

# WORK DRAFT – RECOMMENDED CHANGES

## A BILL FOR AN ACT ENTITLED

**"An Act establishing a Board of Massage Therapists and requiring licensure of massage therapists; and providing for an effective date."**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

\* **Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

(39) Board of Massage Therapists (AS 08.61.010).

\* **Sec. 2.** AS 08.02.010(a) is amended to read:

(a) An acupuncturist licensed under AS 08.06, an audiologist or speech-language pathologist licensed under AS 08.11, a person licensed in the state as a chiropractor under AS 08.20, a professional counselor licensed under AS 08.29, a dentist under AS 08.36, a dietitian or nutritionist licensed under AS 08.38, a marital and family therapist licensed under AS 08.63, **a massage therapist licensed under AS 08.61**, a medical practitioner or osteopath under AS 08.64, a direct-entry midwife certified under AS 08.65, a registered nurse under AS 08.68, an optometrist under AS 08.72, a licensed pharmacist under AS 08.80, a physical therapist or occupational therapist licensed under AS 08.84, a psychologist under AS 08.86, or a clinical social worker licensed under AS 08.95, shall use as professional identification appropriate letters or a title after that person's name that represents the person's specific field of practice. The letters or title shall appear on all signs, stationery, or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy as defined in AS 08.64.380, or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist," "radiologist," "audiologist," "naturopath," ["DERMATOLOGIST", "RADIOLOGIST", "AUDIOLOGIST", "NATUROPATH",] or the like.

\* **Sec. 3.** AS 08 is amended by adding a new chapter to read:

### **Chapter 61. Massage Therapists. Article 1. Board of Massage Therapists.**

**Sec. 08.61.010. Board established.** (a) There is established the Board of Massage Therapists.

(b) The board consists of

(1) three members who are licensed in this state as massage therapists, have at least five years of experience in the practice of massage therapy immediately preceding the date of appointment, and are actively engaged in the practice of massage

therapy; no more than one board member may have ownership, partnership or any other financial stake in a massage school.

(2) two public members who are not licensed health professionals or employees of the state, and who are not present or former members of another state licensing board.

**Sec. 08.61.020. Duties and powers of the board.** The board shall

(1) supply forms for applications, licenses, permits, certificates, and other papers and records;

(2) provide for examination of applicants and issue licenses to those applicants the board finds qualified;

(3) adopt regulations governing the operation of massage therapy schools not approved by the Alaska Commission on Postsecondary Education, the licensure of massage therapists, and the practice of massage therapy, to promote the public health, welfare, and safety of the citizens of the state;

(4) establish standards of professional competence and ethical conduct for massage therapists;

(5) establish standards for continuing education for massage therapists reflecting acceptable national standards; to include acceptance of distant learning continuing education hours due to geographical remoteness of Alaska.

(6) make available to the public a list of massage therapists licensed under this chapter;

(7) determine which states have educational and licensing requirements equivalent to those of this state; and

(8) enforce the provisions of this chapter and adopt and enforce regulations necessary to implement this chapter.

**Article 2. Licensure of Massage Therapists.**

**Sec. 08.61.100. Unlicensed practice prohibited.** (a) Except as provided in (c) of this section, a person may not practice massage therapy or represent that the person is a massage therapist unless the person has a massage therapist license issued under this chapter.

(b) A person represents that the person is a massage therapist when the person adopts or uses a title or description of services that incorporates one or more of the following terms or designations: massage, massage practitioner, massage therapist, massage therapy, therapeutic massage, massage technician, massage technology, massagist, masseur, masseuse, myotherapist or myotherapy, or any traditional European or contemporary western massage method or derivation of those terms that implies a massage technique or method.

(c) The licensing requirement in (a) of this section does not apply to ~~the~~

~~practice of massage therapy by]~~ a person who is

(1) licensed, certified, or registered under other laws of this state while the person is performing services within the person's authorized scope of practice;

(2) employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country while the person practices massage therapy in order to teach a course related to massage therapy or in order to consult with a person licensed under this chapter;

(4) a student enrolled in a board-approved school or course of study while completing a clinical requirement for graduation that is performed under the supervision of a person licensed under this chapter; however, the student must be identified as a student when performing massage services on members of the public and may not be compensated for the massage services provided;

(5) giving massage therapy only to members of that person's family;

(6) ~~[a movement educator, such as a dance therapist or teacher, yoga teacher, personal trainer, martial arts instructor, movement re-patterning practitioner, or athletic department coach;]~~ practicing Structural / Functional / Movement Integration within the scope of practice of a profession with established standards and ethics and do not hold themselves out to be massage therapists or imply their services to be massage or massage therapy. Such practices include, but are not limited to the Feldenkrais Method®, the Rolf Institute's Structural and Movement Integration®, the Trager Approach®, Body-Mind Centering®, Hellerwork®, the Rosen Method®, the Alexander Technique®, and Ortho-Bionomy®. Exempt practitioners who fall under above guidelines may use the terms "bodywork," "bodyworker", "bodywork therapist" or their professions' designated title.

