WEST VIRGINIA CODE CHAPTER 30 ARTICLE 37

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§30-37-1. License required to practice.

To protect the health, safety and welfare of the public and to ensure standards of competency, it is necessary to require licensure of those engaged in the practice of massage therapy. After June 30, 1998, it shall be unlawful for any person not licensed under the provisions of this article to practice massage therapy in this state, or to use the initials LMT, C.M.T., or the words "licensed massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person, corporation or association is engaging in the practice of massage therapy, or employ any person, not duly licensed, who is engaging in the practice of massage therapy or who is using such words or titles to imply or represent that he or she is engaging in the practice of massage therapy.

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§30-37-2. Definitions.

(a) "Board" means the West Virginia Massage Therapy Licensure Board.

(b) "Massage therapist" means a person licensed to practice the health care service of massage therapy under this article who practices or administers massage therapy to a client of either gender for compensation. No person licensed by the massage therapy licensure board may be referred to as a primary care provider nor be permitted to use such designation.

(c) "Massage therapy" means a health care service which is a scientific and skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone, circulation, promoting health and physical well-being. Massage therapy includes massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications or other therapies which involve manipulation of the muscle and connective tissue of the body, for the purpose of enhancing health, reducing stress, improving circulation, aiding muscle relaxation, increasing range of motion, or relieving neuro-muscular pain. Massage therapy does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine, chiropractic, or podiatry, and does not include service performed by nurses, occupational therapists, physical therapists, or reflexologists who act under their own professional license, certificate, or registration, or energy work practitioners (including reiki, qigong, and sound healing).

(d) "Massage establishment" means a place of business wherein massage therapy is practiced, with a physical site or premise, including mobile sites, licensed as required by this article, in which licensed massage therapists are employees or contractors practicing massage therapy on clients.

(e) "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this article, who is not an employee or contractor of the sole practitioner or an establishment, and who provides massage therapy to clients at a specific location including, but not limited to, a rental space, home office space, offsite, or onsite space.

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§30-37-3. Board established; membership; terms.

(a) The West Virginia massage therapy licensure board consists of five members who are appointed by the Governor with the advice and consent of the Senate. Three members of the board shall be massage therapists, one member of the board shall be an osteopathic physician or chiropractor who is knowledgeable of modalities which are included in massage therapy, and one member of the board shall be a lay person who is not a massage therapist or other health care professional.

(b) The terms of board members shall be staggered initially from July 1, 1997. The Governor shall appoint initially three members for a term of one year and two members for a term of two years. Subsequent appointments shall be for a term of two years. Each member shall serve until that member's successor is appointed and qualified, unless the board member is no longer competently performing the duties of office. Any vacancy on the board shall be filled by the Governor for the balance of the unexpired term. The Governor may remove members of the board from office for cause.

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§30-37-4. Quorum meetings; officers; reimbursement; staff.

(a) A majority of the full authorized membership of the board constitutes a quorum.

(b) The board shall meet at least twice a year, at the times and places that it determines.

(c) The board shall annually elect a chairperson and a secretary/treasurer.

(d) Each member of the board is entitled to reimbursement of travel and other necessary expenses actually incurred while engaging in board activities. All reimbursement of expenses shall be paid out of the massage therapy board fund created by the provisions of this article.

(e) The board may employ staff as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel out of the massage therapy board fund created by the provisions of this article.

(f) The board may contract with other state boards or state agencies to share offices, personnel, and other administrative functions as authorized under this article.

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§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

(a) There is hereby continued a massage therapy licensure board fund in the State Treasurer's office.

(b) The board may set, by legislative rule, reasonable fees for the issuance or renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members shall be generated by the fees set under this subsection.

(c) The disposition of all funds received by the board shall be governed by the provisions of section ten, article one, chapter thirty of this code.

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§30-37-6. Duties of board; authorization to propose rules and fees.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this article, which shall include provisions regarding:

(a) Licensure and continuing education requirements, standards of practice, professional ethics, disciplinary actions, and other issues of concern;

(b) Personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities, and equipment used in the practice of massage therapy; and

(c) All fees for licensure, renewal of licensure, and all other related matters.

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§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code, establishing a procedure for licensing of massage therapists. License requirements shall include the following:

(1) Completion of a program of massage education at a school approved by the West Virginia Council for Community and Technical College Education pursuant to §18B-2B-9 of this code or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) prior to February 1, 2015, the massage and bodywork licensing examination administered through the Federation of State Massage Therapy Boards (FSMTB) and any other board approved examination. This school shall require a diploma from an accredited high school, or the equivalent, and on July 1, 2023, upon adoption of the amendments to this section during the regular session of the Legislature, 2023, require completion of at least 625 hours of supervised academic instruction;

(2) Successful completion of the National Certification for Therapeutic Massage and Bodywork (NCTMB) examination, the Massage and Bodywork Licensing Examination (MBLEx), or any other board approved examination; and

(3) Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.

(b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license to practice massage therapy issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article: *Provided, however*, That a person whose license was issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the discretion of the board, be subject to the licensing requirements of this section.

