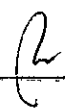


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SENATE
S. No. 2226

10 10 -2 P 317 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 11, Section 15, provides:

The State shall protect and promote the right to health of the people and instill health consciousness among them.

Massage is a part of the Filipino culture, as well as in the majority of our Southeast Asian neighbors. Qualified massage practitioners and therapists invested in their vocation the knowledge of anatomy and physiology, with an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Regulating the practice of massage against unqualified practitioners and establishments is in the interest of public health, safety, and welfare.


This bill not only aims to standardize the qualifications of massage therapists, but will also curb prostitution that uses massage parlors as fronts of their illicit trade.¹


MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed in the Thirteenth Congress, Third Regular Session.

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SENATE
S. No. 2226

16 11-2 11 2011 

Introduced by Senator Miriam Defensor Santiago

AN ACT
REGULATING THE MASSAGE PRACTICE

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* - This act shall be known and may be cited as the "Massage Practice Act."

SECTION 2. *Definitions.* -As used in this act:

(A) "Board" means the Board of Massage Therapy;

(B) "Department" means the Department of Health;

(C) "Secretary" means the Secretary of the Department of Health;

(D) "Massage" means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation;

(E) "Massage therapist" means a person licensed as required by this act, who administers massage for compensation;

(F) "Apprentice" means a person approved by the Board to study massage under the instruction of a licensed massage therapist;

(G) "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water;

(H) "Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage;

1 (I) "Licensure" means the procedure by which a person, hereinafter referred to as
2 a "practitioner," applies to the Board for approval to practice massage or to operate an
3 establishment; and

4 (J) "Board-approved massage school" means a facility which meets minimum
5 standards for training and curriculum as determined by rule of the Board and which is
6 licensed by the Technical Education and Skills Development Authority.

7 SECTION 3. *Exemptions.* -

8 (A) Athletic trainers employed by or on behalf of a professional
9 athletic team performing or training within this state shall be exempt from the
10 provisions of this act.

11 (B) The state and its political subdivisions are exempt from the
12 registration requirements of this act.

13 (C) An exemption granted is effective to the extent that an exempted
14 person's practice or profession overlaps with the practice of massage.

15 SECTION 4. *Board of Massage Therapy.* -

16 (A) The Board of Massage Therapy is created within the Department. The Board shall
17 consist of seven members, who shall be appointed by the Secretary and whose function it shall
18 be to carry out the provisions of this act.

19 (B) Five members of the Board shall be licensed massage therapists and shall have been
20 engaged in the practice of massage for not less than 5 consecutive years prior to the date of
21 appointment to the Board. The Secretary shall appoint each member for a term of 4 years. Two
22 members of the Board shall be laypersons. Each Board member shall be a high school graduate
23 or shall have received a graduate equivalency diploma.

24 Each Board member shall be a Filipino citizen and a resident of the country for not less
25 than 5 years. The appointments will be subject to confirmation by the Senate.

26 (C) The Secretary may at any time fill vacancies on the Board for the remainder of
27 unexpired terms. Each member of the Board shall hold over after the expiration of her or his term

1 until her or his successor has been duly appointed and qualified. No Board member shall serve
2 more than two terms, whether full or partial.

3 (D) The Board shall, in the month of January, elect from its number a chair and a vice
4 chair.

5 (E) The Board shall hold such meetings during the year as it may determine to be
6 necessary, one of which shall be the annual meeting. The chair of the Board shall have the
7 authority to call other meetings at her or his discretion. A quorum of the Board shall consist of
8 not less than four members.

9 (F) The Board has authority to adopt rules to implement the provisions of this chapter.

10 SECTION 5. *Accountability of Board members.* - Each Board member shall be held
11 accountable to the Secretary for the proper performance of all duties and obligations of such
12 Board member's office. The Secretary shall cause to be investigated any complaints or
13 unfavorable reports received concerning the actions of the Board or its individual members and
14 shall take appropriate action thereon, which may include removal of any Board member for
15 malfeasance, misfeasance, neglect of duty, commission of a felony, incompetence, or permanent
16 inability to perform official duties.

17 SECTION 6. *Investigative services.* - The Department shall provide all investigative
18 services required in carrying out the provisions of this act.

