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CHAPTER 30.

 MASSAGE/BODYWORK PRACTICE ACT

**SECTION 40‑30‑10.** Short title.

This chapter may be cited as the Massage/Bodywork Practice Act.

**SECTION 40‑30‑20.** Purpose.

The General Assembly recognizes that the practice of massage/bodywork is potentially harmful to the public in that massage/bodywork therapists must have a knowledge of anatomy, kinesiology, and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage/bodywork is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is, therefore, necessary in the interest of public health, safety, and welfare to regulate the practice of massage/bodywork in this State. However, restrictions must be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters must be afforded the public through legal remedies provided for in this chapter.

**SECTION 40‑30‑30.** Definitions.

As used in this chapter:

(1) “Advisory panel” means the Advisory Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

(2) “Approved massage/bodywork school” means a facility which meets minimum standards for training and curriculum as determined by regulation of the department.

(3) “Department” means the Department of Labor, Licensing and Regulation.

(4) “Director” means the Director of the Department of Labor, Licensing and Regulation.

(5) “Disciplinary panel” means the Disciplinary Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

(6) “Hydrotherapy” means the use of water, vapor, or ice for treatment of superficial tissues.

(7) “Licensure” means the procedure by which a person applies to the department and is granted approval to practice massage/bodywork.

(8) “Massage/bodywork therapy” means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

(9) “Massage/bodywork therapist” means a person licensed as required by this chapter, who administers massage/bodywork therapy for compensation.

(10) “Massage device” means a mechanical device which mimics or enhances the actions possible by the hands by means of vibration.

(11) “Thermal therapy” means the use of ice or a heat lamp or moist heat on superficial tissues.

**SECTION 40‑30‑40.** Advisory Panel for Massage/Bodywork.

(A) There is created the Advisory Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The advisory panel consists of five members appointed by the Governor. The members of the advisory panel must be licensed massage/bodywork therapists and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment to the advisory panel and must be appointed by the Governor. Each advisory panel member must be a high school graduate or shall have received a graduate equivalency diploma. Each advisory panel member must be a citizen of the United States and a resident of this State for not fewer than five years.

(B) Nominations for appointment to the advisory panel may be submitted to the Governor from any individual, group, or association.

(C) Members serve a term of four years and until their successors are appointed and qualify. A vacancy on the advisory panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

(D) The Governor may remove a member of the advisory panel in accordance with Section 1‑3‑240.

**SECTION 40‑30‑50.** Duties of advisory panel.

The duties of the advisory panel are to advise the department in the development of regulations, statutory revisions, and such other matters as the department may request in regard to the administration of this chapter.

**SECTION 40‑30‑60.** Employees; promulgation of regulations.

(A) In accordance with Section 40‑73‑15, the Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

(B) Duties must be prescribed by the director and may include, but are not limited to:

(1) maintaining and preserving records;

(2) receiving and accounting for all monies received by the department;

(3) issuing necessary notices to licensees;

(4) determining the eligibility of applicants for examination and licensure;

(5) examining applicants for licensure including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;

(6) license and renew the licenses of qualified applicants;

(7) evaluate and approve continuing education course hours and programs;

(8) promulgate regulations to carry out this chapter including, but not limited to, establishing a code of ethics to govern the conduct and practices of persons licensed under this chapter. In accordance with Section 40‑73‑15, the Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

**SECTION 40‑30‑65.** Disciplinary Panel for Massage/Bodywork.

(A) There is created a Disciplinary Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The disciplinary panel consists of five members appointed by the Governor with the advice and consent of the Senate. Three of the members of the disciplinary panel must be licensed massage/bodywork therapists and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment and must practice in this State. Two members of the disciplinary panel must be members of the general public who are not licensed massage/bodywork therapists and must not have any financial interest, direct or indirect, in the profession of massage/bodywork therapy. Each disciplinary panel member must be a high school graduate or shall have received a graduate equivalency diploma. Each disciplinary panel member must be a citizen of the United States and a resident of this State for not fewer than five years.

