

CHAPTER 363  
FORMERLY  
HOUSE BILL NO. 357

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO MASSAGE AND BODYWORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 5302(6), Title 24 of the Delaware Code by making deletions as shown by strike through as follows:

§ 5302. Definitions.

(6) "Practice of massage and bodywork" shall mean a system of structured touch applied to the superficial or deep tissue, muscle, or connective tissue, by applying pressure with manual means. Such application may include, but is not limited to, friction, gliding, rocking, tapping, kneading, or nonspecific stretching, whether or not aided by massage oils or the application of hot and cold treatments. The practice of massage and bodywork is designed to promote general relaxation, enhance circulation, improve joint mobilization and/or relieve stress and muscle tension, and to promote a general sense of well-being.

~~The practice of massage and bodywork excludes actions by any person, who is certified or licensed in this State by any other law, and who is engaged in the profession or occupation for which that person is certified or licensed, and actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches and practitioners of techniques, who are acting within the scope of activity for which they are trained, or students of massage who are practicing within the scope of their course of study.~~

Section 2. Amend § 5303, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5303. Board of Massage and Bodywork; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a state Board of Massage and Bodywork, which shall administer and enforce this chapter.

~~(b) The Board shall consist of 7 members appointed by the Governor, who are residents of this State: 2 of whom shall be massage and bodywork therapists licensed under this chapter; 2 shall be massage technicians, certified under this chapter; and 3 shall be members of the public. The public members shall not be, nor ever have been, massage and bodywork therapists, massage technicians, nor members of the immediate family of a massage and bodywork therapist or massage technician; shall not have been employed by a massage and bodywork therapist or massage technician; shall not have a material interest in the providing of goods and services to massage and bodywork therapists or massage technicians; nor have been engaged in an activity directly related to massage. The Board shall consist of 7 members appointed by the Governor, who are residents of this State: 4 professional members licensed under this chapter of whom at least two but not limited to two shall be massage therapists, at least one but not limited to one of whom shall be a certified massage technician, and 3 of whom shall be public members. The public members shall not be nor ever have been a massage therapist or technician, nor members of the immediate family of a massage therapist or technician, nor have been employed by a massage therapist or technician, nor have a material interest in the providing of goods and services to a massage therapist or technician, nor have been engaged in an activity directly related to massage. The public members shall be accessible to inquiries, comments and suggestions from the general public.~~

(c) Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor.

(d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but, no such person shall thereafter be eligible for 2 consecutive appointments to the Board. No person, who has been twice appointed to the Board or who has served on the Board for 6 years within any 9-year period, shall again be appointed to the Board until an interim period of at least 1 year has expired since such person last served.

~~(e) Members of the initial Board shall be appointed by the Governor such that 1 massage and bodywork therapist, 1 massage technician, and 1 public member shall serve a term of 3 years; 1 massage and bodywork therapist, 1 massage technician and 1 public member shall serve a term of 2 years; and 1 public member shall serve a term of 1 year.~~

~~(e)~~ (e) Any act or vote by a person appointed in violation of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

~~(g)~~ (f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

~~(h)~~ (g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of massage or bodywork practitioners.

~~(i)~~ (h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board.

~~(j)~~ (i) Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least 1/2 of all regular business meetings during any calendar year, shall be guilty of neglect of duty and automatically shall be considered to have resigned from the Board.

~~(k)~~ (j) Each member of the Board shall be reimbursed, according to Division policy, for all expenses involved in each meeting, including travel; and, in addition, shall receive not more than \$50 for each meeting attended but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

Section 3. Amend § 5304(c), Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5304. Organization; meetings; officers; quorum.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. A quorum of 4 members of the Board is required to certify and license applicants or to suspend or revoke a license. The affirmative vote of at least 4 members of the Board is required to certify and license applicants or to discipline a certificate or license. All other actions will be by simple majority vote.

Section 4. Amend § 5306(a), Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5306. Powers and duties.

