

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2013
6

7 H.P. 1526

House of Representatives, January 31, 1984

8 Reference to the Committee on Business Legislation. Ordered printed and
sent up for concurrence.

9 Approved for introduction by the Legislative Council pursuant to Joint
10 Rule 26.

EDWIN H. PERT, Clerk

Presented by Representative Curtis of Waldoboro.

11 Cosponsors: Senator Bustin of Kennebec and Representative Pines of
Limestone.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Regulate the Practice of
18 Therapeutic Massage.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 32 MRSA c. 97 is enacted to read:

23 CHAPTER 97

24 THERAPEUTIC MASSAGE

25 §9701. Short title

26 This Act may be cited as the "Massage Licensing
27 Act of 1983."

28 §9702. Definitions

29 As used in this chapter, unless the context oth-
30 erwise indicates, the following terms have the fol-
31 lowing meanings.

1 1. Board. "Board" means the Maine State Board
2 of Massage Therapy created by this chapter.

3 2. House call massage service. "House call mas-
4 sage service" means any business, the primary func-
5 tion of which is to engage in the practice of massage
6 therapy, not at a fixed location, but at a location
7 designated by the customer, client or service.

8 3. Massage therapist or massage technician.
9 "Massage therapist" or "massage technician" means any
10 person who practices or administers as to all or any
11 of the procedures set out in subsection 1, and who
12 has made a study of the underlying principles of
13 anatomy and physiology; theory and practice of mas-
14 sage; hydrotherapy; first aid, including CPR; basic
15 nutrition; laws; ethics; professionalism and related
16 subjects, as generally included in a regular
17 1,000-hour course of study by a recognized and ap-
18 proved school of massage therapy or its equivalent;
19 or who is a member in good standing of the American
20 Massage Therapy Association.

21 4. Massage therapy. "Massage therapy" means the
22 practice of a profession scientifically applied to
23 the patient by the operator's hands, feet, arms or
24 elbows or through the use of any mechanical appara-
25 tus. Massage therapy may include the use of oil
26 rubs, heat lamps, salt glows, hot and cold packs,
27 tubs, showers, saunas, cabinet baths, steambaths,
28 colonics or herbal preparations. Variations of the
29 following procedures may be employed:

30 A. Touch;

31 B. Effleurage;

32 C. Friction;

33 D. Petrissage;

34 E. Vibration;

35 F. Tapotement;

36 G. Medical gymnastics; and

1 H. Nonspecific stretching techniques.

2 5. Massage therapy establishments. "Massage
3 therapy establishments" means any massage establish-
4 ment or place of business where massage as to all or
5 any of the subjects and methods of treatments set out
6 in this section is administered or used.

7 §9703. Massage therapist to be licensed

8 1. Prohibition. It is unlawful for any person
9 or persons to engage in the practice or attempt to
10 practice massage, whether for a fee or gratuity, to
11 conduct massage or teach in a school of massage,
12 without a certificate of license issued pursuant to
13 this chapter. The name "massage" shall be employed
14 only by a licensed establishment or practitioner.

15 2. Massage establishment. It is unlawful for
16 any person or persons to operate or conduct any mas-
17 sage establishment which does not conform to the san-
18 itary provisions contained in this chapter, or any
19 regulations which may be adopted by the board, to em-
20 ploy any person as a massage operator or instructor
21 or to open and conduct a massage establishment or
22 school in a place of residence in the State, who does
23 not hold a certificate of license.

24 3. Practice of any branch of massage. It is un-
25 lawful for any person or persons to practice any
26 branch of massage, as defined in section 9702, wheth-
27 er for payment or by free demonstration, without
28 first being a licensed massage therapist or massage
29 technician pursuant to this chapter, or without oper-
30 ating and maintaining a bona fide and duly licensed
31 massage establishment and without first paying a li-
32 cence fee to the State. No state, county or municip-
33 al occupational license for massage may be issued to
34 any person, unless he has in his possession a duly
35 issued certificate of license or current certificate
36 of renewal, as authorized and signed by the board.

