

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1421

H.P. 978

House of Representatives, April 4, 1991

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed. Pert".

EDWIN H. PERT, Clerk

Presented by Representative KILKELLY of Wiscasset.

Cosponsored by Senator CONLEY of Cumberland, Representative LAWRENCE of Kittery and Representative ADAMS of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Provide for the Regulation of Massage Therapists.



Professional and Financial Regulation.

2
3. Department. "Department" means Department of
4 Professional and Financial Regulation.

6
4. Massage therapist. "Massage therapist" means a person
8 who provides or offers to provide massage therapy for a fee,
monetary or otherwise, to the general public.

10
5. Massage therapy. "Massage therapy" means a scientific
12 or skillful manipulation of soft tissue for therapeutic or
remedial purposes, specifically for improving muscle tone and
14 circulation and promoting health and physical well-being. The
term includes, but is not limited to, manual and mechanical
16 procedures and the use of supplementary aids such as rubbing
alcohol, liniments, oils, antiseptics, powders, herbal
18 preparations, creams or lotions, and procedures such as oil rubs,
salt glows, hot or cold packs, steam baths, cabinet baths and
20 sauna baths, or other similar procedures or preparations commonly
used in this practice. This term does not include manipulation
of the spine.

22 §14302. Board of Massage Therapy; establishment; compensation

24
1. Establishment. The Board of Massage Therapy within the
26 Department of Professional and Financial Regulation, as
established in Title 5, section 12004-A, subsection 22-A, shall
28 carry out the purposes of this chapter.

30
2. Members. The board consists of 7 members appointed by
32 the Governor. Each member must be a citizen of the United States
and a resident of this State. One member must be a registered
34 massage therapist under this chapter; 3 members must be certified
massage therapists under this chapter. Each therapist member
36 must have been, for at least 3 years immediately preceding
appointment, actively engaged as a practitioner, educator or
38 researcher. One member must be a provider of physical health
care who is not a massage therapist. Two members must be
40 consumers of massage services who are not providers of massage
therapy and whose parents, spouses or children are not
42 providers. Persons appointed as initial therapist members of the
board must meet the qualifications for the specialty that they
44 represent and must become registered or certified in accordance
with the provisions of this chapter as soon as provisions have
46 been developed by the board.

48
3. Timetable. The Governor shall make initial appointments
50 by October 15, 1991. The board shall elect a chair and secretary
at the conclusion of its first meeting of each year. No person
may serve as chair for more than 3 years. The commissioner shall
call the first meeting of the board, which must take place within

2 30 days of the completion of the appointments of the initial
3 members, and shall act as chair until a chair is elected.

4 4. Terms of office. Of the first board members, the
5 Governor shall appoint one for a term of one year, one for a term
6 of 2 years and 3 for terms of 3 years. Their successors are
7 appointed for terms of 3 years except that any person chosen to
8 fill a vacancy may be appointed only for the unexpired term of
9 the board member to be succeeded. Upon the expiration of the
10 term of office, a board member may continue to serve until a
11 successor has been appointed and qualified. A person may not be
12 appointed for more than 2 consecutive terms.

13 5. Removal. The Governor may remove any member of the
14 board for good cause.

15 6. Compensation. Members of the board are compensated
16 according to the provisions of Title 5, chapter 379 provided that
17 expenses do not exceed the fees collected by the board. The
18 board members are entitled to prorated payment in any year in
19 which the fees collected under this chapter are insufficient to
20 pay the expenses provided by this section.

21 7. Meetings; quorum. The board shall hold at least 2
22 regular meetings per year. Additional meetings may be held upon
23 the request of any 2 board members. Four members of the board
24 constitute a quorum.

25 §14303. Board of Massage Therapy; powers and duties

26 The board has the following powers and duties in addition to
27 all other powers and duties set forth in this chapter.

28 1. Standards. The board shall administer and enforce this
29 chapter.

30 2. Rules. The board shall adopt rules, in accordance with
31 the Maine Administrative Procedure Act, Title 5, Chapter 375,
32 necessary to carry out the purposes of this chapter.

