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SENATE BILL 275

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY  
Peter Wirth

AN ACT

RELATING TO MASSAGE THERAPY; AMENDING THE MASSAGE THERAPY PRACTICE ACT TO DELETE CERTAIN REFERENCES TO MASSAGE THERAPY INSTRUCTORS; ADDING A SCOPE OF PRACTICE PROVISION; EXPANDING CONTINUING EDUCATION PROVISIONS; MAKING TECHNICAL CHANGES TO THE MASSAGE THERAPY PRACTICE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-12C-3 NMSA 1978 (being Laws 1991, Chapter 147, Section 3, as amended) is amended to read:

"61-12C-3. DEFINITIONS.--As used in the Massage Therapy Practice Act:

- A. "board" means the massage therapy board;
- B. "continuing education" means courses, seminars,

workshops and classes in areas related to the practice of  
massage therapy, such as:

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- 1                   (1) massage;  
2                   (2) bodywork;  
3                   (3) health care;  
4                   (4) psychology;  
5                   (5) anatomy and physiology;  
6                   (6) business;  
7                   (7) insurance;  
8                   (8) ethics;  
9                   (9) professional development;  
10                  (10) movement therapy;  
11                  (11) stress management;  
12                  (12) exempt modalities listed in Subsection C  
13 of Section 61-12C-5.1 NMSA 1978;  
14                  (13) cardiopulmonary resuscitation or first  
15 aid; and  
16                  (14) complementary alternative medicine  
17 modalities determined by the board to be related to the  
18 practice of massage therapy;  
19                  C. "continuing education provider" means:  
20                       (1) an individual who was an active New Mexico  
21 registered independent massage therapy instructor on the  
22 effective date of this 2017 act;  
23                       (2) a massage therapy school regulated by the  
24 requisite regulatory agency where the massage therapy school is  
25 located;

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1                   (3) a national or international professional  
2 association for massage therapists;

3                   (4) an individual or an organization approved  
4 by a national or international massage therapy continuing  
5 education approval agency;

6                   (5) a health care professional organization;  
7 and

8                   (6) accredited post-secondary educational  
9 institutions;

10                  ~~[B-]~~ D. "department" means the regulation and  
11 licensing department;

12                  ~~[G-]~~ E. "jurisprudence" means the statutes and  
13 rules of the state pertaining to the practice of massage  
14 therapy;

15                  ~~[D-]~~ F. "massage therapist" means a person licensed  
16 to practice massage therapy pursuant to the Massage Therapy  
17 Practice Act;

18                  ~~[E-]~~ G. "massage therapy" means the treatment of  
19 soft tissues for therapeutic purposes, primarily comfort and  
20 relief of pain; it is a health care service that includes  
21 gliding, kneading, percussion, compression, vibration,  
22 friction, nerve strokes, stretching the tissue and exercising  
23 the range of motion and may include the use of oils, salt  
24 glows, hot or cold packs or hydrotherapy. Synonymous terms for  
25 massage therapy include massage, therapeutic massage, body

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1 massage, myomassage, bodywork, body rub or any derivation of  
2 those terms. "Massage therapy" does not include the diagnosis  
3 or treatment of illness or disease or any service or procedure  
4 for which a license to practice medicine, nursing,  
5 chiropractic, physical therapy, occupational therapy,  
6 acupuncture or podiatry is required by law; and

7 ~~[F.]~~ H. "massage therapy school" means a facility  
8 providing an educational program in massage therapy that is  
9 registered with the board."

10 SECTION 2. Section 61-12C-5 NMSA 1978 (being Laws 1991,  
11 Chapter 147, Section 5, as amended) is amended to read:

12 "61-12C-5. LICENSE ~~[OR REGISTRATION]~~ REQUIRED.--

13 A. ~~[A person]~~ An individual shall not provide or  
14 offer to provide massage therapy for compensation unless that  
15 ~~[person]~~ individual is a massage therapist.

16 B. ~~[A person]~~ An individual shall not use the title  
17 of or ~~[represent himself to be]~~ make any representation as  
18 being a massage therapist or use any other title,  
19 abbreviations, letters, figures, signs or devices that indicate  
20 the ~~[person]~~ individual is a massage therapist unless ~~[he]~~ the  
21 individual is a massage therapist.