(c) In addition to provisions for licensure, the rules shall include:

(1) Requirements for completion of continuing education hours conforming to NCBTMB, FSMTB, or board approved guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful completion of the NCTMB examination, MBLEx, or any other board approved examination.

(d) Subject to the provisions of subsection (b) of this section, the board may deny an application for renewal for any reason which would justify the denial of an application for initial licensure.

(e) Any person practicing massage therapy during the time his or her license has lapsed is in

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violation of this article and is subject to the penalties provided in this article.

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist's work site.

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§30-37-8. Enforcement.

(a) The board has the power and authority to enter into any court of this state having proper jurisdiction to seek an injunction against any person, corporation or association not in compliance with the provisions of this article, and is further empowered to enter into any court to enforce the provisions of this article to ensure compliance with such provisions.

(b) The board may suspend, revoke, or impose probationary conditions upon a license or impose disciplinary sanctions upon a licensee pursuant to rules adopted in accordance with this article concerning board requirements for licensure. The following are grounds for revocation, suspension, annulment or the imposition of other disciplinary sanctions when a person, corporation or association is:

(1) Guilty of fraud in practice of massage, or fraud or deceit in the licensee's application for licensure;

(2) Engaged in practice under a false or assumed name, or impersonating another practitioner of a like or different name;

(3) Addicted to the habitual use of drugs, alcohol or stimulants to an extent as to incapacitate that person's performance of professional duties;

(4) Guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing medicines or drugs, or practicing or offering to practice any licensed profession without legal authority. The licensee may not diagnose, or imply or advertise in any way a service for a condition that would require diagnosis;

(5) Practicing or offering to practice beyond the scope of licensure of massage therapy without legal authority;

(6) Grossly negligent in the practice of massage or guilty of employing, allowing or permitting an unlicensed person to perform massage in the licensee's work site;

(7) Practicing massage or bodywork with a license from another state or jurisdiction that has been canceled, revoked, suspended or otherwise restricted;

(8) Incapacitated by a physical or mental disability which is determined by a physician to render further practice by the licensee inconsistent with competency and ethics requirements;

(9) Convicted of sexual misconduct, assignation or the solicitation or attempt thereof;

(10) Engaging in any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensee's practice of massage therapy;

(11) Obtaining any fee by fraud, deceit or misrepresentation; or

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(12) In violation of any of the provisions of this article or any substantive rule adopted under the authority of this article.

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§30-37-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.

All proceedings for the revocation, suspension, or other disciplinary sanctions, or nonrenewal of licenses issued under the authority of this chapter shall be governed by the provisions of section eight, article one, chapter thirty of this code.

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§30-37-10. Prohibitions and penalties.

(a) After June 30, 1998, a person, corporation or association who is not licensed pursuant to the provisions of this article may not engage in the practice of massage therapy and may not use the initials LMT, C.M.T., or the words "licensed massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person, corporation or association is engaging in the practice of massage therapy, nor may a person, corporation or association employ any person, not duly licensed, who is engaging in the practice of massage therapy or who is using such words or titles to imply or represent that he or she is engaging in the practice of massage therapy.

(b) Any person, corporation or association who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or confined in jail not more than one year, or both fined and imprisoned.

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§30-37-11. Exemptions.

Nothing in this article may be construed to prohibit or otherwise limit:

(a) The practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice. Persons exempted under this subdivision include, but are not limited to, those licensed, certified or registered to practice within the scope of any branch of medicine, nursing, osteopathy, chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists; and any student enrolled in a program of massage education at a school approved by the West Virginia State College System Board or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork, provided that the student does not hold himself or herself out as a licensed massage therapist and does not charge or receive a fee; and

(b) The activities of any resort spa that has been operating on a continuing basis since January 1, 1975, or any employees of the resort spa. The exemption set forth in this subsection does not extend to any person, corporation or association providing escort services, nude dancing or other sexually oriented services not falling within the scope of massage therapy as defined in this article, irrespective of how long the person, corporation or association has been in operation.

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§30-37-12.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§30-37-13. Massage establishment license required; exemptions; renewals; suspension and revocation; and emergency rule-making authority.

(a) A place of business that is not a sole practitioner, that advertises or offers massage therapy or other massage services must be licensed by the board as a massage establishment as provided by §30-37-1 *et seq*. of this code.

(b) A massage establishment shall employ or contract only with massage therapists licensed in this state to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment and shall be made available during any inspection or investigation. Required documentation for each person providing massage therapy or other massage services shall include:

(1) A copy of the current active West Virginia massage therapist license;

(2) Proof of eligibility to work in the United States; and

(3) If an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator of the establishment and the licensed massage therapist.

(c) An adult oriented business may not obtain a license from the board or operate as a massage establishment.

(d) Each applicant for a massage establishment shall:

(1) Submit a completed application on a board approved form; and

(2) Pay the appropriate fee as prescribed by the board by legislative rule.