(7) practicing ~~[the uses of touch, words, and directed movement to deepen awareness of existing patterns of movement in the body or to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, if the practice is not designated or implied by the person to be massage or massage therapy;]~~ other integrative Methods within the scope of practice of a profession with established standards and ethics and do not hold themselves out to be massage therapists or imply their services to be massage or massage therapy. Such practices include, but are not limited to CranioSacral Therapy, Reflexology, Ayurvedic therapies, Aroma Therapy and Zero Balancing. Exempt practitioners who fall under above guidelines may use the terms "bodywork," "bodyworker", "bodywork therapist" or their professions' designated title.

(8) practicing massage therapy at the athletic department of an institution maintained by the public funds of the state, or any of its political subdivisions, or practicing massage therapy at the athletic department of a school or college approved by the board by regulation using recognized national professional standards; and

(9) practicing [~~techniques specifically intended to affect the human energy field and does not represent or imply that the person is a massage therapist.~~] Energy approaches within the scope of practice of a profession with established standards and ethics and do not hold themselves out to be massage therapists or imply their services to be massage or massage therapy. Such practices include, but are not limited to Polarity, Polarity Therapy, Polarity Bodywork Therapy, Therapeutic Touch, Asian Bodywork Therapy, Acupressure, Jin Shin Jyutsu, Jin Shin Do®, Qi Gong, Reiki and Shiatsu. Exempt practitioners who fall under above guidelines may use the terms “bodywork,” “bodyworker”, “bodywork therapist” or their professions’ designated title.

(d) A person who knowingly violates this section is guilty of a class B misdemeanor.

**Sec. 08.61.110. Qualifications for license.** The board shall issue a license to practice massage therapy to a person who

- (1) applies on a form provided by the board;
- (2) pays the fees established under AS 08.61.200;
- (3) furnishes evidence satisfactory to the board that the person has completed a course of study approved by the board under AS 08.61.130;
- (4) is 18 years of age or older;
- (5) passes a criminal background check in accordance with requirements of other Alaskan health care providers as determined by the board;
- (6) has and maintains current cardiopulmonary resuscitation and first aid certifications as established and approved by the board;
- (7) ~~takes~~ **has** at least four hours of board approved HIV/AIDS, bloodborne infectious disease, and universal precautions education [~~every two years;~~]
- (8) is covered by current liability and malpractice insurance in accordance with national standards as determined by the board [~~the amount of \$100,000,000 or more~~]; and
- (9) successfully completes an examination required by the board.

**Sec. 08.61.120. Examinations.** The board shall use examinations provided by the National Certification Board for Therapeutic Massage and Bodywork, the Federation of State Massage Therapy Boards or other examinations approved by the board.

**Sec. 08.61.130. Standards for courses of study.** (a) In order to meet the requirement of AS 08.61.110(3), an applicant for a license shall have successfully completed at least 500 hours of supervised instruction. The supervised instruction must contain at least

- (1) 125 hours of in-class supervised instruction in the body's systems, including anatomy, physiology and kinesiology;
- (2) 200 hours of in-class supervised instruction in massage bodywork assessment theory and application;
- (3) 40 hours of in-class instruction in pathology;
- (4) four hours of in-class instruction on business;
- (5) six hours of in-class instruction on ethics; and
- (6) 125 additional in-class hours of supervised instruction in an area or related field that theoretically completes the massage program of study.

(b) The board shall establish by regulation the standards and procedures for approving courses of study and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating courses of study. The standards and procedures established by the board shall apply equally to courses of study within this country and in foreign jurisdictions.

**Sec. 08.61.140. Licensure by credentials.** (a) The board may by regulation provide for the licensure without examination of a person who meets the requirements of AS 08.61.110 who

(1) is currently licensed in another state or country with licensing requirements at least equivalent in scope, quality, and difficulty to those of this state; or

(2) holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets the standards of the National Certification Board for Therapeutic Massage and Bodywork on competency assurance and has received education and training substantially equivalent to that required by this state.

(b) At a minimum, an applicant for licensure by credentials under this section

(1) may not be the subject of an unresolved complaint or disciplinary action before a regulatory authority in this state or another jurisdiction;

(2) may not have had a certificate or license to practice massage therapy revoked in this state or another jurisdiction;

(3) shall submit proof of continued competency satisfactory to the board; and

(4) shall pay the required fees.

