WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2609

Fleischauer, Yeager, Staton, Varner, Hutchins, Fragale and Dalton
(By Delegate)

Passed April 11, 1997

In Effect July 1, 1997

Passage
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-seven, relating to licensing massage therapists; license required after the thirtieth day of June, one thousand nine hundred ninety-eight; definitions; creating the West Virginia massage therapy licensure board; appointment and terms of members of board; meetings of board; reimbursement of members' expenses; establishment of massage therapy licensure board fund; powers of board; requirements for licensure; authority of board to enforce provisions of article; proceedings for the revocation, suspension or nonrenewal of licenses; criminal penalties for violations of provisions; persons and activities exempt from provisions of article; and termination of the board.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-seven, to read as follows:
ARTICLE 37. MASSAGE THERAPISTS.

§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 the thirtieth day of June, one thousand nine hundred ninety-eight, 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.


(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, massage therapy, 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, or physical therapists who act under their own professional license, certificate or registration.

(d) “Massage establishment” means a place of business wherein massage therapy is practiced.

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

There is hereby created the West Virginia massage therapy licensure board. The board shall consist of five members who shall be appointed by the governor with the advice and consent of the Senate. Three members of the board shall be massage therapists, chosen from a list of not less than five names submitted by the West Virginia chapter of the American massage therapy association. 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.

The terms of board members shall be staggered initially from the first day of July, one thousand nine hundred ninety-seven. 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.

§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.

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

(a) There is hereby established a massage therapy
licensure board fund in the state treasurer's office.

(b) The board may set 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.

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

(a) The board shall be responsible for licensure and
continuing education requirements, standards of practice
and professional ethics, disciplinary actions, and other
issues of concern.
5 (b) 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.

9 (c) The board shall adopt reasonable rules regarding 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.

14 (d) All fees for licensure, renewal of licensure, and all other related matters shall be set by the board.

§30-37-7. Requirements for licensure.

1 (a) The board shall propose rules establishing a procedure for licensing of massage therapists. License requirements shall include the following:

4 (1) Completion of a curriculum of massage education at a school approved by the commission on massage training accreditational approval or the West Virginia state college system board. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction. This requirement may be waived for those practitioners who were practicing massage therapy prior to the first day of December, one thousand nine hundred ninety-four;

14 (2) Successful completion of the national certification for therapeutic massage and body work (NCTMB) examination; except that any person who is currently practicing massage therapy and who completed the American massage therapy association educational and testing requirements prior to the first day of December, one thousand nine hundred ninety-four, may be granted a two year provisional license without having successfully completed the national certification for therapeutic massage and body work examination. Any such provisional license granted under this exception shall expire in two years if the national certification for
therapeutic massage and body work examination is not successfully completed within that time; and

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

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

(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements including the successful completion of the NCTMB examination.

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


(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 issued pursuant to rules adopted in accordance with this article concerning board requirements for licensure. The following are grounds for revocation, suspension, or annulment 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 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) 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.

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

(7) 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;

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

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


All proceedings for the revocation, suspension 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.


(a) After the thirtieth day of June, one thousand nine hundred ninety-eight, 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 one hundred dollars nor more than five hundred dollars, or confined in the county or regional jail not more than one year, or both fined and imprisoned.


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

(1) 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 of a West Virginia state college system certified or authorized massage therapy school, provided that the student does not hold himself or herself out as a licensed massage therapist; and

(2) The activities of any resort spa that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy-five, or any employees thereof. 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.

§30-37-12. Termination of board.

1 The massage therapy licensure board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand one, unless sooner terminated, continued or reestablished pursuant to the provisions of such article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoonover  
Chairman Senate Committee

Nick Fantasia  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

G. Mark同胞  
Clerk of the Senate

Earl Ray Tomblin  
President of the Senate

Robert C. Thompson  
Speaker of the House of Delegates

The within is approved this the 18th day of May, 1997.

Earl Ray Tomblin  
Governor