22 ~~[G. A person shall not provide or offer to provide~~  
23 ~~massage therapy training as a massage therapy instructor unless~~  
24 ~~he is registered as a massage therapy instructor pursuant to~~  
25 ~~Section 61-12C-9 NMSA 1978.~~

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1           ~~D. A person shall not maintain, manage or operate a~~  
2 ~~massage therapy school offering education, instruction or~~  
3 ~~training in massage therapy unless the school is a registered~~  
4 ~~massage therapy school.]"~~

5           SECTION 3. Section 61-12C-5.1 NMSA 1978 (being Laws 2001,  
6 Chapter 121, Section 1, as amended) is amended to read:

7           "61-12C-5.1. EXEMPTIONS.--Nothing in the Massage Therapy  
8 Practice Act shall be construed to prevent:

9           A. qualified members of other recognized  
10 professions that are licensed or regulated under New Mexico law  
11 from rendering services within the scope of their licenses or  
12 regulations; provided they do not represent themselves as  
13 massage therapists;

14           B. students from rendering massage therapy services  
15 within the course of study of [~~an approved~~] a registered  
16 massage therapy school; and [~~under the supervision of a~~  
17 ~~licensed massage therapy instructor~~;

18           ~~G. visiting massage therapy instructors from~~  
19 ~~another state or territory of the United States, the District~~  
20 ~~of Columbia or a foreign nation from teaching massage therapy;~~  
21 ~~provided the instructor is duly licensed or registered, if~~  
22 ~~required, and is qualified in the instructor's place of~~  
23 ~~residence for the practice of massage therapy. The board shall~~  
24 ~~establish by rule the duration of stay for a visiting massage~~  
25 ~~therapy instructor; and~~

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1           D.] C. sobadores; Hispanic traditional healers;  
2 Native American healers; reflexologists whose practices are  
3 limited to hands, feet and ears; practitioners of polarity,  
4 Trager approach, Feldenkrais method, craniosacral therapy,  
5 Roling structural integration, reiki, ortho-bionomy or ch'i  
6 gung; or practitioners of healing modalities not listed in this  
7 subsection who do not manipulate the soft tissues for  
8 therapeutic purposes from practicing those skills. An exempt  
9 practitioner who applies for a license [~~or registration~~]  
10 pursuant to the Massage Therapy Practice Act shall comply with  
11 all licensure requirements of that act."

12           SECTION 4. Section 61-12C-8 NMSA 1978 (being Laws 1991,  
13 Chapter 147, Section 8, as amended) is amended to read:

14           "61-12C-8. BOARD POWERS.--The board has the power to:

15           A. adopt and file, in accordance with the State  
16 Rules Act, rules necessary to carry out the provisions of the  
17 Massage Therapy Practice Act, in accordance with the provisions  
18 of the Uniform Licensing Act;

19           B. provide for the evaluation of the qualifications  
20 of applicants for licensure as a massage therapist or  
21 registration as a massage therapy school under the Massage  
22 Therapy Practice Act;

23           C. provide for the issuance of massage therapist  
24 licenses [~~or registrations~~] to applicants who meet the  
25 requirements of the Massage Therapy Practice Act;

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1           D. establish minimum curricula for massage therapy  
2 schools and provide for the issuance and revocation of massage  
3 therapy school registrations;

4           ~~[D.]~~ E. provide for the inspection, when required,  
5 of the business premises of any licensee or registrant during  
6 regular business hours;

7           ~~[E.]~~ F. establish minimum training and educational  
8 standards for licensure as a massage therapist; ~~[or~~  
9 ~~registration as a massage therapy instructor;~~

10           ~~F.]~~ G. pursuant to the Uniform Licensing Act,  
11 conduct hearings on charges against applicants or licensees ~~[or~~  
12 ~~registrants]~~ and take actions described in Section 61-1-3 NMSA  
13 1978;

14           ~~[G.]~~ H. bring an action for injunctive relief in  
15 district court seeking to enjoin a person from violating the  
16 provisions of the Massage Therapy Practice Act;

17           ~~[H.]~~ I. issue cease and desist orders to persons  
18 violating the provisions of the Massage Therapy Practice Act or  
19 any rule adopted by the board pursuant to that act;

20           ~~[I.]~~ J. adopt an annual budget;

21           ~~[J.]~~ K. adopt a code of professional conduct for  
22 massage therapists;

23           ~~[K.]~~ L. provide for the investigation of complaints  
24 against licensees and registrants; and

25           ~~[L.]~~ M. publish at least annually combined or

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1 separate lists of licensed massage therapists [~~registered~~  
2 ~~massage therapy instructors~~] and registered massage therapy  
3 schools."