33 3. Complaints. The board shall investigate or cause to be
34 investigated all complaints made on its own motion or on written
35 complaint filed with the board and all cases of noncompliance
36 with or violation of this chapter or any rules adopted by the
37 board. The board shall establish procedures to permit, and shall
38 facilitate the filing of, written complaints by consumers and
39 shall take action to assure that the public is aware of the right
40 to file complaints.

2 4. Records. The board shall keep records and minutes
necessary to the ordinary dispatch of its functions.

4 5. Reports. No later than August 1st of each year, the
board shall submit to the commissioner an annual report of its
6 operations for the preceding fiscal year.

8 6. Contracts. The board may enter into contracts to carry
out its responsibilities under this chapter.

10 7. Budget. The board shall submit to the commissioner its
12 budgetary requirements sufficient to carry out the provisions of
this chapter in the same manner as is provided in Title 5,
14 section 1665.

16 8. Register. The department shall make available, at cost,
a register that contains the names of all individuals registered
18 and certified by the board.

20 9. Fees. Within any limits set in this chapter, the board
shall establish registration and certification fees sufficient,
22 but no more than sufficient, to cover the costs of implementing
the provisions of this chapter. The board shall report to the
24 commissioner if the fees as limited in this chapter are
insufficient.

26 10. Officers. The board shall elect from among its members
28 a secretary and other officers. The secretary shall keep records
and minutes of all activities and meetings.

30 11. Code of ethics. The board shall adopt a code of ethics
32 generally in keeping with standards established by the national
professional associations concerned with the areas of board
34 responsibility.

36 12. Bill of rights. The board shall adopt a bill of rights
for consumers. The bill must set out the qualifications required
38 for registration and certification of therapists.

40 13. Hearings. The board shall conduct hearings to assist
with investigations and to determine whether grounds exist for
42 denial of reregistration or recertification, suspension or
revocation of certification or registration, or other action
44 necessary to the fulfillment of its responsibilities under this
chapter.

46 14. Examination. The board may require an examination as a
48 qualification for certification and shall specify the content of
the examination. The board shall establish examination fees in
50 reasonable and necessary amounts.

2 §14304. Employees

4 The commissioner may appoint, subject to the Civil Service
6 Law, employees necessary to carry out this chapter. Any person
8 so employed is considered to be in the department and under the
 administrative and supervisory direction of the commissioner.

10 §14305. Registration

12 1. Registration required. Effective October 15, 1992, a
14 person, unless specifically exempted by this chapter or certified
16 as a massage therapist under this chapter, may not use the title
 massage therapist or profess to be a massage therapist unless
 registered in accordance with this chapter.

18 Each individual not certified as a massage therapist under
20 this chapter who engages in the practice of massage therapy as
22 defined herein shall register with the board every 2 years. Each
24 individual who registers shall fill out a form designated by the
26 board. Registration expires biennially on December 31st or on
 such other date as the commissioner determines. Notice of
 expiration must be mailed to each registered massage therapist's
 last known address at least 30 days before the expiration of the
 registration. The notice must include any requests for
 information necessary for renewal.

28 2. Individual registration. Only an individual may be
30 registered under this chapter.

32 3. Information required. Each individual who registers
34 shall provide the following information. The board shall compile
36 this information and make it available to the public upon request
 and for a fee that covers the cost of making the information
 available. The information that must be provided by the
 registrant includes:

38 A. Name, address and telephone number;

40 B. Major fields of training and expertise, including
42 degrees and professional certification held and when and
 where conferred;

44 C. Method of billing and previous experience and policy
46 with regard to 3rd-party payments;

48 D. The fee schedule and provisions for pro bono work or
 sliding scale modifications of the fee schedule; and

50 E. A description of the individual's practice.

2 4. Registration fee. Each individual registering under
4 this section shall pay a registration fee established by the
 board not to exceed \$100 biennially.

6 5. Disciplinary action. Any individual registered under
8 this section is subject to the provisions of section 14313.

10 6. Registration not certification. Registration does not
12 imply or certify in any way that the registrant has met any
 standards or criteria of education or training.

