



Board of Massage Therapy Examiners

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2023 SESSION POSITION PAPER

BILL NO: HB 238
COMMITTEE: Health and Government Operations
POSITION: Support

TITLE: Massage Therapy - Definition and Discipline

BILL ANALYSIS: The main purpose of this bill will be to update the Board’s disciplinary processes to include creating a pathway for reinstatement options for disciplinary cases. This statutory amendment will establish a new §6-312. Also, the Board currently has no jurisdiction over an unlicensed individual who performs massage therapy with or without receiving compensation. Thus, a further objective of HB 238 is to close this loophole that allows an individual, who is unlicensed, to practice massage therapy as long as it is not being done for compensation. Additionally, this Bill will prohibit a disciplined licensee/registrant to stay a Board order pending judicial appeal.

POSITION AND RATIONALE: The Maryland Board of Massage Therapy Examiners (the Board) supports HB 238.

Additional Disciplinary Grounds 6-308

From time to time, it is necessary for the Board to take disciplinary actions against a licensee who is found to have violated the Maryland Massage Therapy Act. Many disciplinary cases necessitate the imposition of a probation subject to terms and conditions in order to ensure that the Board can adequately monitor the licensee’s practice. These terms and condition commonly require that the licensee: receive additional training in the form of coursework, obtain a Board-approved chaperone for cases involving sexual assault, obtain a clinical mentor to address clinical deficiencies, or pay a fine. Currently, the Board has no specific disciplinary provision to address the circumstance when a practitioner decides not to comply with those terms and conditions.

Thus, the proposed statute would enable the Board to, if necessary, take additional disciplinary actions when an individual willfully fails to comply with a board order.

Judicial Appeal of Board Decision

The Board recognizes that its mission is to protect the health and wellbeing of the citizens of Maryland. In all instances where a license is suspended or revoked after a hearing, the individual has the right to request a judicial review of the Board’s decision. Currently, the aggrieved

licensee is also able to file a motion with the Circuit Court to stay the Board's Final Order during the judicial appeal process.

To grant a stay of the Board's Order and allow the individual whose license is suspended or revoked to continue the practice of massage therapy is counter to the mission of protecting the citizens of Maryland. Suspension and revocation orders are issued in cases of proven egregious acts and behavior on the part of the licensee, such as inappropriate touching or sexual assault. The proposed bill removes the ability to stay the Board's decision to keep an egregious offender or violator from continuing to practice following suspension/revocation pending the outcome of the appeal. The proposed provision is consistent with provisions that at least eight (8) other health occupations have set forth in their respective practice acts.

Reinstatement

Currently, the only reinstatement provisions set forth in the Maryland Massage Therapy Act are for those individuals whose licenses have lapsed through operation of law such as when the individual fails or declines to renew their license. The Act, however, does not have any provisions specifically dealing with post-disciplinary reinstatements. As such, the process for reinstating the license of a previously suspended or revoked individual is ambiguous. This amendment to the statute would provide a clear and unambiguous pathway for reinstating the license of an individual who is demonstrably rehabilitated and has successfully completed the terms and conditions of a suspension or revocation order. The main purpose of this bill will be to update our disciplinary processes and add language to the definition of Massage Therapy.

Primarily the board is seeking to add language that allows discipline of a licensee if they fail to comply with a board order. (Section 6-308 a.21)

Another objective of this proposed legislation is to prohibit a disciplined licensee/registrant to stay the Board's order pending judicial appeal. The Board is seeking to remove a loophole in which a therapist under a formal board sanction is still allowed to practice massage therapy while pending judicial review. In a recent disciplinary case a suspension order was issued to a licensee and unbeknownst to the board the licensee was still practicing at another massage establishment. (Section 6-310 c)

The board is also seeking to add a new section to the statute which outlines reinstatement options following a board ordered suspension or revocations in disciplinary cases. (Section 6-312)

The board is seeking to remove the entire section 6-308 (d) due to redundancies. All revocations or suspension of licenses are already published on the Boards Website, so there is no need to utilize the Maryland Register.

Definition of "Practice Massage Therapy"

Currently, the definition of "practice massage therapy" is tied to whether the individual is receiving compensation for their work. This is a loophole that potentially would allow an individual to escape Board oversight and regulation simply by not charging for the massage itself. By removing this language, the Board can ensure that proper standards are being met regardless of whether the individual performing the massage is seeking specific remuneration for

it. Finally, the board is seeking to add the language “with or without” to the definition of Massage Therapy. This will close a loophole that allows an individual to practice massage therapy as long as it is not being done for compensation. Currently, the Board has no jurisdiction over an individual, not licensed in Maryland, who performs massage therapy with or without receiving compensation. (Section 6-101 4.g)

Publication in the Maryland Register

Currently, the Massage Therapy Act requires that board orders that revoke or suspend an individual’s license be published to the Maryland Register. This is duplicative of the statutory requirement that all health occupations post all disciplinary orders, regardless of the sanction, to the respective board’s website. To be sure, the Board complies with this requirement and posts its disciplinary orders at or around the same time that it is formally issued. Publication in the Maryland Register is duplicative and a less effective means to ensure that the public is aware of the Board’s orders.

For all of these reasons, the Board of Massage Therapy Examiners respectfully requests a favorable vote on HB 238.

For more information, please contact Sharon J. Oliver, Executive Director at 410-764-5985 or Sharon.oliver@maryland.gov, or Lillian Reese, the legislative liaison for the boards at [443-794-4757](tel:443-794-4757) or at lillian.reese@maryland.gov.

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.