

CHAPTER 480

MESSAGE PRACTICE

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480.031 Short title.—This act shall be known and may be cited as the "Massage Practice Act."

History.—s. 1, ch. 78-436; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.032 Purpose.—The Legislature recognizes that the practice of massage is potentially dangerous to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage in this state; however, restrictions shall be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

History.—s. 2, ch. 78-436; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 49, ch. 89-374; s. 4, ch. 91-429.

480.033 Definitions.—As used in this act:

- (1) "Board" means the Board of Massage.
- (2) "Department" means the Department of Business and Professional Regulation.
- (3) "Massage" means the manipulation of the superficial tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.
- (4) "Massage therapist" means a person licensed as required by this act, who administers massage for compensation.

(5) "Apprentice" means a person approved by the board to study massage under the instruction of a licensed massage therapist.

(6) "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.

(7) "Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage.

(8) "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage or to operate an establishment.

(9) "Board-approved massage school" means a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 246 or the equivalent licensing authority of another state or is within the public school system of this state.

History.—s. 3, ch. 78-436; ss. 13, 15, 25, 30, 34, 50, 62, ch. 80-406; s. 2, ch. 81-318; s. 76, ch. 83-329; ss. 1, 12, 13, ch. 85-280; s. 50, ch. 89-374; s. 4, ch. 91-429; s. 169, ch. 94-218; s. 67, ch. 95-144.

480.034 Exemptions.—

(1) Nothing in this act shall modify or repeal any provision of chapters 458-464, inclusive, or of chapter 476, chapter 477, or chapter 486.

(2) Athletic trainers employed by or on behalf of a professional athletic team performing or training within this state shall be exempt from the provisions of this act.

(3) The state and its political subdivisions are exempt from the registration requirements of this act.

(4) Treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps, shall be exempt from the provisions of this act.

(5) An exemption granted is effective to the extent that an exempted person's practice or profession overlaps with the practice of massage.

History.—s. 4, ch. 78-436; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 1, ch. 87-267; s. 4, ch. 91-429.

480.035 Board of Massage.—

(1) The Board of Massage is created within the department. The board shall consist of seven members, who shall be appointed by the Governor and whose function it shall be to carry out the provisions of this act.

(2) Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments will be subject to confirmation by the Senate.

(3) The Governor may at any time fill vacancies on the board for the remainder of unexpired terms. Each member of the board shall hold over after the expiration of his term until his successor has been duly appointed and qualified. No board member shall serve more than two terms, whether full or partial.

(4) The board shall, in the month of January, elect from its number a chairman and a vice chairman.

(5) The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chairman of the board shall have the authority to call other meetings at his discretion. A quorum of the board shall consist of not less than four members.

(6) Board members shall receive per diem and mileage as provided in s. 112.061 from the place of residence to the place of meeting and return.

(7) The board shall promulgate such rules as are necessary to implement this chapter.

History.—s. 5, ch. 78-436; ss. 13, 15, 25, 30, 34, 51, 62, ch. 80-406; s. 2, ch. 81-318; ss. 2, 12, 13, ch. 85-280; s. 51, ch. 89-374; s. 4, ch. 91-429; s. 170, ch. 94-218.

480.036 Accountability of board members.—Each board member shall be held accountable to the Governor for the proper performance of all duties and obligations of such board member's office. The Governor shall cause to be investigated any complaints or unfavorable reports received concerning the actions of the board or its individual members and shall take appropriate action thereon, which may include removal of any board member for malfeasance, misfeasance, neglect of duty, commission of a felony, incompetency, or permanent inability to perform official duties.

History.—s. 6, ch. 78-436; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.039 Investigative services.—The department shall provide all investigative services required in carrying out the provisions of this act.

History.—s. 9, ch. 78-436; s. 2, ch. 81-318; ss. 3, 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.041 Massage therapists; qualifications; licensure; endorsement; provisional licensure.—

(1) Any person is qualified for licensure as a massage therapist under this act who:

(a) Is at least 18 years of age or has received a high school diploma or graduate equivalency diploma;

(b) Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and

(c) Has received a passing grade on an examination administered by the department.

(2) Every person desiring to be examined for licensure as a massage therapist shall apply to the department in writing upon forms prepared and furnished by the department. Such applicants shall be subject to the provisions of s. 480.046(1). Applicants may take an examination administered by the department only upon meeting the requirements of this section as determined by the board.

(3) Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage.

(4)(a) The board may issue to an applicant, without examination, a provisional license to practice massage, provided such applicant meets all other conditions and requirements relating to qualification for licensure and submits a fee pursuant to s. 480.044. Such applicant for a provisional license shall be associated with a licensed massage therapist and shall practice only under the supervision of such licensed massage therapist at a licensed establishment.