14 §14306. Requirements for certification

16 To be eligible for certification as a massage therapist an
 applicant must:

18 1. Age. Be at least 18 years of age;

20 2. Examination. Pass any examination required by the board;

22 3. Trustworthiness and competence. Demonstrate
24 trustworthiness and competence to engage in the practice of
 massage therapy in a manner that safeguards the interest of the
26 public;

28 4. Ethics. Demonstrate adherence to the ethics of the
 massage therapy profession;

30 5. Interview. Be approved by the board based on any
32 interview that the board may require;

34 6. Criminal history. Have no history of crimes violent or
 sexual in nature;

36 7. High school. Possess a high school diploma or its
38 equivalent;

40 8. Education and experience. Be a graduate of a school of
42 massage therapy approved by the board that requires a minimum of
 500 hours of classroom instruction or have the following
 combination of education and experience:

44 A. A college level course in anatomy or physiology or one
46 approved by the board;

48 B. 300 hours of documented classroom instruction in the
50 theory and technique of massage therapy, as approved by the
 board; and

2 C. 100 hours of applied massage therapy under the
3 supervision of a graduate of a school of massage therapy or
4 a certified massage therapist. This therapy must be
5 documented in a form approved by the board.

6 **§14307. Terms of certification**

8 1. Biennial renewal. Certification expires biennially on
9 December 31st or on another date the commissioner determines.
10 Notice of expiration must be mailed to each certified massage
11 therapist's last known address at least 30 days before the
12 expiration of the certification. The notice must include any
13 requests for information necessary for renewal. The cost of a
14 renewal may not exceed \$125 per biennium.

16 2. Continuing competency. The board may establish
17 continuing competency requirements. Applicants for renewal of
18 certification must show proof of satisfying those requirements.

20 **§14308. Comity**

22 The board may waive the certification examination for an
23 applicant licensed or certified as a massage therapist in a state
24 whose requirements are determined by the board to be at least
25 equivalent to those requirements in this chapter.

26 **§14309. Client bill of rights; code of ethics**

28 Each individual registered or certified under this section
29 shall post and make available to each client a copy of:

32 A. The client bill of rights approved by the board;

34 B. The code of professional ethics approved by the board;
35 and

36 C. The name and telephone number of the person to whom
37 complaints are to be directed and a description of the
38 complaint process.

40 **§14310. Registration or certification not allowed**

42 An individual whose license, certification or registration
43 has been revoked or suspended in this or any other state and in
44 this or any related field may not be registered or certified to
45 practice in this State unless the period of revocation or
46 suspension has been completed and the board has conducted a
47 competency review and determined that rehabilitation has taken
48 place.

50

2 §14311. Exemptions to registration and certification

4 1. Other professionals. This chapter does not apply to the
6 activities or services of members of other professions licensed,
8 certified or registered by the State, including, but not limited
10 to, physicians, chiropractors, physical therapists,
12 cosmetologists or registered nurses performing soft tissue
14 manipulation consistent with the laws of the State governing
16 their practices, provided they do not use the title "massage
18 therapist."

20 2. Other exemptions. This chapter does not apply to the
22 activities and services of individuals who practice other forms
24 of tissue work exclusive of massage therapy, such as rolfing,
26 Trager, reflexology, Shiatsu, Reiki and polarity, if those
28 practitioners do not use the title "massage therapist," unless
30 they choose to meet the requirements of this chapter.

32 §14312. Disciplinary action; grounds; procedure; complaints

34 1. Grounds. The board may suspend, revoke or refuse to
36 renew registration or certification pursuant to Title 5, section
38 10004. In addition, the board may take other action pursuant to
40 Title 10, section 8003, subsection 5. The board's actions may be
42 based on any of the following grounds:

44 A. The practice of fraud or deceit in obtaining
46 certification or registration status under this chapter or
48 in connection with service rendered within the scope of the
50 registration or certification issued;

B. Habitual intemperance in the use of alcohol or the
habitual use of narcotic or other drugs which has resulted
in the regulated person being unable to perform necessary
duties or performing those duties in a manner that would
endanger the health or safety of clients;