37 §9704. Exemptions

38 1. Classes of persons exempt. The following
39 classes of persons are exempt from this chapter:

1 A. Persons authorized by the laws of this State
2 to practice any branch of medicine, surgery, os-
3 teopathy, chiropractic or chiropody, or persons
4 holding a drugless practitioner's certificate;

5 B. Registered nurses and licensed practical
6 nurses under the laws of this State;

7 C. Barbers duly licensed under the laws of this
8 State;

9 D. Beauticians duly licensed under the laws of
10 this State; and

11 E. Registered physical therapists under the laws
12 of this State.

13 2. Extent of exemption. Any exception granted
14 under this section is effective only to the extent
15 that the bona fide practice of the profession or
16 business of the person exempted overlaps into the
17 field comprehended by this chapter, and exemptions
18 under this section are only for those activities
19 which are performed in the course of the bona fide
20 practice of the business or profession of the person
21 exempted.

22 §9705. Board of massage examiners; terms

23 The Governor shall appoint a Maine State Board of
24 Massage Therapy to consist of 3 to 5 actively prac-
25 ticing massage therapists or massage technicians.
26 The members of the first board appointed under this
27 chapter shall be appointed for terms of one, 2 and 3
28 years, respectively, and shall hold office until
29 their successors are appointed and qualified. Suc-
30 cessors of those members shall be appointed for 3
31 years.

32 §9706. Removal of members of board; officers; meet-
33 ings; compensation

34 1. Removal. The Governor may remove from office
35 members of the board for neglect of duties, as re-
36 quired by this chapter, for malfeasance in office and
37 incompetency or for unprofessional conduct. The mem-
38 ber of the board shall be entitled to prior written

1 notice and full specification of charges, followed by
2 a full hearing before the removal may take place.
3 The Governor may fill any vacancy caused by removal
4 of any member of the board, or caused by resignation
5 or death. All appointees to fill vacancies shall be
6 practicing massage therapists in the State.

7 2. Meetings. The board shall, within 2 weeks
8 after its appointment, meet at some convenient place
9 in the State and shall elect a president from its
10 members and a secretary-treasurer. The secretary-
11 treasurer shall render to the Governor a penal bond
12 in the sum of \$1,000, with good and sufficient surety
13 to be approved by the Governor for the faithful dis-
14 charge of his duties. The board shall hold examina-
15 tions from time to time at such places as the board
16 may designate.

17 3. Examination and inspection of establishments
18 and schools. The board shall, from time to time, ex-
19 amine and inspect, or cause to be examined and in-
20 spected, all massage establishments and massage
21 schools operated in the State, and for this purpose
22 the board and its agents and employees may enter and
23 inspect any massage establishments or schools at any
24 reasonable and prearranged time during which the es-
25 tablishment or school is open for the transaction of
26 business.

27 4. Compensation. Each member of the board shall
28 receive \$35 for each day on which he is engaged in
29 his duties as a board member.

30 §9707. Requisites for examination; minimum passing
31 grade

32 1. Requirements. Any person who meets the fol-
33 lowing requirements shall be licensed and shall be
34 issued a certificate as a massage therapist or a mas-
35 sage technician:

36 A. Is 18 years of age or older;

37 B. Is a high school graduate or its equivalent;

38 C. Is a citizen of the United States and a resi-
39 dent of this State for at least 6 months immedi-

1 ately preceding his application to take the exam-
2 ination;

3 D. Is of good moral character;

4 E. Declares under oath that he or she has not
5 been convicted of a violent or sexually related
6 crime, in this State or elsewhere;

7 F. Presents a diploma or credentials issued by a
8 recognized school of massage approved by the
9 American Massage Therapy Association, or like in-
10 stitution, which states that he has successfully
11 completed a course of study consisting of not
12 less than 1,000 hours;

13 G. Pays the fees specified in this chapter to
14 the secretary-treasurer at the time of applica-
15 tion;

16 H. Passes a reasonable demonstrative, oral and
17 written examination, conducted by and under the
18 supervision and direction of the board; and

19 I. Presents a certificate of physical examina-
20 tion.

21 2. Minimum requirements; reexamination. The
22 minimum requirements for licensing shall be a general
23 average in the examination of 75% in all subjects in-
24 volved. Any applicant failing to meet those require-
25 ments may, within 6 months after notification by the
26 board, take a reexamination, upon payment of an addi-
27 tional fee of \$10. No person may take more than 2
28 reexaminations.