(B) Nominations for appointment to the disciplinary panel may be submitted to the Governor from any individual, group, or association.

(C) Members serve a term of two years and until their successors are appointed and qualify. A vacancy on the disciplinary panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

(D) Before entering upon the discharge of the duties of the office, a disciplinary panel member shall take and file with the Secretary of State in writing an oath to perform the duties of the office as a member of the disciplinary panel and to uphold the Constitution of this State and the United States.

(E) Members of the disciplinary panel must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the disciplinary panel. Compensation and reimbursements paid to disciplinary panel members under this subsection must be paid as an expense of the disciplinary panel in the administration of this chapter.

(F) The Governor may remove a member of the disciplinary panel in accordance with Section 1‑3‑240.

**SECTION 40‑30‑70.** Duties of disciplinary panel.

The disciplinary panel shall:

(1) conduct hearings on alleged violations of this chapter and regulations promulgated under this chapter;

(2) mediate consumer complaints, where appropriate and possible;

(3) discipline persons licensed under this chapter in any manner provided for in this chapter.

**SECTION 40‑30‑80.** Fees.

The department shall charge and collect the following fees:

(1) massage/bodywork therapist application, not to exceed fifty dollars;

(2) massage/bodywork therapist initial licensure fee, not to exceed one hundred dollars;

(3) biennial massage/bodywork therapist licensure renewal fee, not to exceed two hundred dollars;

(4) massage/bodywork therapist reexamination fee, not to exceed two hundred fifty dollars;

(5) application and provisional massage/bodywork therapist licensure fee, not to exceed two hundred dollars;

(6) application and reactivation for inactive status of a massage/bodywork therapist license fee, not to exceed two hundred fifty dollars;

(7) renewal fee for inactive status, not to exceed two hundred fifty dollars;

(8) continuing education course provider fee, not to exceed one hundred dollars and continuing education course provider renewal fee, not to exceed fifty dollars.

**SECTION 40‑30‑90.** Annual report.

The department shall prepare and submit an annual report on the administration of this chapter in accordance with Section 40‑73‑20.

**SECTION 40‑30‑100.** Practice without license.

No person may practice massage/bodywork without a license issued in accordance with this chapter by the director; however, a person licensed by the State under this title or any other provision of law whose scope of practice overlaps with the practice of massage/bodywork is not also required to be licensed under this chapter unless the person holds himself out to be a practitioner of massage/bodywork. Nothing in this chapter may be construed to authorize a massage/bodywork therapist licensed under this chapter to practice physical therapy or chiropractic or to utilize chiropractic therapeutic modalities except where the scope of practice for massage/bodywork, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic.

**SECTION 40‑30‑110.** Qualifications for license.

To be licensed by the department as a massage/bodywork therapist a person must:

(1) be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;

(2) have completed a five hundred hour course of supervised study at an approved massage/bodywork school having a curriculum that meets the standards as set forth in regulation by the department; and

(3) have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork, or any other national examination for massage/bodywork therapy that meets the educational requirements of this chapter and have been certified by the National Commission for Certifying Agencies, or an examination that meets the standards recommended by the advisory panel as set forth in regulation by the department.

**SECTION 40‑30‑120.** Application for license.

An application for licensure must be made in writing under oath on a form prescribed by the department and accompanied by all applicable fees.

**SECTION 40‑30‑130.** Examination.

(A) An applicant who fails an examination may be reexamined as provided by the department in regulation.

(B) A licensing examination must be conducted so that the applicant is known to the department by number until the examination is completed and the proper grade determined. An accurate record of each examination must be made and filed with all examination papers with the director of the department and must be kept for reference and inspection for a period of not fewer than two years immediately following the examination.

**SECTION 40‑30‑140.** Issuance of license.

(A) If an applicant satisfies the licensure requirements and pays the applicable fees as provided for in this chapter, the department shall issue a license to the applicant. A license is a personal right and not transferable and the issuance of a license is evidence that the licensee is entitled to all rights and privileges of a massage/bodywork therapist while the license remains current and unrestricted.

