

CHAPTER 29**(SB 91)**

AN ACT relating to licensing massage therapists.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 309.350 is amended to read as follows:

As used in KRS 309.350 to 309.364 unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Licensure for Massage Therapy;
- (2) "Board-approved massage program" means one which meets minimum standards for training and curriculum as determined by the board;
- (3) "Feldenkrais Method" means a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns. The method is based on principles of physics, biomechanics and an understanding of, or learning about, human development. The practice is federally trademarked and requires permission from the Feldenkrais Guild to use the term and methodology;
- (4) "Massage therapist" means a person who is licensed by the board to administer massage or massage therapy to the public for compensation;
- (5) "Polarity therapy" means diverse applications affecting the human energy system. These applications include energetic approaches to somatic contact, verbal facilitation, nutrition, exercise, and health education. Polarity therapy does not make medical claims, diagnose physical ailments, or allow prescription of medications. Standards for schools, education, and practice, the administration of a code of ethics, and a registration process are provided by the American Polarity Therapy Association;
- (6) "Practice of massage therapy" means the application, by a massage therapist licensed by the board, of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of electromechanical devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate; and
- (7) "Trager Approach" means a form of movement education that uses subtle directed movements and the skilled touch of a practitioner. The Trager Approach combines physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body. The practice is federally trademarked.

Section 2. KRS 309.352 is amended to read as follows:

KRS 309.350 to 309.364 shall not preclude:

- (1) Persons duly licensed, registered, or certified as massage therapists in another state or territory, the District of Columbia, or a foreign country when invited to this state to teach a course related to massage therapy or to consult with a person licensed under KRS 309.350 to 309.364;
- (2) Students practicing massage therapy while enrolled in a program recognized by the board and completing a clinical requirement for graduation while under the supervision of a board-licensed massage therapist;
- (3) A person administering a massage to members of the person's immediate family;
- (4) Persons who restrict manipulation of the soft tissues of the human body to the hands, feet, or ears, and do not hold themselves out to be massage therapists;
- (5) Persons who use procedures within the scope of practice of their profession, which has established standards and ethics, provided that their services use touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged, but who are not designated or implied to administer massage or to be massage therapists. These practices include, but are not limited to, the Feldenkrais Method, ~~polarity therapy,~~ and the Trager Approach;

- (6) Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to what is essential for palpation and affecting of the human energy system, provided that their services are not designated or implied to be massage or massage therapy. ***These practices include but are not limited to polarity therapy;***
- (7) Persons duly licensed, certified, or registered in another state or territory, the District of Columbia, or a foreign country when incidentally in this state to provide service as a part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event;
- (8) Students participating in massage therapy classes or continuing education while in the classroom or practicing on a classmate and not holding themselves out as massage therapists or accepting compensation for the practice; or
- (9) Practitioners of the following occupations and professions regulated by state law while engaging in the practices for which they are duly licensed and while not holding themselves out to be massage therapists:
 - (a) Physicians, osteopaths, podiatrists, and athletic trainers regulated under KRS Chapter 311;
 - (b) Chiropractors regulated under KRS Chapter 312;
 - (c) Registered nurses and practical nurses regulated under KRS Chapter 314;
 - (d) Barbers and cosmetologists regulated under KRS Chapters 317 and 317A, respectively;
 - (e) Occupational therapists regulated under KRS Chapter 319A; and
 - (f) Physical therapists regulated under KRS Chapter 327.

Section 3. KRS 309.353 is amended to read as follows:

- (1) No person shall practice massage therapy or hold himself or herself out to be a massage therapist unless the person meets the educational and licensing requirements of KRS 309.358 and 309.360 and holds a valid license that has not been suspended or revoked.
- ~~(2)(4)~~ A licensed massage therapist may represent himself or herself as a massage therapist or licensed massage therapist and may use the ***abbreviation***~~abbreviations "M.T." or "L.M.T."~~ as part of or immediately following his or her name to identify the profession.
- ~~(3)(2)~~ It shall be unlawful for any person, or for any business entity, its employees, agents, or representatives, to practice massage or massage therapy or to use in connection with his, her, or its name or business activity the words "massage," "massage therapy," "massage therapist," "massage practitioner," "masseur," or "masseuse," or the letters ~~"M.T." or "L.M.T.,"~~ or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless massage therapy is provided by a massage therapist licensed and practicing in accordance with KRS 309.350 to 309.364.
- (4) ***Any advertisement or sign to induce the public into believing that one is a massage therapist shall be prima facie evidence of a violation of this section if the person making the advertisement or displaying the sign is not licensed to practice massage therapy in accordance with KRS 309.350 to 309.364.***

