

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

event an indigent person is released on bail and is unable to pay the bail commissioner's fee.

Sec. 3. Implementation dates. The Attorney General shall adopt standards as required by the Maine Revised Statutes, Title 15, chapter 99 no later than 6 months after the effective date of this Act.

District attorneys shall designate arrest warrant repositories as required by Title 15, chapter 99 and those repositories must be operational no later than June 1, 1992.

All law enforcement agencies holding attested copies or original arrest warrants issued prior to June 1, 1992 shall make a complete review of any outstanding warrants and shall transfer any outstanding warrants issued prior to June 1, 1992 to the appropriate arrest warrant repository no later than September 1, 1992, except that any original arrest warrant must be returned to the issuing court.

See title page for effective date.

CHAPTER 403

H.P. 978 - L.D. 1421

An Act to Provide for the Regulation of Massage Therapists

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

Sec. 1. 32 MRSA c. 125 is enacted to read:

CHAPTER 125

MASSAGE THERAPISTS

§14301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means Commissioner of Professional and Financial Regulation.

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

3. Massage therapist. "Massage therapist" means a person who provides or offers to provide massage therapy for a fee, monetary or otherwise. This definition includes the use of different forms of the term "massage therapist," such as "masseur" or "masseur."

4. Massage therapy. "Massage therapy" means a scientific or skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving

muscle tone and circulation and promoting health and physical well-being. The term includes, but is not limited to, manual and mechanical procedures for the purpose of treating soft tissue only, the use of supplementary aids such as rubbing alcohol, liniments, oils, antiseptics, powders, herbal preparations, creams or lotions, procedures such as oil rubs, salt glows and hot or cold packs or other similar procedures or preparations commonly used in this practice. This term specifically excludes manipulation of the spine or its articulations and excludes sexual contact as defined in Title 17-A, section 251, subsection 1, paragraph D.

§14302. Commissioner; powers and duties

The commissioner or the commissioner's designee has the following powers and duties in addition to all other powers and duties set forth in this chapter.

1. Standards. The commissioner shall administer and enforce this chapter.

2. Rules. The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out the purposes of this chapter.

3. Complaints. The commissioner shall investigate or cause to be investigated all complaints concerning violations of this chapter or rules adopted by the department, made on the commissioner's own motion or on written complaint filed with the department, and all cases of noncompliance with or violation of this chapter or any rules adopted by the department.

4. Contracts. The commissioner may enter into contracts to carry out the commissioner's responsibilities under this chapter.

5. Register. The commissioner shall make available, at cost, a register that contains the names of all individuals registered.

6. Hearings. The commissioner may conduct hearings to assist with investigations and to determine whether grounds exist for denial of reregistration, suspension of registration or other action necessary to the fulfillment of the commissioner's responsibilities under this chapter.

7. Advisory Council. The commissioner, as necessary, may select members of the profession and other interested parties to serve on an advisory council to advise and consult with the commissioner concerning the regulation of massage therapists. Service on the council is not in itself a conflict of interest regardless of the occupations or associations of the members.

§14303. Employees

The commissioner may appoint, subject to the Civil Service Law, employees necessary to carry out this chapter. Any person so employed is considered to be in the de-

partment and under the administrative and supervisory direction of the commissioner.

§14304. Registration

1. Registration required. Effective January 1, 1992 a person, unless specifically exempted by this chapter, may not use the title "massage therapist" or profess to be a massage therapist unless registered in accordance with this chapter.

Each individual using the title "massage therapist" or professing to be a massage therapist shall register with the department every year. Each individual who registers shall fill out a form designated by the department. Registration expires yearly 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.