(B) A person licensed under this chapter shall display the license in a prominent and conspicuous place in the person’s place of business and shall include the number of the license in an advertisement of massage/bodywork services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium.

(C) Only a person licensed under this chapter may use the title of “massage/bodywork therapist”.

(D) Under conditions established by the department in regulation the department may issue a provisional license to applicants meeting these requirements.

(E) A duplicate license may be issued to a licensee by the department in accordance with regulations promulgated by the department and upon payment of a fee.

**SECTION 40‑30‑150.** License from other state.

The department shall issue a license to a person who holds an active license in another state if the standards for licensure in that state are at least the substantial equivalent to the licensing standards provided for in this chapter, and the person satisfies any other requirements the department may prescribe in regulation.

**SECTION 40‑30‑160.** Records and registry.

(A) The department shall keep a record of its proceedings and a registry of all applications for licensure. The register shall show the name, age, and last known address of each applicant, the place of business of the applicant, the education, experience, and other qualifications of the applicant, type of examination required, whether or not a license was granted, whether or not the applicant was denied a license, the date of the action of the department, and other information considered necessary by the department.

(B) The record of department proceedings and its registry of applications must be open to public inspection and a copy of the registry must be provided upon request and payment of a fee.

(C) Records of the department and its registry are prima facie evidence of its proceedings and a transcript certified by the director under seal is admissible as evidence with the same force and effect as the original.

**SECTION 40‑30‑170.** Publication of roster.

Annually the department shall prepare and publish a roster containing the names and places of businesses of all persons licensed under this chapter. A copy of the roster must be provided upon request and upon payment of a fee.

**SECTION 40‑30‑180.** Renewal of license.

(A) A person licensed under this chapter biennially must satisfy these license renewal requirements in order to continue practicing massage/body work therapy:

(1) pay a renewal fee in the amount, at the time, and in the manner as the department provides in regulation;

(2) complete continuing education requirements prescribed by the department in accordance with Section 40‑30‑190 and submit evidence of compliance; however, a massage/body work therapist who has proof of a “Certificate in Massage” issued prior to January 1, 1974, is exempt from continuing education requirements.

A massage/body work therapist’s license automatically reverts to inactive status if the massage/body work therapist fails to timely comply with this subsection and only may be reinstated upon application and payment of any fees and after having met any additional requirements which the department may establish in regulation including, but not limited to, continuing education requirements.

(B) A license which has been inactive for more than four years automatically expires if the person has not made application for renewal of the license. An expired license is null and void without any further action by the department.

**SECTION 40‑30‑190.** Promulgation of regulations.

The department shall promulgate regulations establishing:

(1) continuing education requirements and compliance procedures:

(a) for license renewal not to exceed twelve classroom hours per biennium;

(b) for license reinstatement not to exceed six classroom hours for each year the license was inactive;

(2) criteria for the approval of continuing education programs or courses including, but not limited to, correspondence courses.

**SECTION 40‑30‑200.** Fitness to practice; investigation of complaints.

If the director has reason to believe that a person licensed under this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated under this chapter or if a written complaint is filed with the director charging the licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the disciplinary panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act.

**SECTION 40‑30‑210.** Proceedings before disciplinary panel.

For the purpose of a proceeding under this chapter, the disciplinary panel may administer oaths and upon its own motion or upon request of any party, shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of any books, documents, or other tangible items and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the disciplinary panel, the disciplinary panel may apply pursuant to the Administrative Procedures Act to an administrative law judge for an order requiring the person to appear before the disciplinary panel and to produce documentary evidence and give other evidence concerning the matter under inquiry.

