

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL NO. 178

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Massage Therapists” and substitute “State Board of Chiropractic Examiners - Regulation of Massage”; strike beginning with “altering” in line 3 down through “persons” in line 4 and substitute “establishing a classification of registered massage technicians; requiring an individual to obtain a registration from the State Board of Chiropractic Examiners before the individual may practice non-therapeutic massage therapy; requiring the Board to adopt certain regulations; requiring the Board to set certain fees; requiring the Massage Therapy Advisory Committee to perform certain duties; requiring an applicant for registration to practice non-therapeutic massage therapy to meet certain requirements; prohibiting registered massage technicians from practicing in certain settings; requiring an applicant applying for registration to perform certain duties; providing for the issuance and renewal of a registration; providing that the Board may deny a registration to an applicant, reprimand any registration holder, place any registration holder on probation, or suspend or revoke a registration under certain circumstances; prohibiting certain persons from advertising under certain circumstances”; in line 6, after “certified;” insert “prohibiting certain health care providers from referring patients to certain individuals; prohibiting certified massage therapists from employing or contracting with certain individuals; defining certain terms; making stylistic and technical changes”; and in lines 6 and 7, strike “practice of massage therapy by uncertified persons” and substitute “State Board of Chiropractic Examiners and the regulation of massage”; and in line 10, strike “and 3-5A-10” and substitute “through 3-5A-11, inclusive”; and after line 12, insert:

“BY adding to

Article - Health Occupations

Section 3-5A-06 and 3-5A-12

Annotated Code of Maryland

(1994 Replacement Volume and 1998 Supplement)”.

(Over)

AMENDMENT NO. 2

On page 1, after line 22, insert:

“(E) “HEALTH CARE FACILITY” HAS THE MEANING STATED IN § 19-101(F) OF THE HEALTH - GENERAL ARTICLE.”;

and in lines 23 and 25, strike “(e)” and “(f)”, respectively, and substitute “(F)” and “(G)”, respectively.

On page 2, in line 13, strike “(g)” and substitute “(H)”; and after line 15, insert:

“(I) “PRACTICE NON-THERAPEUTIC MASSAGE THERAPY” MEANS TO ENGAGE PROFESSIONALLY AND FOR COMPENSATION IN MASSAGE THERAPY IN A SETTING THAT IS NOT A HEALTH CARE FACILITY.

(J) “REGISTRATION” MEANS, UNLESS THE CONTEXT REQUIRES OTHERWISE, A REGISTRATION ISSUED BY THE BOARD TO PRACTICE NON-THERAPEUTIC MASSAGE THERAPY.

(K) “REGISTERED MASSAGE TECHNICIAN” MEANS AN INDIVIDUAL WHO IS REGISTERED BY THE BOARD TO PRACTICE NON-THERAPEUTIC MASSAGE THERAPY.”;

AMENDMENT NO. 3

On page 2, before line 16, insert:

“3-5A-02.

The Board shall adopt regulations for the:

- (1) [certification] CERTIFICATION and practice of massage therapists; AND
- (2) REGISTRATION AND PRACTICE OF MASSAGE TECHNICIANS.

3-5A-03.

(a) (1) The Board shall set reasonable fees for the issuance and renewal of certificates AND REGISTRATIONS and the other services it provides to massage therapists.

(2) The fees charged shall be set so as to produce funds to approximate the cost of maintaining the certification program, REGISTRATION PROGRAM, and the other services provided to massage therapists.

(b) (1) The Board shall pay all fees collected under the provisions of this subtitle to the Comptroller of the State.

(2) The Comptroller shall distribute all fees to the State Board of Chiropractic Examiners Fund established under § 3-206 of this title.

(c) The fees shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Board as provided by the provisions of this subtitle.

3-5A-04.

(a) (1) There is a Massage Therapy Advisory Committee within the Board.

(2) The Committee shall consist of six members appointed by the Board.

(3) Of the six members:

(i) Two shall be licensed chiropractors; and

(ii) Four shall be certified massage therapists.

