

**CHAPTER 29****( HB 79 )**

AN ACT relating to massage therapy.

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) "Compensation" means the direct or indirect payment, loan, advance, donation, contribution, deposit, barter, gratuity, or gift of money or anything of value;
- (4) "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;
- (5) "Massage therapist" means a person who is licensed by the board to administer massage or massage therapy to the public for compensation;
- (6) "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. ***The practice of polarity therapy is federally trademarked;***
- (7) "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
- (8) "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 309.351 is amended to read as follows:

Massage therapists practicing under KRS 309.350 to 309.364 shall not perform any of the following: diagnosis of illness or disease; high-velocity, low-amplitude thrust applied to a joint; spinal or pelvic adjustment or chiropractic manipulation; ***application of ultrasound; prescription of medication; or*** deep physical agent modalities, except hydrotherapy methods ***and pulsed electromagnetic field therapy or microcurrent devices for which the massage therapist has completed training required by the board***~~[- application of ultrasound; or prescription of medication].~~

➔Section 3. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:

- (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years, and who have been residents of Kentucky for at least one (1) year;
  - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program *or be a designated representative of a school owner or of a school director*; and
  - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
  - (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
  - (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.
  - (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔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. 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, standards of practice, standards of educational program curriculum and instructor qualification, 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 the Circuit Court of the county where the alleged violation occurred against any individual who practices massage therapy in the Commonwealth without a license.
- (7) *The board shall require a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation of any applicant for licensure to practice massage therapy.*
- (8) *The board may employ staff as needed in the conduct of its duties and functions, and shall fix their compensation.*

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

- (1) (a) *The board shall promulgate administrative regulations establishing a reasonable schedule of fees and charges for the issuance and restoration of licenses and certificates, and for the renewal of licenses and certificates issued under KRS 309.350 to 309.364.*
- (b) *Former licensees with an expired license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulations of the board. If the reinstatement application is made within five (5) years from the date of termination, applicants shall not be required to submit to any examination as a condition for reinstatement.*
- (c) *A revoked license may not be reinstated or renewed. For a license that is reinstated, the licensee shall pay the reinstatement fee and the renewal fee as established by the board through administrative regulations.*
- (d) *A former licensee who fails to reinstate a license within five (5) years after termination may not have it renewed, restored, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure.*
- (e) *The board may require that a person applying for a renewal or reinstatement of licensure show evidence of completion of continuing professional education as prescribed by the board in administrative regulations.*

~~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;~~
- (5) ~~Sixty (60) to ninety (90) days after expiration of license, late renewal fees not to exceed two hundred dollars (\$200); and~~
- (6) ~~Beyond ninety (90) days after the expiration of a license:~~
- (a) ~~Late renewal fees not to exceed two hundred dollars (\$200) if the applicant for renewal can demonstrate to the satisfaction of the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control; or~~
- (b) ~~The application and initial, nonrefundable license fees required by subsections (1) and (2) of this section, accompanied by:~~
1. ~~A new application for licensure; and~~
2. ~~Proof of compliance with all of the requirements to practice massage therapy specified in KRS 309.358.†~~
- (f) If the board determines that the applicant practiced on an expired license, the board may require one (1) continuing education credit per month of expiration, at the discretion of the board.

- (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," or to engage in the practice of massage therapy. The inactive annual renewal fee shall be promulgated by the board in administrative regulation.*
- (3) *To regain active status, the licensee shall, upon the submission of an application, show completion of one (1) hour of continuing professional education for every six (6) months 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 7 of this Act to regain active status.*

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

- (1) The board may issue a license as a massage therapist to an applicant who:

- (a)~~(1)~~ Is eighteen (18) years of age or older;
- (b)~~(2)~~ Has paid the application fee and other fees required by the board;
- (c)~~(3)~~ Is a person of good moral character;
- (d) ***Has submitted a recent criminal background check performed by means of a fingerprint check pursuant to subsection (7) of Section 4 of this Act;***
- (e) ***Has submitted a recent color photograph as prescribed by administrative regulation promulgated by the board;***
- (f)~~(4)~~ Has successfully completed:
  1. A course of study consisting of a minimum of six hundred (600) hours of supervised instruction in a massage therapy training program approved by the board; *or*
  2. ***An associate degree having a massage therapy emphasis which meets the requirements of a massage therapy training program with supervised technique instruction and approved by the board;*** and
- (g)~~(5)~~ Has successfully passed an examination administered by the ***Federation of State Massage Therapy Boards, the National Certification Board for Therapeutic Massage and Bodywork, or a certifying agency that has been approved by the National Commission for Certifying Agencies, or other examinations approved by the board.***

- (2) ***The board shall incorporate the photograph provided in subsection (1)(e) of this section into the license. The photograph shall not be merely affixed to the license.***

➔Section 7. 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. ***Twelve (12)***~~Twenty-four (24)~~ hours of training shall be required for each two (2) year renewal period. ***Three (3) hours of the twelve (12) required shall be in ethics***~~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 8. 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 ***one thousand dollars (\$1,000) per violation***~~five hundred dollars (\$500)~~ when the licensee 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, if in accordance with KRS Chapter 335B. "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;
  - (g) Evidence of gross negligence or gross incompetence in the practice of massage therapy;
  - (h) Violating the standards of practice or the code of ethics as promulgated by administrative regulations;

- (i) Violating KRS 304.39-215; or
  - (j) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4) or (5).
- (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 KRS 309.358.~~
- ~~(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.~~
- ~~(3) (5) 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 9. KRS 309.363 is amended to read as follows:

- (1) A person, institution, or business entity offering 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 and pay a fee as specified in KRS 309.357. The completed application shall provide proof acceptable to the board that the following criteria have been met:
  - (a) The school is licensed to operate by the Kentucky Commission on Proprietary Education, the Council on Postsecondary Education, or their 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) hours of anatomy, physiology, or kinesiology;
    - 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;
    - 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 may use its discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358; *and*
  - (c) A listing of instructional staff and their qualifications as follows:
    - 1. Instructors of the practical courses shall be licensed massage therapists and shall 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; and
    - 3. Instructors in adjunctive courses shall have subject-specific education and experience.
- (2) *A school may be presumed to have met the qualifications in subsection (1)(b) and (c) of this section if it holds a current designation of "Approved School" from the National Certification Board of Therapeutic Massage and Bodywork or has the designation of "accredited" or "COMTA-endorsed curriculum" from the Council for Massage Therapy Accreditation.*
- (3) The board shall accept National Certification Board for Therapeutic Massage and Bodywork guidelines in approving continuing education.

➔Section 10. KRS 309.3631 is amended to read as follows:

- (1) A person, institution, or business entity offering a massage therapy program of instruction shall renew a certificate of good standing annually.
- (2) During the renewal process, the person, institution, or business entity shall submit to the board documentation of program updates, personnel changes, graduation rates, and licensing examination rates.
- (3) *Application for the initial certificate of good standing and annual renewals shall include a fee prescribed by the board in administrative regulations.*

**Signed by Governor March 17, 2021.**