(a) The Board of Massage and Bodywork shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State [Chapter 101 of Title 29]. Each rule or regulation shall implement or clarify a specific section of this chapter;

(2) Designate the application form to be used by all applicants, and process all applications;

(3) Designate the written examination to be taken by all persons applying for licensure as massage and bodywork therapists, subject to approval by the Director of the Division; ~~applicants who qualify for licensure as massage and bodywork therapists by reciprocity shall have achieved a passing score on the written examination. Those practitioners currently certified in this State who have successfully passed the written examination shall not be required to retake the written examination when applying for licensure as massage and bodywork therapists;~~

(4) If the examination is not otherwise available, to provide for the administration of all examinations, including notice and information to applicants. The Board shall adopt a nationally-prepared and administered massage and bodywork therapy examination, subject to approval by the Director of the Division;

(5) Evaluate the credentials of all persons applying for a license to practice massage and bodywork therapy in Delaware and of all persons applying for certification as massage technicians, in order to determine whether such persons meet the qualifications for licensing or certification set forth in this chapter;

(6) Grant licenses to, and renew licenses and certifications of, all persons who meet the qualifications for licensure and/or renewal of licenses; and grant certificates to persons who meet the qualifications for massage technicians;

(7) Establish by rule and regulation continuing education standards required for license and certificate renewal;

(8) Evaluate certified records to determine whether an applicant for licensure or certification, who previously has been licensed, certified, or registered in another jurisdiction to practice massage and/or bodywork, has engaged in any act or offense that would be grounds for disciplinary action under this chapter; and whether there are disciplinary proceedings or unresolved complaints pending against such applicants for such acts or offenses;

(9) Refer all complaints from licensees and the public concerning licensed massage and bodywork therapists and certified massage technicians, or concerning practices of the Board or of the profession, to the Division for investigation pursuant to § 8735 of Title 29; and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter, Chapter 101 of Title 29 and § 8735 of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern. The Board shall determine whether or not a massage and bodywork therapist or massage technician shall be subject to a disciplinary hearing, and if so, shall conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29]; ~~and~~

(11) When it has been determined, after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty; ~~after time for appeal has lapsed.~~

(12) Adopt rules and regulations concerning advertising by massage and bodywork therapists and massage technicians;

(13) Adopt rules and regulations setting forth unprofessional conduct by massage and bodywork therapists and massage technicians; and

(14) Adopt, pursuant to the Board's rules and regulations, a Client Disclosure form, which shall be used by all certified massage technicians. The Disclosure shall include, at the minimum, a statement that the person providing services is a certified massage technician, and not a licensed massage and bodywork therapist, and, by law, is not authorized to treat medically diagnosed conditions. The Disclosure shall be provided to the client at the first session.

Section 5. Amend the heading "Subchapter II. License and Registration" where it appears in Chapter 53, Title 24 of the Delaware Code by making deletions as shown by strike through as follows:

*Subchapter II. License ~~and Registration~~*

Section 6. Amend § 5307, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5307. License; certification required.

(a) No person shall engage in the practice of massage and bodywork therapy or hold himself or herself out to the public in this State as being qualified to practice massage and bodywork therapy; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice massage and bodywork therapy, unless such person has been duly licensed or certified under this chapter. Massage and bodywork therapists licensed under this chapter may practice massage and/or bodywork therapy on referral or prescription from a licensed medical or osteopathic physician or chiropractor ~~by prescription~~ as deemed appropriate by the referring physician or chiropractor. Massage technicians certified under this chapter are prohibited from practicing on referral or prescription from a licensed medical or osteopathic physician or chiropractor and from treating medically diagnosed conditions.

(b) Whenever a license or certificate to practice ~~as a~~ massage and bodywork ~~therapist~~ in this state has expired or been suspended or revoked, it shall be unlawful for the person to practice massage and bodywork ~~therapy~~ in this State.

(c) No person shall act as a massage technician, or hold himself or herself out as a massage technician, unless such person has been duly certified by the Board under this chapter. Massage technicians shall practice massage and/or bodywork on other than medically diagnosed conditions.