(b) In addition to the powers and duties set forth elsewhere in this subtitle, the Advisory Committee shall:

(1) Develop and recommend to the Board regulations to carry out the provisions of this subtitle;

(Over)

(2) Develop and recommend to the Board a code of ethics for the practice of massage therapy for adoption by the Board;

(3) Develop and recommend to the Board the requirements for:

(I) [certification] CERTIFICATION as a massage therapist; AND

(II) REGISTRATION AS A MASSAGE TECHNICIAN;

(4) Evaluate the credentials of applicants and recommend to the Board certification of applicants who fulfill the requirements for:

(I) [a] A certificate to practice massage therapy; OR

(II) A REGISTRATION TO PRACTICE NON-THERAPEUTIC MASSAGE THERAPY;

(5) Consider complaints brought to the Board involving certified massage therapists OR REGISTERED MASSAGE TECHNICIANS and recommend to the Board the appropriate disciplinary action;

(6) Evaluate education programs in massage therapy for approval by the Board;

(7) Keep a record of its proceedings; and

(8) Submit an annual report to the Board.

3-5A-05.

(a) (1) Except as otherwise provided in this subtitle, an individual shall be:

(I) [certified] CERTIFIED by the Board before the individual may practice massage therapy in this State; OR

(II) REGISTERED BY THE BOARD BEFORE THE INDIVIDUAL MAY PRACTICE NON-THERAPEUTIC MASSAGE THERAPY IN THIS STATE.

(2) This section does not apply to:

(i) A student enrolled in an approved education program as determined by the Board while practicing massage therapy in that program;

(ii) An individual permitted to practice massage therapy under regulations adopted by the Board, if the individual:

1. Otherwise has qualified to practice massage therapy in any other state or country that has substantially similar requirements for authorization to practice massage therapy and the individual is in this State for no more than 7 days; or

2. Has an application for a certificate pending before the Board but has not taken the examination required under this section or has taken an examination under this section, but the results of the examination are not yet known;

(iii) A family member practicing massage therapy on another family member;

(iv) An athletic trainer while functioning in the course of the athletic trainer's professional capacity;

(v) An individual employed by the federal government to practice massage therapy while practicing within the scope of the individual's employment;

(vi) An individual who is working in a facility that provides health club services for which the seller of the services has registered with the Consumer Protection Division of the Office of the Attorney General as required under § 14-12B-02 of the Commercial Law Article;
or

(Over)

(vii) An individual working in a beauty salon for which the person who operates the beauty salon has obtained a permit from the State Board of Cosmetology as required under § 5-501 of the Business Occupations and Professions Article.

(b) To qualify for a certificate, an applicant shall be an individual who: [meets the requirements of this section.

(c) (1) [The applicant must be of] IS OF good moral [character.] CHARACTER;

[(d)](2) [The applicant must be at] IS AT least 18 years [old.] OLD;

[(e)](3)After January 1, 2002, [the applicant shall have] HAS satisfactorily completed at least 60 credit hours of education at an institution of higher education as defined in § 10-101 of the Education Article and as approved by the Board and the Maryland Higher Education [Commission.] COMMISSION;

[(f)](4) [The applicant shall:

(1) Complete] HAS COMPLETED 500 hours of education in a Board approved program for the study of massage therapy that includes the following areas of content:

(i) Anatomy and physiology;

(ii) Massage theory, techniques, and practice;

(iii) Contraindications to massage therapy; and

(iv) Professional ethics; and

[(2)](5) [Pass] HAS PASSED an examination approved by the Board.

(C) TO QUALIFY FOR REGISTRATION, AN APPLICANT SHALL BE AN INDIVIDUAL WHO:

(1) IS OF GOOD MORAL CHARACTER;

(2) IS AT LEAST 18 YEARS OLD;

(3) HAS COMPLETED 500 HOURS OF EDUCATION IN A BOARD APPROVED PROGRAM FOR THE STUDY OF MASSAGE THERAPY THAT INCLUDES THE FOLLOWING AREAS OF CONTENT:

(I) ANATOMY AND PHYSIOLOGY;

(II) MASSAGE THEORY, TECHNIQUES, AND PRACTICE;

(III) CONTRAINDICATIONS TO MASSAGE THERAPY; AND

(IV) PROFESSIONAL ETHICS; AND

(4) HAS PASSED AN EXAMINATION APPROVED BY THE BOARD.

~~[(g)]~~ (D) (1) Subject to the provisions of paragraph (2) of this subsection, the Board may waive any of the qualifications required for a certificate under this subtitle for an applicant who:

(i) Pays the application fee set by the Board;

(ii) Provides evidence acceptable to the Board that the applicant has practiced massage therapy for at least a total of 2 years after October 1, 1994 and before October 1, 1999 and has performed at least 300 paid massage therapy sessions; and

(iii) 1. Completes a Board approved program in the study of massage therapy; or

2. Passes an examination approved by the Board.

(2) The authority of the Board to grant a waiver under this subsection shall terminate on January 1, 2002.