29 §9708. Fees for certificate of license

30 1. Fee. A fee of \$35 shall be paid by any per-
31 son applying for a certificate of license to practice
32 as a licensed massage therapist or massage techni-
33 cian.

34 2. Renewal fee. The fee to be paid by a massage
35 therapist or massage technician for renewal of a li-
36 cence shall be \$10. Each certificate shall be re-
37 newed annually.

1 §9709. Certificate of license; recording; display;
2 renewal

3 1. Display; recording. Each certificate of li-
4 cence shall be conspicuously displayed at the place
5 of practice and shall be recorded in the office of
6 the clerk of courts of any county where the licensed
7 massage therapist or massage technician practices,
8 within 30 days after issuance of the certificate.

9 2. House call services. Any massage therapist
10 or massage technician engaged in a house call service
11 shall carry an updated card authorized by the board
12 proving certificate of license.

13 3. Payment of renewal fee. Annually, on or be-
14 fore January 1st, every licensed massage therapist or
15 massage technician must pay to the secretary-trea-
16 surer of the board the renewal fee set out in section
17 9708.

18 4. Continuing education. Attendance at
19 post-graduate work for at least 3 days each year, as
20 may be outlined pursuant to rules adopted by the
21 board, may be a further requirement for renewal of a
22 certificate.

23 5. Physical and mental competence. If the board
24 finds that any massage therapist or massage techni-
25 cian is in such physical condition as to jeopardize
26 the health of those who seek massage from him, the
27 board shall require the applicant or certificate
28 holder to submit to a physical examination by a com-
29 petent medical examiner and, if the person is found
30 to have, or to have had, any communicable disease,
31 the board may disqualify that person from obtaining
32 or renewing a certificate to practice massage in this
33 State. The granting or renewal of a certificate may
34 be denied until that person furnishes proof of being
35 physically and mentally competent and sound to prac-
36 tice massage. The holder of an expired certificate
37 of license may, within one year from the date of ex-
38 piration, have the certificate renewed upon payment
39 of the required renewal fee and upon meeting the oth-
40 er requirements of this chapter.

1 6. Failure to renew for 2 years. Any regis-
2 trant, who does not renew his license for 2 consecuti-
3 ve years, shall take the examination as prescribed
4 for an applicant to become a licensed massage thera-
5 pist or massage technician, and shall otherwise com-
6 ply with all the provisions of this chapter, as ap-
7 licable to any original applicant for license.

8 §9710. Sanitary requirements

9 The board may, by regulations, prescribe reason-
10 able sanitary conditions regarding personal cleanli-
11 ness of massage therapists or massage technicians;
12 sanitary conditions as to towels, linen, creams, lo-
13 tions, oils and other materials used in the practice
14 of massage; and sanitary conditions concerning facil-
15 ities and equipment used in that practice.

16 §9711. Revocation of certificates of license;
17 preferment of charges

18 The certificate of license of a massage therapist
19 or massage technician may be revoked, suspended or
20 annulled, upon one or more of the following grounds:

21 1. Fraud. That the licensee is guilty of fraud
22 in the practice of massage, or fraud or deceit in his
23 admission to the practice of massage; or is engaged
24 in the practice of massage under a false or assumed
25 name, or is impersonating another practitioner of a
26 like or different name;

27 2. Violent or sexually related crime. That a
28 licensee has been convicted in a court of competent
29 jurisdiction of a violent or sexually related crime;

30 3. Liquor or drugs. That the licensee has a se-
31 vere addiction to alcohol or other drugs that endan-
32 ger the public by impairing a massage therapist's or
33 massage technician's ability to practice safely;

34 4. Advertising; prescription of drugs. That the
35 licensee is guilty of fraudulent, false, misleading
36 or deceptive advertising or that he prescribed medi-
37 cine or drugs or practices any other licensed profes-
38 sion without legal authority to do so;

1 5. Negligence; employment of unlicensed persons.
2 That the licensee is guilty of willful negligence in
3 the practice of massage or has been guilty of employ-
4 ing, allowing or permitting any unlicensed person to
5 perform massage in his or her establishment; or

6 6. Other offenses. That the licensee has vio-
7 lated any provision of this chapter.