4 SECTION 5. Section 61-12C-9 NMSA 1978 (being Laws 1991,  
5 Chapter 147, Section 9, as amended) is amended to read:

6 "61-12C-9. REQUIREMENTS FOR LICENSURE OF MASSAGE  
7 THERAPISTS [~~AND REGISTRATION OF MASSAGE THERAPY INSTRUCTORS~~].--

8 A. The board shall issue a license to practice  
9 massage therapy to any [~~person~~] individual who files a  
10 completed application, accompanied by the required fees, and  
11 who submits satisfactory evidence that the applicant:

12 (1) has reached the age of majority;

13 (2) has completed all educational requirements  
14 established by the board; and

15 (3) has completed at least six hundred fifty  
16 hours [~~in length~~] of education that includes at least five  
17 hundred hours of massage therapy instruction.

18 [~~B. The board shall register as a massage therapy~~  
19 ~~instructor any applicant who:~~

20 (1) ~~is currently licensed as a massage~~  
21 ~~therapist; and~~

22 (2) ~~has completed the educational and~~  
23 ~~experience requirements established by the board, which~~  
24 ~~requirements shall meet minimum standards of training and~~  
25 ~~curriculum for massage therapy instructors established by the~~

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1 board.

2 ~~G.]~~ B. An initial license [~~or registration~~] issued  
3 pursuant to this section may be for a period of up to two years  
4 pursuant to board rule."

5 SECTION 6. Section 61-12C-13 NMSA 1978 (being Laws 1991,  
6 Chapter 147, Section 13, as amended) is amended to read:

7 "61-12C-13. EXAMINATIONS.--

8 A. The board shall establish by rule the required  
9 examinations for licensure as a massage therapist and the  
10 procedures for taking and retaking them. The board shall  
11 determine the passing grade on examinations.

12 B. The board shall specify by rule the general  
13 areas of competency to be covered by examinations for licensure  
14 and ensure that the examinations measure adequately both an  
15 applicant's competency and knowledge of related statutory  
16 requirements. Professional testing services may be utilized  
17 for the examinations."

18 SECTION 7. Section 61-12C-17 NMSA 1978 (being Laws 1991,  
19 Chapter 147, Section 17, as amended) is amended to read:

20 "61-12C-17. LICENSE [~~OR REGISTRATION~~] RENEWAL--CONTINUING  
21 EDUCATION.--

22 A. Massage therapy licenses [~~and massage therapy~~  
23 ~~instructor registrations~~] shall expire biennially. [~~Massage~~  
24 ~~therapy school registrations shall expire annually.~~]

25 Expiration dates shall be established by rule.

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1           B. The board may establish continuing ~~[educational]~~  
2 education requirements as a condition of the renewal of massage  
3 therapy licenses ~~[and massage therapy instructor~~  
4 ~~registrations]~~.

5           C. All courses offered by continuing education  
6 providers defined in Section 61-12C-3 NMSA 1978 shall be  
7 acceptable to meet continuing education requirements regardless  
8 of the location where the course is offered.

9           D. The board may approve or deny the application of  
10 an individual who is not a continuing education provider as  
11 defined in Section 61-12C-3 NMSA 1978 to offer a particular  
12 continuing education course; provided that:

13                   (1) the individual submits:

14                           (a) a copy of any relevant license;

15                           (b) proof of a minimum of two years'  
16 experience in the area of instruction;

17                           (c) a course syllabus for the proposed  
18 course;

19                           (d) a resume; and

20                           (e) a one-time fee to be determined by  
21 the board by rule; and

22                   (2) the board shall approve or deny an  
23 application of an individual to offer a particular continuing  
24 education course within thirty days of receipt of a complete  
25 application.

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1           ~~[G.]~~ E. A license ~~[or registration]~~ shall be  
2 renewed by submitting a renewal application on a form provided  
3 by the board.

4           ~~[D.]~~ F. A sixty-day grace period shall be allowed  
5 each ~~[license or registration holder]~~ licensee after the end of  
6 the renewal period, during which time a license ~~[or~~  
7 ~~registration]~~ may be renewed upon payment of the renewal fee  
8 and a late fee as prescribed by the board."

9           **SECTION 8.** Section 61-12C-18 NMSA 1978 (being Laws 1991,  
10 Chapter 147, Section 18, as amended) is amended to read:

11           "61-12C-18. INACTIVE STATUS.--

12           A. A massage therapy license ~~[or massage therapy~~  
13 ~~instructor registration]~~ not renewed at the end of the sixty-  
14 day grace period shall be placed on inactive status for a  
15 period not to exceed two years. At the end of two years, if  
16 the license ~~[or registration]~~ has not been reactivated, it  
17 shall automatically expire.