**Sec. 08.61.150. Renewal of a license.** A license issued under this chapter may be renewed on payment of the required fee and the submission of evidence satisfactory to the board that the licensed massage therapist

(1) has met the continuing education requirements of the board;

(2) does not have an unresolved complaint relating to the practice of massage therapy pending at the time of application; and

(3) has not committed an act that is a ground for discipline under AS 08.61.210.

### **Article 3. General Provisions.**

**Sec. 08.61.200. Fees.** The Department of Commerce, Community, and Economic Development shall set fees under AS 08.01.065 for licenses and license renewal under this chapter.

**Sec. 08.61.210. Grounds for discipline, suspension, or revocation of license.** The board may impose a disciplinary sanction under AS 08.01.075 on a person holding a license under this chapter if the board finds that the person

(1) secured a license through deceit, fraud, or intentional misrepresentation;

- (2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;
- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;
- (5) intentionally or negligently engaged in or permitted the performance of client care by a person under the licensed massage therapist's supervision that does not conform to minimum professional standards regardless of whether actual injury to the client occurred;
- (6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;
- (7) continued to practice after becoming unfit because of
  - (A) professional incompetence; or
  - (B) addiction or severe dependency on alcohol or other drugs that impairs the ability to practice safely;
- (8) engaged in lewd or immoral conduct in connection with the delivery of professional service to a client.

**Sec. 08.61.290. Definitions.** In this chapter,

- (1) "board" means the Board of Massage Therapists;
- (2) "massage therapist" means an individual licensed under this chapter;
- (3) "massage therapy" means a health care service involving the systematic manipulation and treatment of the soft tissues, to include the muscular and connective tissues of the body, to enhance the functions of those tissues and promote relaxation and well-being;
  - in this paragraph, "manipulation and treatment"
    - (A) includes manual techniques, applied with the intent to physically affect local soft tissues, such as pressure, friction, stroking, percussion, kneading, vibration, muscular assessment by palpation, ~~and~~ range of motion for purpose of demonstrating muscle excursion for muscle flexibility, ~~and~~ nonspecific stretching, and application of superficial heat, cold, water, lubricants, or salts;
    - (B) does not include diagnosis, the prescription of drugs or medicines, attempts to manipulate any articulation of the body or spine, or mobilization of these articulations by the use of a thrusting force.

\* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. (a) Notwithstanding AS 08.61.010(b), enacted by sec. 3 of this Act, and AS 39.05.055, the terms of the first members of the Board of Massage Therapists appointed by the governor under AS 08.61.010(b) are as follows: (1) two members shall be appointed for four-year terms; (2) two members shall be appointed for three-year terms; and

(3) one member shall be appointed for a two-year term. The governor shall specify the term of office of each member appointed under this subsection.

(b) Notwithstanding AS 08.61.010(b), enacted by sec. 3 of this Act, the initial members of the Board of Massage Therapists are not required to be licensed under AS 08.61 until July 1, ~~2009~~ 2010.

(c) Notwithstanding sec. 7 of this Act, the Department of Commerce, Community, and Economic Development and the Board of Massage Therapists may proceed to adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act) but not before the effective date of the law implemented by the regulation.

\* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISION: LICENSING OF CURRENT MESSAGE THERAPISTS. (a) Notwithstanding AS 08.61.110, enacted by sec. 3 of this Act, the Board of Massage Therapists shall ~~[issue a license to practice massage therapy to a person who does not meet the requirement of AS 08.61.110(3) if the person]~~ waiver the education and examination requirements and issue a license to a person to practice massage therapy who

(1) applies for the license ~~[before July 1, 2010]~~ 2011;

(2) submits documentation satisfactory to the board that the person's ~~[had 500 hours of board approved experience in the active practice of massage therapy within the 36 months immediately preceding the date of the person's application]~~ occupational practice of massage began by the date the legislation passed; and

(3) meets all applicable licensure requirements other than the requirement in AS 08.61.110(3) and AS 08.61.110 (9).

(b) A license issued under this section is considered to be a license issued under AS 08.61, enacted by sec. 3 of this Act.

(c) In this section, "board" and "massage therapy" have the meanings given in AS 08.61.290, enacted by sec. 3 of this Act.

\* **Sec. 6.** AS 08.61.010 and 08.61.020, enacted by sec. 3 of this Act, and sec. 4 of this Act take effect immediately under AS 01.10.070(c).

- **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect July 1, ~~[2009]~~ 2010.

### Pre-emption

“Beginning the effective date of this act, a local unit of government shall not establish or maintain licensing requirements for a massage therapist licensed under this act not usually required by other healthcare providers.