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

§14305. Requirements for registration

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

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

2. Photograph. Furnish to the department 2 signed photographs of the applicant. The photographs must be a minimum size of 5 inches by 3 inches;

3. Doctor's certificate. Present a written statement from a physician licensed to practice in the State stating that the applicant has been examined and found to be free of an infectious or communicable disease and showing that the examination was conducted within 60 days prior to the submission of the application;

4. Criminal history. Present or have submitted to the department a report from the Department of Public Safety setting forth the state and federal criminal record of the applicant or the absence thereof;

5. References. Present 3 character references citing that the applicant is of good moral character, one of which must be from a health care provider who is not a massage therapist;

6. High school. Possess a high school diploma or its equivalent; and

7. Fee. Pay a one-time application fee of \$25 and a yearly registration fee of \$100. All fees are nonrefundable.

§14306. Registration not allowed

An individual whose license, certification or registration has been refused, revoked or suspended for violations

that would be grounds for similar action under section 14308 in this or any other state and in this or any related field may not be registered to practice in this State unless the period of refusal, revocation or suspension has been completed and the department has conducted a review and determined that rehabilitation has taken place.

§14307. Exemptions to registration

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

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

§14308. Disciplinary action; grounds; procedure; complaints

1. Grounds. The commissioner may suspend, revoke or refuse to renew registration under the same grounds as contained in Title 5, section 10004. In addition, the commissioner may take the same action granted to bureaus, boards and commissions pursuant to Title 10, section 8003, subsection 5. The commissioner's actions may be based on any of the following grounds:

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

B. Habitual intemperance in the use of alcohol or the habitual use of narcotic or other drugs that 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 current medical finding of mental incompetence that affects the registrant's ability to perform the registrant's occupation in a healthy and safe manner;

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

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

F. Revocation in any state of a professional or occupational license, certification or registration for disciplinary reasons, or rejection of any application for reasons related to untrustworthiness, within 3 years of the date of application; and

G. Violating any provisions of this chapter or any rule of the department.

2. Procedure. Except as provided in Title 5, section 10004 a registration may not be denied, suspended, revoked or refused for renewal for the reasons set forth in subsection 1 without prior written notice and opportunity for hearing on that denial, suspension or revocation. A registration may not be denied, suspended or revoked under this section except by a decision of the commissioner or the commissioner's designee.

3. Complaints. Any person may file a complaint with the commissioner seeking disciplinary action against a massage therapist concerning violations of this chapter or rules adopted by the department. Complaints must be in writing. If the commissioner determines that a complaint alleges facts that, if true, would require denial, revocation, suspension or nonrenewal or other disciplinary action of a registered therapist, the commissioner or the commissioner's designee may conduct a hearing pursuant to the Maine Administrative Procedure Act. Whenever the commissioner establishes that a complaint does not state facts that warrant action the complaint may be dismissed.

The commissioner shall conduct proceedings under this subsection in accordance with the provisions of Title 5, chapter 375, subchapter IV.

§14309. Penalty; injunction

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

§14310. Home rule

Nothing in this chapter prohibits a municipality from adopting or enforcing an ordinance that regulates massage or massage therapists. If a municipality adopts such an ordinance, an individual must comply with the provisions of this chapter and any provision of the local ordinance that is more restrictive than this chapter.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF

1991-92

1992-93

Division of Licensing and Enforcement

Positions	(0.5)	(0.5)
Personal Services	\$7,800	\$10,400
All Other	10,000	10,000
Capital Expenditures	5,000	
TOTAL	\$22,800	\$20,400

Provides funds for a part-time Clerk Typist III position, general operations, computer software and capital equipment including a computer to support the registration of massage therapists.

Division of Administrative Services

All Other	\$3,000	\$3,000
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Provides funds for general operating expenses related to the registration of massage therapists.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

TOTAL	\$25,800	\$23,400
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See title page for effective date.

CHAPTER 404

H.P. 1242 - L.D. 1808

An Act to Revise the Membership of the Committee to Advise the Department of Human Services on AIDS

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, terms of office of some members of the Committee to Advise the Department of Human Services on AIDS expire in April; and

Whereas, new members should include a representative of the Maine AIDS Alliance; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §19202, first ¶, as repealed and replaced by PL 1989, c. 189, is amended to read:

The Committee to Advise the Department of Human Services on AIDS, as established by section