(b) The provisional license, when granted, shall include the name and address of the licensed massage therapist with whom the applicant is associated. No licensed massage therapist may supervise more than one provisional licenseholder at the same time.

(c) The applicant must appear at the next examination for licensure for which the applicant can be scheduled according to the rules of the board and department. The provisional license shall expire upon written notification by the department that the applicant has failed the examination or on the date of the scheduled examination, should the applicant fail to appear. Acceptance of a provisional license by an applicant shall be deemed to be consent for expiration of that license in accordance with the provisions of this chapter.

(d) No more than one provisional license may be issued to an individual. No provisional license shall be issued to an applicant who has previously failed the examination.

(5) The board shall adopt rules:

(a) Establishing a minimum training program for apprentices.

(b) Specifying standards and procedures for issuance of a provisional license.

(c) Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033(6), by massage therapists.

(d) Specifying licensing procedures for practitioners desiring to be licensed in this state who hold an active license and have practiced in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

History.—s. 10, ch. 78-436; ss. 13, 15, 25, 30, 34, 52, 62, ch. 80-406; s. 2, ch. 81-318; ss. 25, 47, ch. 82-179; s. 77, ch. 83-329; ss. 4, 12, 13, ch. 85-280; s. 61, ch. 87-225; s. 52, ch. 89-374; s. 4, ch. 91-429; s. 153, ch. 94-119.

480.0415 License renewal.—The board shall prescribe by rule the method for renewal of biennial licensure which shall include continuing education requirements not to exceed 12 classroom hours per biennium. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the criteria for continuing education courses held in a classroom setting.

History.—ss. 5, 13, ch. 85-280; s. 53, ch. 89-374; s. 4, ch. 91-429; s. 230, ch. 94-119.

480.042 Examinations.—

(1) The board shall specify by rule the general areas of competency to be covered by examinations for licensure. These rules shall include the relative weight assigned in grading each area, the grading criteria to be

used by the examiner, and the score necessary to achieve a passing grade. The board shall ensure that examinations adequately measure both an applicant's competency and his knowledge of related statutory requirements. Professional testing services may be utilized to formulate the examinations.

(2) The board shall ensure that examinations comply with state and federal equal employment opportunity guidelines.

(3) The department shall, in accordance with rules established by the board, examine persons who file applications for licensure under this act in all matters pertaining to the practice of massage. A written examination shall be offered at least once yearly and at such other times as the department shall deem necessary.

(4) The board shall adopt rules providing for reexamination of applicants who have failed the examination.

(5) All licensing examinations shall be conducted in such manner that the applicant shall be known to the department by number until his examination is completed and the proper grade determined. An accurate record of each examination shall be made; and that record, together with all examination papers, shall be filed with the secretary of the department and shall be kept for reference and inspection for a period of not less than 2 years immediately following the examination.

History.—s. 11, ch. 78-436; ss. 13, 15, 25, 30, 34, 53, 62, ch. 80-406; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429; s. 154, ch. 94-119.

480.0425 Inactive status.—

(1) A license that has become inactive may be reactivated under s. 480.041 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the criteria for continuing education courses held in a classroom setting.

(2) The board shall promulgate rules relating to licenses which have become inactive and for the renewal of inactive licenses. The board shall prescribe by rule a fee not to exceed \$50 for the reactivation of an inactive license and a fee not to exceed \$50 for the renewal of an inactive license.

History.—ss. 111, 117, ch. 83-329; ss. 12, 13, ch. 85-280; s. 54, ch. 89-374; s. 4, ch. 91-429; s. 231, ch. 94-119.

480.043 Massage establishments; requisites; licensure; inspection.—

(1) No massage establishment shall be allowed to operate without a license granted by the department in accordance with rules adopted by the board.

(2) The board shall adopt rules governing the operation of establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(3) Any person, firm, or corporation desiring to operate a massage establishment in the state shall submit to the department an application, upon forms provided

by the department, accompanied by any information requested by the department and an application fee.

(4) Upon receiving the application, the department may cause an investigation to be made of the proposed massage establishment.

(5) If, based upon the application and any necessary investigation, the department determines that the proposed establishment would fail to meet the standards adopted by the board under subsection (2), the department shall deny the application for license. Such denial shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an applicant previously denied permission to operate a massage establishment may reapply for licensure.

(6) If, based upon the application and any necessary investigation, the department determines that the proposed massage establishment may reasonably be expected to meet the standards adopted by the department under subsection (2), the department shall grant the license under such restrictions as it shall deem proper as soon as the original licensing fee is paid.

(7) Once issued, no license for operation of a massage establishment may be transferred from one person, corporation, name, or location to another.

(8) Renewal of license registration for massage establishments shall be accomplished pursuant to rules adopted by the board. The board is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(9) The board is authorized to adopt rules governing the periodic inspection of massage establishments licensed under this act.

