

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2099
(Human Services Committee)
(At the request of the State Board of Massage)

AN ACT to create and enact subsection 5 of section 43-25-02 of the North Dakota Century Code, relating to the definition of remote education; and to amend and reenact subsection 2 of section 43-25-02 and sections 43-25-03, 43-25-04, 43-25-05, 43-25-05.1, 43-25-06, 43-25-07, 43-25-09, 43-25-10, 43-25-13, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to regulating the practice of massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants. ~~"Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.~~

SECTION 2. Subsection 5 of section 43-25-02 of the North Dakota Century Code is created and enacted as follows:

5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

SECTION 3. AMENDMENT. Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be licensed. A person may not:

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or
4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." or terms of similar meaning without a license issued by the board.

SECTION 4. AMENDMENT. Section 43-25-04 of the North Dakota Century Code is amended and reenacted as follows:

43-25-04. Exemptions. The following persons are exempt from this chapter:

1. Schools that furnish massage services to their student athletes.
2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist. Students may practice homework unsupervised on other students, family, or friends, but no fee or tip may be charged or accepted. These massages may only be performed at the school or at the residence of the student, family member, or friend.
3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities are performed in the course of the bona fide practice of the individual's profession or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage and does not perform massage while working in a massage establishment.
4. A health spa or similar business to the extent the spa or business is performing superficial applications used for beautification or health of the skin, including salt glows and contouring.
5. Any individual instructor demonstrating massage techniques as a component of a board-approved seminar.

SECTION 5. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint a board of massage, to consist of five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each member of the board holds office until that member's successor is appointed and qualified.

Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, and secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

SECTION 6. AMENDMENT. Section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05.1. Powers and duties of the board. The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board ~~shall~~ may periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.

4. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

SECTION 7. AMENDMENT. Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

43-25-06. Removal of members of board of massage - Officers of the board –Meeting.

The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

~~The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary treasurer. The secretary treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary treasurer's duties.~~

SECTION 8. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for ~~application~~ licensure and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate or legal equivalent, and of good moral character and temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board;
 - b. Passes an examination conducted or approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to ~~pass the examination is entitled to a reexamination within six months~~ obtain licensure within six months of the initial application is entitled to reapply within six months after notification that the application was rejected, upon payment of ~~an additional~~ a fee of fifty dollars or a lesser amount established by the board, ~~but two reexaminations. Two applications exhaust the privilege under the original application.~~
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 9. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice.
2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. ~~Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than six units of a licensee's annual continuing education requirements may be by~~

~~remote education. To qualify as continuing education, the remote education must be sponsored by a nationally recognized provider and must be board approved for content and suitability.~~

3. Continuing education of at least thirty-two continuing education hours, or equivalent college credits, submitted every two years is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than twelve hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability.

a. Odd-numbered licensed individuals report their continuing education in odd-numbered years and even-numbered licensed individuals report their continuing education in even-numbered years, based on the calendar year.

b. This subdivision applies for the initial licensure period. Individuals licensed on or before May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even, would need to report at least sixteen hours. Those not required to submit continuing education that initial January first would report at least twenty-four hours by the following January first. Individuals licensed after May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even would not be required to report that cycle, but would report at least forty-eight hours for the next cycle. Those not required to submit continuing education hours that initial January first would report at least sixteen hours by the following January first. Thereafter, initial licensees would follow the normal renewal reporting cycle.

c. This subdivision applies to renewing licensees, for the implementation of the continuing education reporting cycle. On or before January 1, 2010, even-numbered licensees would submit at least sixteen hours of continuing education. On or before January 1, 2011, odd-numbered licensees would submit at least thirty-two hours of continuing education.

3. 4. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have a physical examination by a competent medical examiner. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.

4. 5. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee ~~and~~. The board may require production of a new certificate of physical examination and evidence of any required continued educational hours being completed.

5. 6. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 10. AMENDMENT. Section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

43-25-10. ~~Revocation of license~~ Disciplinary actions - Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:

- a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - d. The licensee is addicted to the habitual use of intoxicating liquors, ~~narcotics, or stimulants~~ or other legal or illegal drugs, to the extent the licensee is ~~incapacitated~~ compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or ~~vitamins,~~ or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.
2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to one hundred dollars.
 3. A complaint may be submitted to the board by any person or on its own motion. A complaint ~~must~~ may be signed by the complainant and ~~verified under oath.~~ The president may initiate an investigation of the complaint and report to the board.
 - ~~3.~~ 4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 11. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record ~~book~~ of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied, ~~the fee to belong to the secretary treasurer. The secretary treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.~~

SECTION 12. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive compensation in an amount ~~of sixty-two~~ to be established by rule not to exceed one hundred dollars per day or prorated for partial days ~~for each day or portion of a day~~ the member is actually engaged in the performance of official duties and payment for mileage and travel expenses as provided in sections

44-08-04 and 54-06-09. ~~The secretary treasurer may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.~~

SECTION 13. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage in a state that ~~has and maintains a standard of practice which is substantially the same as that maintained~~ meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2099.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State