Section 4. KRS 309.355 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 309.350 to 309.364 and shall have the responsibility to evaluate the qualifications of applicants for licensure and to authorize issuing, renewing, suspending, and revoking licenses.
- (2) ***The board shall investigate alleged violations brought to its attention, conduct investigations, and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of KRS 309.350 to 309.364 and administrative regulations promulgated pursuant to KRS 309.350 to 309.364. The board shall have the authority to administer oaths, receive evidence, interview persons, and require the production of books, papers, documents, or other evidence.*** The board may institute civil and criminal proceedings against violators of KRS 309.350 to 309.364~~, shall investigate alleged violations brought to its attention, and shall take appropriate action~~. The Attorney General, Commonwealth's attorneys, and county attorneys shall assist the board in prosecuting violations of KRS 309.350 to 309.364.

- (3) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364, including creating a code of *ethics*~~[ethical standards]~~, standards of practice~~[for licensed massage therapists]~~, and continuing education requirements *for licensed massage therapists*.
- (4) The board shall keep a record of its proceedings and a register of all persons licensed as massage therapists. The register shall include the name, license number and date of issue, last known place of business, and residence of each licensee. The board shall publish annually a directory of licensed massage therapists and their places of business. The list shall be available to any Kentucky citizen upon request and payment of a fee not to exceed the cost of the publication.
- (5) The board shall make an annual report to the Governor and the General Assembly, which shall contain an account of its duties performed, actions taken, and appropriate recommendations.
- (6) The board may seek an injunction in Franklin Circuit Court against any individual who practices massage therapy in the Commonwealth without a license.

Section 5. KRS 309.357 is amended to read as follows:

The following fees shall be required of licensees and prospective applicants:

- (1) Application fee of fifty dollars (\$50), which shall be credited to the initial license fee for successful applicants;
- (2) Initial, nonrefundable license fee not to exceed one hundred twenty-five dollars (\$125);
- (3) Biennial renewal fees not to exceed one hundred dollars (\$100);
- (4) Late renewal fees not to exceed one hundred fifty dollars (\$150) *up to sixty (60) days after expiration of license*; and
- (5) ~~[Within]~~ Sixty (60) days *after expiration of license*~~[of the date of reinstatement]~~, *late renewal* fees not to exceed two hundred dollars (\$200).

Section 6. KRS 309.358 is amended to read as follows:

- (1) Between June 24, 2003, and June 24, 2005, the board shall issue an initial license as a massage therapist to an applicant who:
 - (a) Is eighteen (18) years of age or older;
 - (b) Has paid the application fee and other fees required by the board;
 - (c) Is a person of good moral character;
 - (d) Has successfully completed a course of study consisting of a minimum of five hundred (500) classroom hours of supervised instruction in a massage therapy training program approved by the board; and
 - (e) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission for Certifying Agencies.
- (2) On and after June 24, 2005, the board may issue a license as a massage therapist to an applicant who:
 - (a) Is eighteen (18) years of age or older;
 - (b) Has paid the application fee and other fees required by the board;
 - (c) Is a person of good moral character;
 - (d) Has successfully completed a course of study consisting of a minimum of six hundred (600) classroom hours of supervised instruction in a massage therapy training program approved by the board; and
 - (e) Has successfully passed an examination administered by *the National Certification Board for Therapeutic Massage and Bodywork* or a certifying agency that has been approved by the National Commission for Certifying Agencies.

Section 7. KRS 309.359 is amended to read as follows:

The board may grant a license to any person who is licensed, certified, or registered in another state *of the United States*~~[or country]~~ that has standards at least as stringent as those required by KRS 309.358. *The board may grant a*

license by endorsement to applicants licensed, certified, or registered in another state of the United States that has lesser standards than Kentucky's if the board determines that the applicant's combined initial training, professional experience, continuing education, or other credentials constitute an equivalent to the standards in Section 6 of this Act. Applicants who are not from a state that has standards at least as stringent as those required by KRS 309.358 may appeal to the board for a hearing to determine if their experience and education meet the criteria.