(d) This Chapter shall not apply to:

(1) Actions by any person, who is certified or licensed in this State by any other law, and who is engaged in and acting within the scope of the profession or occupation for which that person is certified or licensed;

(2) Actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches, who is acting within the scope of activity for which such person is trained; and

(3) Any student of massage who is practicing within the scope of his or her course of study.

Section 7. Amend § 5308, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5308. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a massage and bodywork therapist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Is at least 18 years of age;

~~(2)~~ (2) Has completed 500 hours of supervised in-class study as a student in a school which trains massage or bodywork therapists, or as a student in an approved program of massage or bodywork therapy; the school or program of training must include a curriculum of no less than:

- a. 100 hours of anatomy and physiology;
- b. 300 hours of technique and theory of massage or bodywork therapy;
- c. ~~100~~ 75 hours of elective courses in the field of massage therapy;
- d. 25 hours of ethics, law and contraindications.

~~(3)~~ (3) Has achieved the passing score on a written, standardized, nationally-prepared and administered examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If the testing agency has not established a passing score, the Board in conjunction with the Division shall establish the passing score;

~~(4)~~ (4) Has passed a state-certified examination in cardiopulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status;

~~(5)~~ (5) ~~Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; and, has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant has previously been or currently is licensed to practice massage and/or bodywork therapy;~~

~~(6)~~ (6) ~~Foreign trained applicants must provide evidence of training and supervision essentially comparable to that cited in paragraph (a)(1) of this section.~~

~~(6) Is at least 18 years of age.~~

(5) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter;

(6) Has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant has previously been or currently is licensed to practice massage and/or bodywork therapy;

(7) Has not been the recipient of any administrative penalties regarding that person's practice of massage and bodywork therapy, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations and/or has not entered into any 'consent agreements' which contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure;

(8) Shall not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public;

(9) Has not been convicted of a crime that is substantially related to the practice of massage and bodywork. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(9), if it finds all of the following:

a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

c. The applicant is capable of practicing massage and bodyworks in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, safety or welfare;

(10) Has not been convicted of a felony sexual offense; and

(11) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Board of Massage and Body work shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be licensed to practice as a massage therapist until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to §5308(a)(9) of this chapter.

(b) Where the Board has found to its satisfaction that an ~~application~~ applicant has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for that applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) The Board shall grant a license to an applicant, who was previously licensed as a massage therapist in this State, and who has let that applicant's license lapse due to a failure to timely renew said license, subject to the applicant meeting the requirements of subsection (a) of this section, and the continuing education requirements as provided for in the Board's rules and regulations.

(e) Foreign-trained applicants must provide evidence of training and supervision essentially comparable to that cited in § 5308(a)(2) of this Chapter.

(f) All individuals licensed to practice as massage therapists in this State shall be required to be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2014, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

Section 8. Amend § 5309, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5309. Qualifications of applicants for certification as massage technicians.

(a) An applicant who is applying for certification as a massage technician under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person meets the requirements of §§ 5308(a)(5) – (11) and § 5308(e) and:

~~(1) Is at least 18 years of age;~~

~~(1) (2)~~ Has completed, as a minimum, a 300-hour course of supervised in-class study of massage that includes a curriculum of no less than:

- a. Sixty hours of anatomy and physiology;
- b. One hundred-forty hours of theory and technique;
- c. ~~One hundred~~ Seventy-five hours of elective courses in the field of massage therapy;
- d. Twenty-five hours of ethics, law and contraindications

~~This requirement will apply to all certification applications submitted after January 1, 2005. For applications submitted prior to January 1, 2005, the applicant shall have completed as a minimum, 1400 hour course of supervised in class study of massage.~~

~~(2) (3)~~ Has passed a state-certified examination in cardio-pulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status; ~~and~~

~~(3) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; and, has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been or currently is licensed, certified, or registered as a massage technician or massage or bodywork therapist.~~

~~(4) Is at least 18 years of age.~~

(b) Notwithstanding subsection (a) of this section, an applicant may apply for a temporary massage technician certification under this section after completion of a 200-hour course of supervised in-class study of massage that includes a curriculum of no less than:

- (1) Fifty hours of anatomy and physiology;
- (2) One hundred and ten hours of theory and technique;
- (3) Twenty-five hours of ethics, law, and contraindications; and
- (4) Fifteen hours of elective courses.