[(h)] (E) (1) Subject to the provisions of this subsection, the Board may waive any requirement of this subtitle for an applicant who is registered, certified, or licensed to practice massage therapy in another state.

(2) The Board may grant a waiver under this subsection only if the applicant:

(i) Pays the application fee set by the Board; and

(ii) Provides adequate evidence that the applicant:

1. Has completed educational requirements that the Board determines to be equivalent to the Board approved educational requirements in this State;

2. At the time the applicant became certified, registered, or licensed in the other state, passed in that state or any other state an examination that the Board determines to be equivalent to the examination required in this State; and

3. Is of good moral character.

3-5A-06.

AN INDIVIDUAL WHO IS REGISTERED TO PRACTICE NON-THERAPEUTIC MASSAGE THERAPY UNDER § 3-5A-05 OF THIS SUBTITLE MAY NOT PRACTICE IN A MEDICAL OFFICE, HOSPITAL, OR OTHER HEALTH CARE FACILITY FOR THE PURPOSE OF PROVIDING MASSAGE THERAPY.

[3-5A-06.] 3-5A-07.

(A) To apply for a certificate, an applicant shall:

(1) Submit to the Board an application on the form that the Board requires;

(2) Submit to the Board evidence of compliance with the requirements of § 3-5A-05 of this subtitle; and

(3) Pay the application fee set by the Board.

(B) TO APPLY FOR REGISTRATION, AN APPLICANT SHALL:

(1) SUBMIT TO THE BOARD AN APPLICATION ON THE FORM THAT THE BOARD REQUIRES;

(2) SUBMIT TO THE BOARD EVIDENCE OF COMPLIANCE WITH THE REQUIREMENTS OF § 3-5A-05 OF THIS SUBTITLE; AND

(3) PAY THE APPLICATION FEE SET BY THE BOARD.

[3-5A-07.] 3-5A-08.

(a) (1) A certificate OR REGISTRATION expires on the date set by the Board, unless the certificate OR REGISTRATION is renewed for a 1-year term as provided in this section.

(2) A certificate OR REGISTRATION may not BE renewed for a term of longer than 2 years.

(b) At least 1 month before the certificate OR REGISTRATION expires, the Board shall send to the certificate holder OR REGISTRATION HOLDER, by first class mail to the last known address of the certificate holder OR REGISTRATION HOLDER, a renewal notice that states:

(1) The date on which the current certificate OR REGISTRATION expires;

(2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the certificate OR REGISTRATION expires; and

(3) The amount of the renewal fee.

(Over)

(c) Before a certificate OR REGISTRATION expires, the certificate holder OR REGISTRATION HOLDER periodically may renew it for an additional term, if the certificate holder OR REGISTRATION HOLDER:

(1) Otherwise is entitled to be certified OR REGISTERED;

(2) Submits to the Board a renewal application on the form that the Board requires; and

(3) Pays to the Board a renewal fee set by the Board.

(d) (1) Each certificate holder OR REGISTRATION HOLDER shall notify the Board in writing of any change in the name or address of the certificate holder OR REGISTRATION HOLDER within 60 days after the change occurred.

(2) If a certificate holder OR REGISTRATION HOLDER fails to notify the Board within the time required under this subsection, subject to the hearing provisions of § 3-315 of this title, the Board may impose an administrative penalty of \$100.

(e) (1) The Board shall renew the certificate of each certificate holder who meets the requirements of this section.

(2) THE BOARD SHALL RENEW THE REGISTRATION OF EACH REGISTRATION HOLDER WHO MEETS THE REQUIREMENTS OF THIS SECTION.

[3-5A-08.] 3-5A-09.