(e) Exemptions:

(1) A place of business is not required to hold a massage establishment license under this article if:

(A) The place of business is owned by the federal government, the state, or a political subdivision of the state, or otherwise offers massage services as authorized under any other state issued professional or occupational license; or

(B) At the place of business, a licensed massage therapist practices as a sole practitioner;

(2) The sole practitioner does not use a business name or assumed name; or

(3) Uses a business name or an assumed name and provides the massage therapist’s full

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legal name or license number in each advertisement and each time the business name or assumed name appears in writing.

(f) A massage establishment license shall be renewed biennially on a form prescribed by the board, with the appropriate fee.

(g) Massage establishment requirements:

(1) A massage establishment shall post, in a prominent location, the board administered establishment license, the state license of each licensed massage therapist employed by the establishment, and any business licenses required by any state, municipality or local governmental entity;

(2) Properly maintain and secure for each client the initial consultation documents, all session notes, written consent documents, and related billing records; and

(3) Maintain a current list of all establishment employees and/or contractors on the premises at all times which includes:

(A) The full name; and

(B) License number and expiration date of the licensed as a massage therapist.

(h) A massage establishment may not:

(1) Employ or contract with an individual to perform massage services who is not a licensed massage therapist in this state and who is not a United States citizen or a legal resident with a valid work permit;

(2) Allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(3) Allow any individual, including a client, license holder, or employee, to engage in sexual contact in the massage establishment;

(4) Allow any individual, including a license holder, employee, or contract employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

(5) Allow any individual, including a license holder, employee, or contract employee to reside on the premises of the massage establishment.

(i) A licensee of a massage establishment may be disciplined, including the suspension or revocation of the license for cause:

(1) Pursuant to the general provisions of §30-1-1 *et seq*. and §30-37-1 *et seq*. of this code;

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(2) For violating any provision of this article;

(3) For violating any applicable state law, rule, or policy; and

(4) For violating any applicable local ordinance.

(j) A license to operate a massage establishment shall be required, starting on July 1, 2025, upon the enactment of this section by the regular session of the Legislature, 2024.

(k) All establishment license holders who are not licensed massage therapists, shall, beginning July 1, 2025, obtain two hours of continuing education on the laws and rules of massage therapy every two years and shall provide the certificate of completion to the board by October 1, 2025, and with the application for biennial renewal of the establishment license.

(l) The board shall propose emergency legislative rules pursuant to §29A-3-1 *et seq*. of this code to establish reasonable fees for the licensure of massage establishments, including the fee for the establishment license and any establishment inspection fees as determined necessary by the board. The fee for a biennial establishment license may not exceed $100.

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§30-37-14. Emergency orders for establishment violations; penalty for continued violation.

(a) The executive director of the board may issue an emergency order suspending the operation of a massage establishment if:

(1) A law-enforcement agency provides notice to the board, that the law-enforcement agency is investigating the massage establishment for an offense pursuant to §61-8-1 *et seq.*, §61-14-1 *et seq.*, or §30-37-1 *et seq*. of this code, and rules promulgated thereunder; or

(2) The board has reasonable cause to believe that an offense pursuant to §30-37-1 *et seq*. of this code, or the rules promulgated thereunder is being committed at the massage establishment, and upon inspection by the board, one or more violations of §30-37-1 *et seq*. of this code or rules promulgated thereunder are observed; or

(3) Upon inspection of a massage establishment, one or more violations of §30-37-1 *et seq*. of this code or rules promulgated thereunder are observed.

(b) After an inspection where violations were observed, the executive director of the board shall issue an emergency order. If the board believes the massage establishment may be in violation of a local, municipal, or other applicable law, the board shall notify law enforcement of the possible violations.

(c) An emergency order shall identify the massage establishment by its business name, state that the massage establishment is closed by order of the WV Massage Therapy Licensing Board pursuant to §30-37-1 *et seq*. of this code, and rules promulgated thereunder. The massage establishment shall remain closed to the public until the it is in compliance with the provisions of §30-37-1 *et seq*. of this code and rules promulgated thereunder. The board shall provide the massage establishment with a written summary of the findings of the inspection resulting in the emergency order, describing what compliance measures are necessary. Within three business days the board shall provide to the massage establishment a written complaint resulting in the emergency order suspending the operation of the massage establishment, which describes the compliance measures which must be taken for the emergency order to be rescinded.

(d) The emergency order shall be noticed by being printed on 8 1/2" x 11" paper and taped to the front door of the massage establishment where it is clearly visible to the public.

(e) A massage establishment may not remove the emergency order notice suspending its operations or open for business until it is in compliance with §30-37-1 *et seq*. of this code, and rules promulgated thereunder as verified by a board inspection.

(f) A massage establishment that opens its business to the public while subjected to an emergency order suspending its operations, shall be fined $1,000 per day, for each day of the violation.

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(g) If the board has to take legal action against a massage establishment for continued violations of §30-37-1 *et seq*. of this code, and rules promulgated thereunder, the court may triple the applicable fines and order the massage establishment to reimburse the board for all legal fees, and all administrative costs.

(h) A massage establishment may appeal the action of the executive director of the board to the board pursuant to the provisions of §30-1-8 of this code.

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