A temporary massage technician certification, which is subject to all the other provisions and requirements of this chapter, shall be valid for a period of no more than 1 year and may not be renewed or reissued, and shall not be eligible for inactive status.

(c) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information intentionally has been supplied, it shall report its findings to the Attorney General for further action.

(d) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for that applicant than for other applicants or licensees; or has in some way contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

~~(e) The Board shall grant a certification to an applicant who was previously granted a certification in this State, and who has let that applicant's certification lapse due to a failure to timely renew said license, subject to the applicant meeting the requirements of subsection (a) of this section, and the continuing education requirements as provided for in the Board's rules and regulations. All individuals licensed to practice as massage technicians in this State shall be required to be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2014, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.~~

Section 9. Amend § 5310, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5310. Reciprocity.

~~Where an applicant is currently licensed or certified as a massage and/or bodywork therapist or massage technician, or is licensed or certified under any other title which indicates such person practices massage and/or bodywork in another jurisdiction, and has practiced continually for 2 years in that jurisdiction, in lieu of all other requirements for licensure and certification under this chapter, the Board shall accept a certificate or other evidence that the applicant is currently licensed or certified in that jurisdiction, has practiced continually for 2 years, possesses current CPR certification, and in addition, for an applicant for licensure as massage and bodywork therapist, has achieved the passing score on the written national examination.~~

Upon receipt of an application from an applicant who has been or who currently is licensed, certified or registered as a massage and/or bodywork therapist or massage technician in another jurisdiction, the applicant is responsible for contacting the licensing authority or comparable agency, in such other jurisdiction or jurisdictions and requesting that a certified statement be sent directly to the Board by the licensing authority, which shall certify that there are no disciplinary proceedings or unresolved complaints pending against the applicant; and whether the applicant has engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter. In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. Applicants for licensure to practice massage and bodywork

~~therapy in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such evidence.~~

Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to each applicant who shall present proof of current licensure, in good standing, in another State, the District of Columbia or territory of the United States, and who, in addition:

(1) Meets the criteria for licensure in good standing as defined in §§ 5308(a)(5)-(10) of this Chapter for all currently and previously held licenses and has complied with §§ 5308(a)(11) and 5308(e);

(2) Has achieved the passing score on a written, standardized nationally-prepared and administered examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If the testing agency has not established a passing score, the Board in conjunction with the Division shall establish the passing score;

(3) Has practiced massage and bodywork continually for 2 years immediately prior to making application;

(4) Possesses current CPR certification; and

(5) Is at least 18 years of age.

Section 10. Amend § 5312, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5312. Issuance and renewal of licenses; certification.

(a) The Board shall issue a license or certificate to each applicant who meets the requirements of this chapter for licensure as a massage ~~or~~ and bodywork therapist or certification-as a massage technician and who pays the fee established under § 5311 of this title.

(b) Each license or certificate shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee or certificant has met the continuing education requirements established by the Board.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensed massage ~~or~~ and bodywork therapist or certified massage technician may still renew such license or certificate, notwithstanding the fact that such licensee or certificant has failed to renew on or before the renewal date.

(d) Any licensee or certificate holder, upon written request, may be placed on inactive status. Any person who desires to reactivate that person's license or certificate shall complete a Board approved application form, submit a reactivation fee set by the Division, submit proof of current CPR certification, and submit evidence of compliance with continuing education requirements in accordance with the Board's rules and regulations.