History.—s. 12, ch. 78-436; ss. 13, 15, 25, 30, 34, 54, 62, ch. 80-406; s. 2, ch. 81-318; ss. 6, 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.044 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

(a) Massage therapist application and examination fee: not to exceed \$250.

(b) Massage therapist initial licensure fee: not to exceed \$150.

(c) Establishment application fee: not to exceed \$200.

(d) Establishment licensure fee: not to exceed \$150.

(e) Biennial establishment renewal fee: not to exceed \$150.

(f) Biennial massage therapist licensure renewal fee: not to exceed \$200.

(g) Massage therapist reexamination fee: not to exceed \$250.

(h) Fee for apprentice: not to exceed \$100.

(i) Colonics examination fee: not to exceed \$100.

(j) Colonics reexamination fee: not to exceed \$100.

(k) Application and provisional licensure fee: not to exceed \$50.

(l) Application and reactivation for inactive status of a massage therapist license fee: not to exceed \$250.

(m) Renewal fee for inactive status: not to exceed \$250.

(2) The department shall impose a late fee not to exceed \$150 on a delinquent renewal of a massage establishment license.

(3) The board may establish by rule an application fee not to exceed \$100 for anyone seeking approval to provide continuing education courses and may provide by rule for a fee not to exceed \$50 for renewal of providership.

(4) The department is authorized to charge the cost of any original license or permit, as set forth in this chapter, for the issuance of any duplicate licenses or permits requested by any massage therapist or massage establishment.

(5) All moneys collected by the department from fees authorized by this act shall be paid into the Professional Regulation Trust Fund in the department and shall be applied in accordance with the provisions of ss. 215.37 and 455.219. The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

History.—s. 13, ch. 78-436; ss. 13, 15, 25, 30, 34, 55, 62, ch. 80-406; s. 2, ch. 81-318; ss. 7, 12, 13, ch. 85-280; s. 24, ch. 88-205; s. 54, ch. 89-162; s. 55, ch. 89-374; s. 4, ch. 91-429.

480.046 Grounds for disciplinary action by the board.—

(1) The following acts shall constitute grounds for which disciplinary actions specified in subsection (2) may be taken against a massage therapist or massage establishment licensed under this act:

(a) Attempting to procure a license to practice massage by bribery or fraudulent misrepresentation.

(b) Having a license to practice massage revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.

(f) Making deceptive, untrue, or fraudulent representations in the practice of massage.

(g) Being unable to practice massage with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon probable cause, authority to compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond his control, shall constitute an admission of the allegations against him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of massage with reasonable skill and safety to clients.

(h) Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.

(i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(j) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform.

(k) Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

(l) Refusing to permit the department to inspect the business premises of the licensee during regular business hours.

(m) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.

(n) Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the board, may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to license an applicant.

(b) Revocation or suspension of a license.

(c) Issuance of a reprimand or censure.

(d) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(3) The board shall have the power to revoke or suspend the license of a massage establishment licensed under this act, or to deny subsequent licensure of such an establishment, in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the establishment so licensed.

(4) Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120.

History.—s. 15, ch. 78-436; s. 2, ch. 81-318; s. 78, ch. 83-329; ss. 8, 12, 13, ch. 85-280; s. 1, ch. 88-233; s. 56, ch. 89-374; s. 4, ch. 91-429.

480.0465 Advertisement.—Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in any newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to the provisions of s. 480.043(6), the license number of a licensed

massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

History.—ss. 9, 13, ch. 85-280; s. 2, ch. 88-233; s. 57, ch. 89-374; s. 4, ch. 91-429.

480.047 Penalties.—

- (1) It is unlawful for any person to:
 - (a) Hold himself out as a massage therapist unless duly licensed as provided herein.
 - (b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage in this state at a board-approved massage school.
 - (c) Permit an employed person to practice massage unless duly licensed as provided herein.
 - (d) Present as his own the license of another.
 - (e) Allow the use of his license by an unlicensed person.
 - (f) Give false or forged evidence to the department in obtaining any license provided for herein.
 - (g) Falsely impersonate any other licenseholder of like or different name.
 - (h) Use or attempt to use a license that has been revoked.
 - (i) Otherwise violate any of the provisions of this

act.

(2) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 16, ch. 78-436; s. 2, ch. 81-318; ss. 10, 12, 13, ch. 85-280; s. 58, ch. 89-374; s. 4, ch. 91-429.

480.049 Civil proceedings.—As cumulative to any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this act or the lawful rules or orders of the department.

History.—s. 18, ch. 78-436; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429.

480.052 Power of county or municipality to regulate massage.—A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

History.—s. 20, ch. 78-436; ss. 13, 15, 25, 30, 34, 56, 62, ch. 80-406; s. 2, ch. 81-318; ss. 12, 13, ch. 85-280; s. 4, ch. 91-429.