8 Charges may be preferred by any person, or the
9 board may on its own motion direct the president of
10 the board to prefer charges. An accusation may be
11 filed with the secretary-treasurer of the board,
12 charging any licensed massage therapist or massage
13 technician with any of the offenses set out in this
14 section. The accusation shall be in writing, signed
15 by the accuser and duly verified under oath.

16 §9712. Form of accusation; notice

17 1. Notice; hearing. Whenever an accusation as
18 set out in section 9711 is filed, the board shall set
19 a day certain for hearing and the secretary-treasurer
20 shall transmit to the accused a true copy of any and
21 all charges filed with him relating to the accusa-
22 tions, notifying the accused in writing that on the
23 day fixed for the hearing, which shall not be less
24 than 10 days from the date of notice, he may appear
25 to show cause, if any, why his certificate of license
26 to practice massage in this State shall not be re-
27 voked, suspended or annulled. For the purposes of
28 any such hearing, the board may require by subpoena
29 the attendance of witnesses, may administer oaths and
30 hear testimony and receive evidence, either oral or
31 documentary, for and against the accused. The ac-
32 cusced has the right at the hearing to cross examine
33 witnesses, produce evidence and witnesses in his de-
34 fense and appear personally or by counsel.

35 2. Form of notice. The notice provided for in
36 this section shall be substantially in the following
37 form:

38 To: _____

39 You are hereby notified that charges have been
40 filed with the secretary-treasurer of the Maine

1 State Board of Massage Therapy against you, as a
2 practitioner of massage in this State, a true
3 copy of the charges being attached hereto. The
4 board has fixed the day of _____ in
5 _____, for a hearing on those charges, at
6 which time and place you are hereby notified to
7 appear before the board and show cause, if any,
8 why your certificate to practice massage shall
9 not be revoked, suspended or annulled. At that
10 time and place, the board will hear testimony and
11 receive evidence, either oral or documentary,
12 both for and against you, as relating to those
13 charges.

14 Dated at _____, this _____ day of
15 _____, A.D. 19 _____.

16 Secretary-Treasurer of the
17 Maine State Board of Massage Therapy

18 3. Service of notice. The notice shall be sent
19 to the certificate holder by registered or certified
20 mail, directed to his last known address. The post
21 office registration receipt for the notice, signed by
22 the accused or his agent, shall be prima facie evi-
23 dence of service of the notice.

24 §9713. Power to revoke, suspend or annul certificate
25 of license; review; reissuance of certifi-
26 cates of license

27 1. Revocation, suspension or annulment. The
28 board may, upon satisfactory proof that any certifi-
29 cate holder has been guilty of any of the charges
30 preferred against him, revoke, suspend or annul any
31 certificate issued under this chapter, upon a 2/3 ma-
32 jority vote of the board. The accused person may
33 have the proceedings of the board reviewed by pro-
34 ceedings instituted in the court of the county in
35 which the certificate of that person is recorded.
36 The review proceeding shall issue upon the petition
37 of the person whose certificate has been revoked,
38 suspended or annulled at any time within 90 days af-
39 ter the revocation, suspension or annulment by the
40 board. The revocation, suspension or annulment shall
41 be stayed by initiation of review proceedings.

1 2. Review proceedings. Proceedings upon review
2 shall be as in other like administrative proceedings
3 reviewed by courts of record in this State.

4 3. Notice to clerk of courts. In the event that
5 any certificate shall finally be revoked, suspended
6 or annulled under this chapter, the board shall
7 forthwith transmit, to the clerk of the court in
8 which the accused is registered as a massage thera-
9 pist or massage technician, a certificate under its
10 seal certifying that the license has been revoked,
11 suspended or annulled and the clerk shall, upon re-
12 ceipt of that certificate, file the same and forth-
13 with mark the license revoked, suspended or annulled.
14 In the event of suspension only, the clerk shall in-
15 indicate on the license the period for which the li-
16 cence is suspended.