C. A medical finding of mental incompetence;

D. Aiding or abetting persons not duly registered or
certified under this chapter who profess to be registered;

E. Incompetence in the practice of massage therapy. A
registered or certified therapist is considered incompetent
in the practice if the person has engaged in conduct that
evidences a lack of ability or fitness to discharge the duty
owed to a client or has engaged in conduct that evidences a
lack of knowledge or inability to apply principles or skills
necessary to carry out the practice for which that person is
registered or certified;

2 F. Unprofessional conduct, which means the violation of any
3 standard of professional behavior or code of ethics adopted
4 by the board;

5 G. Subject to the limitations of Title 5, chapter 341,
6 conviction of crime that involves dishonesty or false
7 statement or that directly relates to the practice of
8 massage therapy, or conviction of a crime for which
9 incarceration for one year or more may be imposed;

10 H. Revocation in any state of a professional or
11 occupational license, certification or registration for
12 disciplinary reasons, or rejection of any application for
13 reasons relating to untrustworthiness, within 3 years of the
14 date of application; and

15 I. Violating any provisions of this chapter or any rule of
16 the board.

17
18
19
20 2. Procedure. Except as provided in Title 5, section
21 10004, no registration or certification status may be denied,
22 suspended, revoked or refused for renewal for the reasons set
23 forth in subsection 1 without prior written notice and
24 opportunity for hearing on that denial, suspension or
25 revocation. The burden of proof is on the board in any
26 proceeding to deny, suspend or revoke registration or
27 certification. No registration or certification may be denied,
28 suspended or revoked under this section except by majority vote
29 of the board.

30
31
32 3. Complaints. Any person may file a complaint with the
33 board seeking disciplinary action against a massage therapist.
34 Complaints must be in writing in a form prescribed by the board
35 by rule. If the board determines that a complaint alleges fact
36 that, if true, would require denial, revocation, suspension or
37 nonrenewal or other disciplinary action of a registered or
38 certified therapist, the board shall conduct a hearing pursuant
39 to the Maine Administrative Procedure Act. Whenever the board
40 establishes that a complaint does not state facts that warrant a
41 hearing, the complaint may be dismissed. Persons making
42 complaints must be advised in writing of each formal decision
43 made by the board regarding that complaint.

44 Any individual whose registration or certification has been
45 denied, suspended or revoked may apply to the board for
46 registration or certification reinstatement one year after the
47 date of the board's original action. The board shall determine
48 the nature of this review.

2 The board shall conduct its proceedings in accordance with
3 the provisions of Title 5, chapter 375, subchapter IV.

4 **§14313. Penalty; injunction**

6 Any person who violates this chapter commits a Class E
7 crime. The State may bring an action in Superior Court to enjoin
8 any person from violating this chapter, regardless of whether
9 proceedings have been or may be instituted in the Administrative
10 Court or whether criminal proceedings have been or may be
11 instituted.

12

14

14 **STATEMENT OF FACT**

16

18

20

22

This bill establishes the Board of Massage Therapy, a regulatory board of 7 members in the Department of Professional and Financial Regulation. Four members are to be practitioners of massage therapy, 2 are to be consumers and one is to be a provider of health care who is not a massage therapist. Initial appointments are to be made by October 15, 1991.

24

26

28

30

32

34

The bill requires that, effective October 19, 1992, all persons who wish to use the title "massage therapist" or to practice massage therapy must be registered or certified by the State. Initial registration may be accomplished by providing the information required by the Board of Massage Therapy and paying a biennial fee not to exceed \$100. Certification requires graduation from a school of massage therapy or a combination of course work and supervised practice and an initial fee not to exceed \$200 biennially. The board may require an examination and an interview for initial certification and may require programs for maintaining competence as a condition for certification renewal.

36

38

40

Pursuant to the Maine Revised Statutes, Title 5, section 12015, any joint standing committee of the Legislature recommending passage of this bill is required to submit to the Legislature a written report to support the recommendations that massage therapists be subject to state regulation.