**SECTION 40‑30‑220.** Cease and desist orders; temporary restraining orders.

(A) When the disciplinary panel or the department has reason to believe that a person is violating or intends to violate a provision of this chapter or a regulation promulgated under this chapter, in addition to all other remedies, it may order the person to immediately cease and desist from engaging in the conduct. If the person is practicing massage/bodywork without being licensed under this chapter the disciplinary panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The administrative law judge may issue a temporary restraining order ex parte and the disciplinary panel or the department is not required to:

(1) post a bond;

(2) establish the absence of an adequate remedy at law;

(3) establish that irreparable damage would result from the continued violation.

No disciplinary panel member nor the Director of the Department of Labor, Licensing or Regulation nor any other employee of the department may be held liable for damages resulting from a wrongful temporary restraining order.

(B) In accordance with the South Carolina Rules of Civil Procedure, the disciplinary panel or the department also may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or a regulation promulgated under this chapter.

**SECTION 40‑30‑230.** Misconduct.

The following constitute misconduct and are grounds for the department denying initial licensure to or the disciplinary panel taking disciplinary action against a person who:

(1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure under this chapter;

(2) has had his license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

(3) has violated a provision of this chapter, a regulation promulgated under this chapter, or an order of the department or the disciplinary panel;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated under this chapter;

(5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;

(6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

(7) has committed dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;

(8) lacks the professional or ethical competence to practice massage/bodywork;

(9) has been convicted of or has pled guilty to or nolo contendere to a felony or a crime which directly relates to the practice or ability to practice massage/bodywork;

(10) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him unfit to practice massage/bodywork;

(11) has sustained a physical or mental disability, as determined by a physician, which renders further practice by the licensee dangerous to the public.

**SECTION 40‑30‑240.** Mental or physical examination; records; drug testing.

When investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40‑30‑230(10), or a physical or mental disability, as provided for in Section 40‑30‑230(11), the disciplinary panel upon reasonable grounds may:

(1) require an applicant or licensee to submit to a mental or physical examination including a drug test by physicians designated by the disciplinary panel. The results of an examination are admissible in a hearing before the disciplinary panel, notwithstanding a claim of privilege under a contrary rule of law. A person who accepts the privilege of practicing massage/bodywork in this State or who files an application for a license to practice massage/bodywork in this State is deemed to have consented to submit to a mental or physical examination including a drug test and to have waived all objections to the admissibility of the results in a hearing before the disciplinary panel upon the grounds that the results constitute a privileged communication. If an applicant or licensee fails to submit to an examination when requested by the disciplinary panel under this section, unless the failure was due to circumstances beyond the person’s control, the disciplinary panel shall enter an order automatically denying or suspending the license pending compliance and further order of the disciplinary panel. An applicant or licensee who is prohibited from practicing under this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the disciplinary panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients;

(2) obtain records specifically relating to the mental or physical condition of an applicant or licensee who is the subject of an investigation authorized by item (1) and these records are admissible in a hearing before the disciplinary panel, notwithstanding any other provision of law. A person who accepts the privilege of practicing massage/bodywork in this State or who files an application to practice massage/bodywork in this State is deemed to have consented to the disciplinary panel obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the disciplinary panel upon the grounds that the records constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the disciplinary panel to obtain these records when requested by the disciplinary panel under this section, unless the failure was due to circumstances beyond the person’s control, the disciplinary panel shall enter an order automatically denying or suspending the license pending compliance and further order of the disciplinary panel. An applicant or licensee who is prohibited from practicing massage/bodywork under this section must be afforded at reasonable intervals an opportunity to demonstrate to the disciplinary panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients.

**SECTION 40‑30‑250.** Discipline.

(A) Upon a determination by the disciplinary panel that one or more of the grounds for discipline exists, as provided for in Section 40‑30‑230, the disciplinary panel may:

(1) issue a nondisciplinary letter of caution;

(2) issue a public reprimand;

(3) impose a fine not to exceed five hundred dollars;

(4) place the licensee on probation, restrict the license, or suspend the license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension, respectively, including, but not limited to, satisfactory completion of additional education of a supervisory period or of continuing education programs as may be specified;

(5) permanently revoke the license.

(B) A decision by the disciplinary panel to discipline a licensee as authorized under this section must be made by a majority vote of the total membership of the disciplinary panel serving at the time the vote is taken.