18           B. If within a period of two years from the date  
19 the license ~~[or registration]~~ was placed on inactive status the  
20 ~~[massage therapist or massage therapy instructor]~~ licensee  
21 wishes to resume practice, the ~~[board shall be notified]~~  
22 licensee shall notify the board in writing, and, upon proof of  
23 completion of any continuing education or refresher courses  
24 prescribed by rule of the board and payment of an amount set by  
25 the board in lieu of all lapsed renewal fees, the license ~~[or~~

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1 ~~registration]~~ shall be restored in full."

2 SECTION 9. Section 61-12C-21 NMSA 1978 (being Laws 1991,  
3 Chapter 147, Section 21, as amended) is amended to read:

4 "61-12C-21. ADVERTISING.--A massage therapist [~~massage~~  
5 ~~therapist instructor]~~ or massage therapy school [~~licensed or~~  
6 ~~registered pursuant to the Massage Therapy Practice Act]~~ shall  
7 include the number of the license or registration and the  
8 designation as a "licensed massage therapist" [~~"registered~~  
9 ~~massage therapy instructor"~~] or "registered massage therapy  
10 school" in any advertisement of massage therapy services as  
11 established by board rule."

12 SECTION 10. Section 61-12C-24 NMSA 1978 (being Laws 1991,  
13 Chapter 147, Section 24, as amended) is amended to read:

14 "61-12C-24. [~~DENIAL~~] SUSPENSION, REVOCATION AND  
15 REINSTATEMENT OF LICENSES.--

16 A. Pursuant to the Uniform Licensing Act, the board  
17 may take disciplinary action against [~~a person~~] an individual  
18 licensed [~~or registered~~] pursuant to the Massage Therapy  
19 Practice Act.

20 B. The board has authority to take an action set  
21 forth in Section 61-1-3 NMSA 1978 upon a finding by the board  
22 that the licensee [~~registrant or applicant~~]:

23 (1) is guilty of fraud, deceit or  
24 misrepresentation;

25 (2) attempted to use as [~~his~~] the licensee's

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1 own the license [~~or registration~~] of another;

2 (3) allowed the use of [~~his~~] the licensee's  
3 license [~~or registration~~] by another;

4 (4) has been adjudicated as mentally  
5 incompetent by regularly constituted authorities;

6 (5) has been convicted of [~~any~~] an offense  
7 punishable by incarceration in a state penitentiary or federal  
8 prison. A copy of the record of conviction, certified by the  
9 clerk of the court entering the conviction, is conclusive  
10 evidence of conviction;

11 (6) is guilty of unprofessional or unethical  
12 conduct or a violation of the code of ethics;

13 (7) is habitually or excessively using  
14 controlled substances or alcohol;

15 (8) is guilty of false, deceptive or  
16 misleading advertising;

17 (9) is guilty of aiding, assisting or  
18 advertising [~~any~~] an unlicensed [~~or unregistered~~  
19 ~~person~~] individual in the practice of massage therapy;

20 (10) is grossly negligent or incompetent in  
21 the practice of massage therapy;

22 (11) has had a license [~~or registration~~] to  
23 practice massage therapy revoked, suspended or denied in any  
24 jurisdiction, territory or possession of the United States or  
25 another country for acts of the licensee [~~or registrant~~]

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1 similar to acts described in this section. A certified copy of  
2 the record of conviction shall be conclusive evidence of the  
3 conviction; or

4 (12) is guilty of failing to comply with a  
5 provision of the Massage Therapy Practice Act or rules of the  
6 board adopted pursuant to that act and filed in accordance with  
7 the State Rules Act.

8 C. Disciplinary proceedings may be instituted by  
9 sworn complaint of any ~~[person]~~ individual, including members  
10 of the board, and shall conform with the provisions of the  
11 Uniform Licensing Act.

12 D. The board ~~[may]~~ shall establish the guidelines  
13 for the disposition of disciplinary cases. Guidelines may  
14 include ~~[but shall not be limited to]~~ minimum and maximum  
15 fines, periods of probation, conditions of probation or  
16 reissuance of a license ~~[or registration]~~.

17 E. ~~[License and registration holders]~~ Licensees who  
18 have been found culpable and sanctioned by the board shall be  
19 responsible for the payments of all costs of the disciplinary  
20 proceedings."