Section 11. Amend § 5313, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5313. Grounds for discipline, ~~refusal, revocation or suspension of licenses and certificates.~~

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 5315 of this title, if, after a hearing, the Board finds that the massage ~~or~~ and bodywork therapist or massage technician:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a massage ~~or~~ and bodywork therapist or certification as a massage technician; has impersonated another person holding a license or certification, or allowed another person to use the massage or bodywork license or massage technician certification, or aided or abetted a person not licensed as a massage or bodywork therapist or certified as a massage technician to represent that person as a massage or bodywork therapist or massage technician;

~~(2) Has been convicted of a crime that is substantially related to the practice of massage and bodywork. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(2), if it finds all of the following:~~

~~a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.~~

~~b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.~~

~~c. The applicant is capable of practicing massage and bodyworks in a competent and professional manner.~~

~~d. The granting of the waiver will not endanger the public health, safety or welfare;~~

(2) Has been convicted of a crime that is substantially related to the practice of massage and bodywork, as set forth in the Board's rules and regulations; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof;

~~(3) Has excessively used or abused drugs (including alcohol, narcotics or chemicals);~~

(3) Has an impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the practitioner's ability to undertake his or her practice in a manner consistent with the safety of the public;

(4) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(5) Has had that practitioner's license as a massage ~~or~~ and bodywork therapist or that practitioner's certificate as massage technician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a massage ~~or~~ and bodywork therapist or certified as a massage technician in this State shall be deemed to have given consent to the release of this information by the Board of Massage and Bodywork Therapy or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(6) Has failed to notify the Board that the practitioner's license as a massage ~~or~~ and bodywork therapist or certificate as massage technician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; ~~or~~

(7) Has engaged directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or who profits by means of a credit or other valuable consideration such as wages or an unearned commission, discount or gratuity with any person who referred a patient or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly and properly organized business entity recognized by the Delaware law and comprised of massage therapists from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs; or

(8) Has been guilty of unprofessional conduct, as adopted in the rules and regulations, and which shall include departure from or the failure to conform to the national code of professional ethics and standards of acceptable massage and bodywork practices.

(b) Where a practitioner fails to comply with the Board's request that the practitioner attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have jurisdiction to issue such order.

(c) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be disciplined, restricted, suspended or revoked by the Board, and no practitioner's right to practice shall be limited by the Board, until such practitioner has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act.

Section 12. Amend § 5315, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5315. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that any of the conditions or violations set forth in § 5313 of this title applies to a practitioner regulated by this chapter.

(1) Issue a letter of reprimand;

~~(2) Publicly censure a practitioner;~~

~~(3)~~ (2) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Board upon the matters which are the basis of the probation;

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

~~(4)~~ (3) Suspend any practitioner's license or certification;

~~(5)~~ (4) Revoke a practitioner's license or certification;

(5) Impose a monetary penalty not to exceed \$500 for each violation.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) The Board may temporarily suspend a practitioner's license or certification in advance of a final adjudication, or during the appeals process with 24 hours written notice to the practitioner, but only in cases where there is a clear and immediate danger to the health, safety and welfare of the public if the licensee or certificant is allowed to continue to practice. Such suspension may be appealed in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(d) Where a licensee or certificant has been suspended due to a disability of the licensee or certificant, the Board, at a Board meeting, may reinstate such licensee or certificant if the Board is satisfied that the licensee or certificant is able to practice with reasonable skill and safety.

(e) As a condition of reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this chapter.

(f) The Board shall permanently revoke the license or certificate of a person licensed as a massage and bodywork therapist or certified as a massage technician who is convicted of a felony sexual offense.

Section 13. Amend § 5316(c), Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5316. Hearing procedures.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days after the date of mailing of the decision. ~~of service, or of the postmarked date of the copy of the decision mailed to the practitioner.~~ Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

Section 14. Section 7 and 8, pertaining to the amended education requirements set forth in §§ 5308(a)(2) and 5309(a)(2), shall go into effect September 1, 2014. The remaining Sections of this Act shall take effect immediately upon enactment.

Approved July 27, 2012