Section 8. KRS 309.361 is amended to read as follows:

- (1) When renewing a license, each licensee shall document the successful completion of the required board-approved continuing education credits. Twenty-four (24) hours of training shall be required for each two (2) year renewal period. A maximum of twelve (12) additional hours may be carried over into the next renewal period. Courses may include ethics, business practices, science, and techniques related to massage therapy.
- (2) *Waivers or extensions of continuing education may be approved at the discretion of the board.*

Section 9. KRS 309.362 is amended to read as follows:

- (1) The board may deny or refuse to renew a license, may suspend or revoke a license, may issue an administrative reprimand, or may impose probationary conditions *or fines not to exceed five hundred dollars (\$500)* when the licensee ~~or applicant~~ has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include the following:
 - (a) Obtaining or attempting to obtain a license by fraud, misrepresentation, concealment of material facts, or making a false statement to the board;
 - (b) Being convicted of a felony in any court if the act or acts for which the licensee or applicant for license was convicted are determined by the board to have a direct bearing on whether the person is trustworthy to serve the public as a licensed massage therapist. "Conviction," as used in this paragraph, shall include a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere in a court of law;
 - (c) Violating any lawful order or administrative regulation promulgated by the board;
 - (d) Violating any provision of this chapter *or administrative regulations promulgated thereunder*;
 - (e) Having sexual contact as defined by KRS 510.010(7) with a client or having engaged or attempted to engage in lewd or immoral conduct with any client or patient;
 - (f) Engaging in fraud or material deception in the delivery of professional services, including reimbursement or advertising services, in a false or misleading manner; ~~or~~
 - (g) Evidence of gross negligence or gross incompetence in the practice of massage therapy; *or*
 - (h) *Violating the standards of practice or the code of ethics as promulgated by administrative regulations.*
- (2) *Any licensed massage therapist who does not desire to meet the qualifications for active license renewal shall, upon application and payment of an inactive renewal fee, be issued an inactive license. The license shall not entitle the license holder to use the term "licensed massage therapist," nor to engage in the practice of massage therapy. The inactive renewal fee shall not exceed fifty dollars (\$50) annually.*
- (3) *To regain active status, the licensee shall upon application show completion of one (1) hour of continuing professional education for each month the license has been in an inactive state not to exceed five (5) years. Waivers or extensions of continuing education may be approved at the discretion of the board. Beyond five (5) years, the licensee shall meet the requirements in Section 6 of this Act.*
- (4) The board may, at its discretion, deny, refuse to renew, suspend or revoke a license, or impose probationary conditions following an administrative hearing pursuant to KRS Chapter 13B and in accordance with administrative regulations promulgated by the board.
- (5)~~(3)~~ The surrender of a license shall not deprive the board of jurisdiction to proceed with disciplinary actions under KRS 309.350 to 309.364.

Section 10. KRS 309.363 is amended to read as follows:

- (1) A person, institution, or business entity *offering* ~~desiring to have the board determine the standing of~~ a massage therapy program of instruction shall file a completed application for a certificate of good standing with the board on a form prescribed by the board. The completed application shall provide proof acceptable to the board that the following criteria have been met:
- (a) The *school* ~~program~~ is licensed to operate by the Kentucky State Board for Proprietary Education, *the Council on Postsecondary Education*, or *their* ~~its~~ equivalent in another state;
 - (b) A curriculum statement showing clock hours devoted to each subject with the following minimums:
 1. One hundred *twenty-five (125)* ~~(100)~~ hours of anatomy, physiology, or *kinesiology* ~~pathology~~;
 2. A two hundred (200) hour course to include massage theory, technique, and practice focusing on gliding strokes, kneading, direct pressure, deep friction, joint movement, superficial warming techniques, percussion, compression, vibration, jostling, shaking, and rocking; ~~and~~
 3. Two hundred (200) hours of approach to the business of massage, specifically including contraindications, benefits, business, history, ethics, *client documentation*, legalities of massage, and *modality* courses designed to meet the school's specific program objectives;
 4. *Forty (40) hours of pathology; and*
 5. The *school* ~~board~~ may use its discretion in allotting the additional *thirty-five (35)* ~~one hundred (100)~~ curricular hours that are required under KRS 309.358;
 - (c) A listing of instructional staff and their qualifications *as follows*:
 1. ~~showing a minimum educational equivalent for each instructor and aide for licensure under KRS 309.350 to 309.364, or proof of qualifying for issuance of a license under KRS 309.359.~~ Instructors ~~of~~ *in* the practical courses shall be *licensed massage therapists and shall* ~~required to~~ have three (3) years of experience in the practice of massage therapy.
 2. *Instructors of science courses shall be either licensed massage therapists with three (3) years of experience in the practice of massage therapy or have certification or specific higher education in the subject they are teaching.*
- (2) The board shall accept National Certification Board for Therapeutic Massage and Bodywork guidelines in approving continuing education.

SECTION 11. A NEW SECTION OF KRS 309.350 TO 309.364 IS CREATED TO READ AS FOLLOWS:

Any person who violates Section 3 of this Act shall be guilty of a Class B misdemeanor.

Approved March 24, 2006.