21 SECTION 11. Section 61-12C-27 NMSA 1978 (being Laws 1993,  
22 Chapter 173, Section 20, as amended) is amended to read:

23 "61-12C-27. OFFENSES--CRIMINAL PENALTIES.--~~[A person]~~ An  
24 individual who does any of the following is guilty of a  
25 misdemeanor and shall be sentenced pursuant to Section 31-19-1

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1 NMSA 1978:

2 A. violates a provision of the Massage Therapy  
3 Practice Act or rules adopted pursuant to that act;

4 B. renders or attempts to render massage therapy  
5 services [~~instruction as a massage therapy instructor or~~  
6 ~~instruction as a massage therapy school~~] without the required  
7 current valid license [~~or registration~~] issued by the board; or

8 C. advertises or uses a designation, diploma or  
9 certificate implying that [~~he~~] the individual is a massage  
10 therapist [~~massage therapy instructor~~] or massage therapy  
11 school unless [~~he~~] the individual holds a current valid license  
12 or registration issued by the board."

13 SECTION 12. A new section of the Massage Therapy Practice  
14 Act is enacted to read:

15 "[NEW MATERIAL] MASSAGE THERAPY SCHOOL REGISTRATION,  
16 RENEWAL, SUSPENSION AND REVOCATION.--

17 A. A person shall not maintain, manage or operate a  
18 massage therapy school offering education, instruction or  
19 training in massage therapy unless the school is a registered  
20 massage therapy school.

21 B. Massage therapy school registrations shall  
22 expire annually. Expiration dates shall be established by  
23 rule.

24 C. A registration shall be renewed by submitting a  
25 renewal application on a form provided by the board.

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1           D. A sixty-day grace period shall be allowed each  
2 registrant after the end of the renewal period, during which  
3 time a registration may be renewed upon payment of the renewal  
4 fee and a late fee as prescribed by the board.

5           E. Proceedings to determine whether to suspend or  
6 revoke the registration of a massage therapy school may be  
7 instituted by sworn complaint of any individual, including  
8 members of the board, and shall conform with the provisions of  
9 the Uniform Licensing Act."

10           **SECTION 13.** A new section of the Massage Therapy Practice  
11 Act is enacted to read:

12           "[NEW MATERIAL] DENIAL OF LICENSE.--

13           A. Pursuant to the Uniform Licensing Act, the board  
14 may deny the issuance of a massage therapist license to an  
15 applicant.

16           B. The board has authority to take an action set  
17 forth in Section 61-1-3 NMSA 1978 upon a finding by the board  
18 that the applicant:

19                   (1) is guilty of fraud, deceit or  
20 misrepresentation;

21                   (2) attempted to use as the applicant's own  
22 the license of another;

23                   (3) allowed the use by another of the  
24 applicant's license issued in another jurisdiction;

25                   (4) has been adjudicated as mentally

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1 incompetent by regularly constituted authorities;

2 (5) has been convicted of an offense  
3 punishable by incarceration in a state penitentiary or federal  
4 prison. A copy of the record of conviction, certified by the  
5 clerk of the court entering the conviction, is conclusive  
6 evidence of conviction;

7 (6) is guilty of unprofessional or unethical  
8 conduct or a violation of the code of ethics;

9 (7) is habitually or excessively using  
10 controlled substances or alcohol;

11 (8) is guilty of false, deceptive or  
12 misleading advertising;

13 (9) is guilty of aiding, assisting or  
14 advertising the practice of massage therapy in New Mexico  
15 without a New Mexico license;

16 (10) is grossly negligent or incompetent in  
17 the practice of massage therapy;

18 (11) has had a license to practice massage  
19 therapy revoked, suspended or denied in any jurisdiction,  
20 territory or possession of the United States or another country  
21 for acts of the applicant similar to acts described in this  
22 section. A certified copy of the record of conviction shall be  
23 conclusive evidence of the conviction; or

24 (12) is guilty of failing to comply with a  
25 provision of the Massage Therapy Practice Act or rules of the

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1 board adopted pursuant to that act and filed in accordance with  
2 the State Rules Act."

3 SECTION 14. A new section of the Massage Therapy Practice  
4 Act is enacted to read:

5 "[NEW MATERIAL] SCOPE OF PRACTICE.--The practice of  
6 massage therapy is assessment of the soft tissue and joints of  
7 the body and the treatment and prevention of physical  
8 dysfunction and pain of soft tissue and joints by manipulation  
9 to relieve pain or to develop, maintain, rehabilitate or  
10 augment physical function."