17 4. Practicing after revocation, suspension or
18 annulment. Any person who practices massage after
19 his license has been revoked, suspended or annulled
20 shall be deemed to have practiced massage without a
21 license. At any time after 6 months from the date of
22 revocation, suspension or annulment, the board may,
23 in the exercise of its reasonable discretion and by a
24 majority vote, issue a new license to the person af-
25 fected, restoring or reconferring all rights and
26 privileges of and pertaining to the practice of mas-
27 sage, the fee therefor to be the same as upon iss-
28 uance of an original certificate.

29 §9714. Records to be kept by secretary-treasurer

30 1. Record book. The secretary-treasurer shall
31 keep a record book in which shall be entered the
32 names of all persons to whom certificates have been
33 granted under this chapter, the certificate number of
34 each, the date of granting that certificate, any re-
35 newal of the certificate and other matters of
36 record. The record book shall be deemed and consid-
37 ered a book of records and certification under the
38 hand of the secretary-treasurer, with the seal of the
39 board as to the contents of the book, shall consti-
40 tute proper evidence in any of the courts of this
41 State.

1 2. Other records. The original books, records
2 and papers of the board shall be kept at the office
3 of the secretary-treasurer. The secretary-treasurer
4 shall furnish, to any person making application
5 therefor, extracts of any records, certified by the
6 secretary-treasurer.

7 §9715. Compensation of board members

8 The board members shall receive necessary travel-
9 ing expenses while actually engaged in their official
10 duties. The board may hire office and inspection
11 personnel as necessary for carrying on its official
12 duties and shall set the compensation to be paid to
13 those employees. No employee of the board may be re-
14 lated by blood or marriage to any member of the
15 board.

16 §9716. Disposition of funds received by board

17 All moneys collected by the board under this
18 chapter shall be paid to the secretary-treasurer, who
19 shall give a due receipt for those funds, deposit the
20 funds in a depository bank to the credit of the board
21 fund. The board may expend the funds for its opera-
22 tion and maintenance, under the provisions of this
23 chapter, upon vouchers duly signed by the secretary-
24 treasurer and countersigned by the president of the
25 board. The total expense incurred by the board shall
26 not exceed the amounts collected by the board annual-
27 ly pursuant to this chapter.

28 §9717. Other laws unaffected by this chapter

29 Nothing in this chapter may be construed or in-
30 terpreted as changing, modifying or repealing any of
31 the laws relating to physicians, osteopaths, chiro-
32 practicers, chiropodists, optometrists, beauticians and
33 nurses.

34 §9718. Present practitioners

35 Any person, resident of this State, who is actu-
36 ally engaged in the practice of massage and who has
37 practiced the profession 3 years or more at any place
38 within this State, or who has a diploma from an ap-
39 proved school of massage at the time this chapter

1 takes effect, or who is eligible for membership in
2 the American Massage Therapy Association shall be
3 granted a certificate or registration as a licensed
4 massage therapist or massage technician without first
5 having passed the demonstrative, oral or written ex-
6 amination before the board, by making application to
7 the board, furnishing credentials satisfactory to the
8 board, together with a certificate of physical exami-
9 nation and payment of the required fee.

10 §9719. Limitation

11 After the period of one year from the date on
12 which this chapter takes effect, no person may engage
13 in the practice of massage unless he has first ob-
14 tained a license from the board.

15 §9720. Violations

16 Any person who violates any provision of this
17 chapter is guilty of a Class E crime.

18 §9721. Reciprocity

19 1. Reciprocity. Any person who has been duly
20 licensed to practice massage in another state which
21 has and maintained a standard of practice substan-
22 tially the same as that maintained in this State, who
23 has been lawfully and continuously engaged in that
24 practice for 2 or more years immediately before fil-
25 ing his application to practice in this State and who
26 submits to the board a duly attested certificate from
27 the examining board of the state in which he is li-
28 icensed, certifying to the fact of his licensing and
29 of being a person of good moral character, may, upon
30 paying a fee of \$35, be granted a certificate to
31 practice in this State without being required to take
32 an examination. No certificate may be issued to any
33 applicant unless the state or territory from which
34 the certificate is granted extends a reciprocal priv-
35 ilege in the practice of massage.

36 2. Reciprocal agreements. The board may enter
37 into reciprocal relations with other states having
38 massage requirements substantially the same as those
39 provided by this chapter.

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STATEMENT OF FACT

The purpose of this bill is to provide for the
licensing and regulation of therapeutic massage.

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