(C) A final order of the department refusing to issue a license to an applicant or of the disciplinary panel disciplining a licensee under this section, except for a private reprimand, is public information.

**SECTION 40‑30‑260.** Voluntary surrender of license.

A licensee who is under investigation for misconduct as defined in Section 40‑30‑230 for which the disciplinary panel may take disciplinary action may voluntarily surrender his license to the department. The voluntary surrender invalidates the license at the time of its relinquishment, and no person whose license is surrendered voluntarily may practice as a massage/bodywork therapist until the disciplinary panel reinstates the license. A person practicing as a massage/bodywork therapist during the period of voluntary license surrender is considered an illegal practitioner and is subject to the penalties provided by this chapter. The surrender of a license may not be considered as an admission of guilt in a proceeding under this chapter. The surrender does not preclude the disciplinary panel from imposing conditions on the acceptance of the proffered surrender and does not preclude the disciplinary panel from taking disciplinary action against the licensee.

**SECTION 40‑30‑270.** Appeal.

A person aggrieved by an action of the disciplinary panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the disciplinary panel’s or the department’s decision pending completion of the appellate process.

**SECTION 40‑30‑280.** Service of notice upon nonresident.

(A) Service of any notice provided for by law upon a nonresident licensed under this chapter or upon a resident who having been licensed, subsequently becomes a nonresident or after due diligence cannot be found at his usual abode or place of business in this State, may be made by leaving with the Director of the Department of Labor, Licensing and Regulation a copy of the notice and any accompanying documents. A copy of the notice, accompanying documents, and a certified copy of the service on the director must be mailed to the licensee at his last known address, return receipt requested. The director shall keep a record of the day of the service of the notice, and the return receipt must be attached to and made a part of the return of service of the notice by the department.

(B) A continuance may be given in any hearing under this chapter for which notice is given pursuant to this section so as to afford the licensee a reasonable opportunity to appear and be heard.

**SECTION 40‑30‑290.** Costs and fines.

(A) All costs and fines imposed under Section 40‑30‑250 are due and payable immediately upon imposition. Unless the costs and fines are paid within sixty days after the order becomes final, the order constitutes a judgment and may be filed and executed upon in the same manner as a judgment in the court of common pleas, and the department may collect costs and attorney fees incurred in executing the judgment. Interest at the legal rate accrues on the amount due from the date imposed until the date paid.

(B) All fines and costs collected under this section must be remitted by the department to the State Treasurer and deposited in a special fund from which the department, upon approval of the State Budget and Control Board, must be reimbursed for the administrative costs associated with investigations and hearings under this chapter.

**SECTION 40‑30‑300.** Privileged communications.

(A) Every communication, whether oral or written, made by or on behalf of a person, to the director or the disciplinary panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the person, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Nothing in this chapter may be construed as prohibiting the respondent or his legal counsel from exercising the respondent’s constitutional right of due process under the law, nor as prohibiting the respondent from normal access to the charges and evidence filed against him as part of due process under the law.

**SECTION 40‑30‑310.** Violation of chapter.

(A) It is unlawful for a person to:

(1) hold himself out as a massage/bodywork therapist unless licensed under this chapter;

(2) permit an employed person to practice massage/bodywork unless licensed under this chapter;

(3) present as his own the license of another;

(4) allow the use of his license by an unlicensed person;

(5) give false or forged evidence to the department in obtaining a license under this chapter;

(6) falsely impersonate another license holder of like or different name;

(7) use or attempt to use a license that has been revoked;

(8) otherwise violate a provision of this chapter.

(B) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against any person violating the provisions of this chapter or the regulations or orders of the department or disciplinary panel. For each violation, the court may in its discretion, impose a fine of no more than one thousand dollars.

**SECTION 40‑30‑320.** Instruction of massage/bodywork.

Nothing in this chapter may be construed to prevent the teaching of massage/bodywork in this State at an approved massage/bodywork school.