

## **CHAPTER 43-25 MESSAGE THERAPISTS**

### **43-25-01. Short title.**

Repealed by S.L. 1997, ch. 375, § 11.

### **43-25-02. Definitions.**

1. "Board" means the North Dakota board of massage therapy.
2. a. "Massage" means the practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:
  - (1) Assessment, evaluation, or treatment;
  - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
  - (3) Active or passive stretching of the body within the normal anatomical range of movement;
  - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands;
  - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
  - (6) Use of hot or cold applications.
- b. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.
3. "Massage establishment" means any place of business in which massage is practiced.
4. "Massage therapist" means an individual licensed to practice massage.
5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

### **43-25-03. Massage therapists to be licensed.**

A person may not:

1. Practice massage, attempt to practice massage, or teach massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the requirements adopted by the board;
3. Employ an unlicensed person to perform a massage; or
4. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." or terms of similar meaning without a license issued by the board.

### **43-25-04. Exemptions.**

The following persons are exempt from this chapter:

1. Schools that furnish massage services to their student athletes.
2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist, a school may charge a fee and students may accept tips under a policy set by the school. Students may practice homework unsupervised on other students, family, or friends, but no fee or tip may be charged or accepted. These massages may only be performed at the school or at the residence of the student, family member, or friend.
3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities are performed in the course of the bona fide practice of the individual's profession or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or

is engaged in the practice of massage and does not perform massage while working in a massage establishment.

4. A health spa or similar business to the extent the spa or business is performing superficial applications used for beautification or health of the skin, including salt glows and contouring.
5. Any individual instructor demonstrating massage techniques as a component of a board-approved seminar.
6. Any individual practicing healing by manipulating the energy field or the flow of energy of the human body by means other than the manipulation of the soft tissues of the human body, provided that the individual's services are not designated or implied to be massage or massage therapy. For purposes of this subsection, a light touch or tap is not a manipulation of the soft tissues of the human body.

#### **43-25-05. Board of massage therapy - Terms.**

1. The governor shall appoint a board of massage therapy, to consist of five members.
  - a. Three members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state and have done so for at least the previous three years. These members must be appointed for terms of three years, staggered so that the term of one member expires each year.
  - b. One member of the board must be a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services, and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term, staggered so that the term expires with a licensed board member but not with the instructor board member.
  - c. One member of the board must be a current or former massage therapy instructor of a massage therapy program that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
  - d. Each member of the board holds office until that member's successor is appointed and qualified. Any member appointed to a term beginning after June 30, 2013, may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of three years has passed since that member last served on the board.
2. Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, secretary, and treasurer. The treasurer must be bonded in the sum of at least fifty thousand dollars for the faithful discharge of the treasurer's duties.
3. Each member of the board must be a citizen of North Dakota and the United States.

#### **43-25-05.1. Powers and duties of the board.**

The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board periodically shall inspect or cause to be inspected all massage establishments. The board and the board's agents may enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. In accordance with the guidelines established for reports under section 54-06-04, the board shall prepare and submit a biennial report detailing income and expenses and a list of licensed massage therapists.

4. The board may hire office personnel deemed necessary by the board for carrying on the board's official duties and shall set the compensation to be paid to the personnel.

**43-25-06. Removal of members of board of massage therapy - Officers of the board.**

The governor may remove from office a member of the board for failure to maintain the qualifications for appointment, for neglect of duties as required by this chapter, for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

**43-25-07. Requisites for licensure and examination - Subjects - Minimum passing grade - Fee for re-examination.**

1. Any person who is eighteen years of age or more and of good moral character and temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
  - a. Presents a diploma or credentials issued by an approved massage therapy education program that meets the standards set by the board;
  - b. Receives a passing score on an examination approved by the board; and
  - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to obtain licensure within one year of the initial license or relicensure application is entitled to reapply within six months after notification that the application was rejected, upon payment of a fee of fifty dollars or a lesser amount established by the board. Two applications exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The board may approve alternate educational methods or methodology for applicants to complete educational requirements if the applicant has graduated from a school of massage that is accredited by a national or regional accrediting agency recognized by the United States department of education.

**43-25-08. Fee for license.**

The application fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

**43-25-08.1. Criminal history record checks.**

The board shall require an applicant under this chapter to submit to a statewide and nationwide criminal history record check. The board may require a licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

**43-25-09. License - Display - Renewal - Renewal fee.**

1. Each license must be conspicuously displayed at the place of practice.
2. Except as otherwise provided under this subsection, twenty-four hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of

continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ten hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability as defined in this chapter.

- a. Licensees with odd-numbered licenses shall report required continuing education on or before February twenty-eighth of each odd-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
  - b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
  - c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to subdivisions a and b.
  - d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
3. If the board reasonably believes a massage therapist or applicant has a physical or mental condition jeopardizing the health of those who seek massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. If the individual has had or has any communicable disease deemed sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.
  4. A holder of an expired license may within two years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require a new certificate of physical examination and evidence of completion of any required continued educational hours.
  5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".
  6. An applicant with training and credentials outside of the United States must submit at the applicant's own expense qualifications, credentials, and work experience to one of the following credentialing agencies for review:
    - a. International education research foundation;
    - b. International consultants of Delaware, inc.; or
    - c. A credentialing agency approved by the board.
  7. Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.

#### **43-25-10. Disciplinary actions - Complaints.**

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
  - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
  - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
  - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.

- d. The licensee is addicted to the habitual use of intoxicating liquors, or other legal or illegal drugs, to the extent the licensee is compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
  - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or the licensee infringes on any other licensed profession.
  - f. The licensee is guilty of gross negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
  - g. The licensee has violated this chapter or any rule adopted by the board.
2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to two hundred dollars.
  3. A complaint may be submitted to the board by any person or on its own motion. A complaint must be signed by the complainant. The president may initiate an investigation of the complaint and report to the board.
  4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

**43-25-11. Provisions for hearing - Notice.**

Repealed by S.L. 2001, ch. 384, § 15.

**43-25-12. Power of board to revoke, suspend, or annul licenses.**

Repealed by S.L. 2001, ch. 384, § 15.

**43-25-13. Records to be kept by the board.**

The board may implement rules for record retention. Licensee information is retained by the board from the date a license is granted until five years after inactive status. Any official entry or a certificate of the absence of information, certified under the hand of the secretary and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied.

**43-25-14. Compensation of board members - Clerks.**

The board members are entitled to receive compensation in an amount to be established by rule not to exceed one hundred dollars per day or prorated for partial days the member is actually engaged in the performance of other meetings and official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

**43-25-15. Disposition of money received by the board.**

Repealed by S.L. 1971, ch. 510, § 15.

**43-25-16. Other laws unaffected by this chapter.**

Repealed by S.L. 2001, ch. 384, § 15.

**43-25-17. Practitioners at time chapter becomes effective.**

Repealed by S.L. 1961, ch. 291, § 2.

**43-25-18. Reciprocity.**

1. Any individual who has been duly licensed in another state, territory, or jurisdiction of the United States, to practice massage, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination, if the applicant provides evidence satisfactory to the board the applicant:

- a. Is licensed in good standing in any other state, territory, or jurisdiction of the United States;
  - b. Actively practiced for at least two of the last three years;
  - c. Graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
  - d. Passed an examination acceptable to the board;
  - e. A massage license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and
2. To qualify for licensure under this section, an applicant shall submit to a statewide and nationwide criminal history record check as required by section 43-25-08.1.

**43-25-19. Penalty for violation.**

Any person violating section 43-25-03 without being exempt under section 43-25-04 is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.