(a) Subject to the hearing provisions of § 3-315 of this title, the Board may deny a certificate OR REGISTRATION to any applicant, reprimand any certificate holder OR REGISTRATION HOLDER, place any certificate holder OR REGISTRATION HOLDER on probation, or suspend or revoke the certificate of a certificate holder OR THE REGISTRATION OF A REGISTRATION HOLDER if the applicant, [or] certificate holder, OR REGISTRATION HOLDER:

- (1) Fraudulently or deceptively obtains or attempts to obtain a certificate OR REGISTRATION for the applicant or for another;
- (2) Fraudulently or deceptively uses a certificate OR REGISTRATION;
- (3) Is disciplined by a licensing, certifying, or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (5) Willfully and knowingly:
 - (i) Files a false report or record of an individual under the care of the certificate holder OR REGISTRATION HOLDER; or
 - (ii) Gives any false or misleading information about a material matter in an employment application;
- (6) Knowingly does any act that has been determined by the Board, in its regulations, to exceed the scope of practice authorized to the individual under this subtitle;
- (7) Provides professional services while:
 - (i) Under the influence of alcohol; or
 - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (8) Does an act that is inconsistent with generally accepted professional standards in the practice of massage therapy;

(Over)

- (9) Is negligent in the practice of massage therapy;
- (10) Is professionally incompetent;
- (11) Has violated any provision of this subtitle;
- (12) Submits a false statement to collect a fee;
- (13) Is physically or mentally incompetent;
- (14) Knowingly fails to report suspected child abuse in violation of § 5-704 of the Family Law Article;
- (15) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the certificate holder OR REGISTRATION HOLDER is qualified to render because the individual is HIV positive;
- (16) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control's guidelines on universal precautions;
- (17) Is habitually intoxicated;
- (18) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Article 27 of the Code;
- (19) Fails to cooperate with a lawful investigation conducted by the Board;
- (20) Engages in conduct that violates the professional code of ethics; or
- (21) Knowingly does an act that has been determined by the Board to be a violation of the Board's regulations.

(b) If, after a hearing under § 3-315 of this title, the Board finds that there are grounds under subsection (a) of this section to suspend or revoke a certificate OR REGISTRATION to practice massage therapy, to reprimand a certificate holder OR REGISTRATION HOLDER, or place a certificate holder OR REGISTRATION HOLDER on probation, the Board may impose a penalty not exceeding \$5,000 in lieu of or in addition to suspending or revoking the certificate OR REGISTRATION, reprimanding the certificate holder OR REGISTRATION HOLDER, or placing the certificate holder OR REGISTRATION HOLDER on probation.

(c) (1) An individual whose certificate OR REGISTRATION has been suspended or revoked by the Board shall return the certificate OR REGISTRATION to the Board.

(2) If the suspended or revoked certificate OR REGISTRATION has been lost, the individual shall file with the Board a verified statement to that effect.

(d) The Board shall file a notice for publication in the earliest publication of the Maryland Register of each revocation or suspension of a certificate OR REGISTRATION under this section within 24 hours of the revocation or suspension.

[3-5A-09.] 3-5A-10.

This subtitle does not limit the right of an individual to practice or advertise an occupation that the individual is otherwise authorized to practice under the Maryland Annotated Code.”;

in line 16, strike “3-5A-10.” and substitute “3-5A-11.”; in line 21, after “therapist” insert “OR REGISTERED AS A MASSAGE TECHNICIAN”; and after line 24, insert:

“(C) AN INDIVIDUAL WHO IS A REGISTERED MASSAGE TECHNICIAN UNDER THIS SUBTITLE OR A BUSINESS ENTITY THAT EMPLOYS REGISTERED MASSAGE TECHNICIANS UNDER THIS SUBTITLE MAY NOT ADVERTISE TO THE PUBLIC THAT THE INDIVIDUAL OR BUSINESS ENTITY PROVIDES HEALTH-RELATED THERAPEUTIC MASSAGE SERVICES.”;

and in line 25, strike “(c)” and substitute “(D)”.

AMENDMENT NO. 4

On page 2, after line 27, insert:

“3-5A-12.

(A) A HEALTH CARE PROVIDER LICENSED OR CERTIFIED UNDER THIS ARTICLE MAY NOT REFER PATIENTS TO A PERSON WHO IS NOT A CERTIFIED MASSAGE THERAPIST.

(B) A MASSAGE THERAPIST CERTIFIED UNDER THIS SUBTITLE MAY NOT EMPLOY OR CONTRACT WITH AN INDIVIDUAL WHO IS NOT A CERTIFIED MASSAGE THERAPIST.

[3-5A-11.] 3-5A-13.

Notwithstanding the fact that these services are provided within the scope of their certified practice, nothing in this subtitle requires a nonprofit health service plan, insurer, health maintenance organization, or person acting as a third party administrator to reimburse a certified massage therapist OR REGISTERED MASSAGE TECHNICIAN for any services rendered.”.