19 SECTION 7. *Massage therapists: qualifications; licensure; endorsement.* -

20 (A) Any person is qualified for licensure as a massage therapist under this act who:

21 (1) Is at least 18 years of age or has received a high school diploma or graduate
22 equivalency diploma;

23 (2) Has completed a course of study at a Board-approved massage school or has
24 completed an apprenticeship program that meets standards adopted by the Board; and

25 (3) Has received a passing grade on an examination administered by the
26 Department.

1 (B) Every person desiring to be examined for licensure as a massage therapist shall apply
2 to the Department in writing upon forms prepared and furnished by the Department. Such
3 applicants shall be subject to the provisions of SECTION 12 (1). Applicants may take an
4 examination administered by the Department only upon meeting the requirements of this section
5 as determined by the Board.

6 (C) Upon an applicant's passing the examination and paying the initial licensure fee, the
7 Department shall issue to the applicant a license, valid until the next scheduled renewal date, to
8 practice massage.

9 (D) The Board shall adopt rules:

10 (1) Establishing a minimum training program for apprentices.

11 (2) Providing for educational standards, examination, and certification for the
12 practice of colonic irrigation, as defined in s. 480.033(6), by massage therapists.

13 (3) Specifying licensing procedures for practitioners desiring to be licensed in this
14 state who hold an active license and have practiced in any other state, territory, or
15 jurisdiction of the United States or any foreign national jurisdiction which has licensing
16 standards substantially similar to, equivalent to, or more stringent than the standards of
17 this state.

18 SECTION 8. *License renewal.* - The Board shall prescribe by rule the method for renewal
19 of biennial licensure which shall include continuing education requirements not to exceed 25
20 classroom hours per biennium. The Board shall by rule establish criteria for the approval of
21 continuing education programs or courses. The programs or courses approved by the Board may
22 include correspondence courses that meet the criteria for continuing education courses held in a
23 classroom setting.

24 SECTION 9. *Examinations.* -

25 (A) The Board shall specify by rule the general areas of competency to be covered by
26 examinations for licensure. These rules shall include the relative weight assigned in grading each
27 area, the grading criteria to be used by the examiner, and the score necessary to achieve a passing
28 grade.

1 The Board shall ensure that examinations adequately measure an applicant's competency.
2 Professional testing services may be utilized to formulate the examinations.

3 (B) The Board shall ensure that examinations comply with state and federal equal
4 employment opportunity guidelines.

5 (C) The Department shall, in accordance with rules established by the Board, examine
6 persons who file applications for licensure under this act in all matters pertaining to the practice
7 of massage. A written examination shall be offered at least once yearly and at such other times as
8 the Department shall deem necessary.

9 (D) The Board shall adopt rules providing for reexamination of applicants who have
10 failed the examination.

11 (E) All licensing examinations shall be conducted in such manner that the applicant shall
12 be known to the Department by number until her or his examination is completed and the proper
13 grade determined. An accurate record of each examination shall be made; and that record,
14 together with all examination papers, shall be filed with the secretary of the Department and shall
15 be kept for reference and inspection for a period of not less than 2 years immediately following
16 the examination.

17 SECTION 10. *Massage establishments; requisites; licensure; inspection.* -

18 (A) No massage establishment shall be allowed to operate without a license granted by
19 the Department in accordance with rules adopted by the Board.

20 (B) The Board shall adopt rules governing the operation of establishments and their
21 facilities, personnel, safety and sanitary requirements, financial responsibility, insurance
22 coverage, and the license application and granting process.

23 (C) Any person, firm, or corporation desiring to operate a massage establishment in the
24 state shall submit to the Department an application, upon forms provided by the Department,
25 accompanied by any information requested by the Department and an application fee.

26 (D) Upon receiving the application, the Department may cause an investigation to be
27 made of the proposed massage establishment.

1 (E) If, based upon the application and any necessary investigation, the Department
2 determines that the proposed establishment would fail to meet the standards adopted by the
3 Board under subsection (2), the Department shall deny the application for license. Such denial
4 shall be in writing and shall list the reasons for denial. Upon correction of any deficiencies, an
5 applicant previously denied permission to operate a massage establishment may reapply for
6 licensure.

7 (F) If, based upon the application and any necessary investigation, the Department
8 determines that the proposed massage establishment may reasonably be expected to meet the
9 standards adopted by the Department under subsection (2), the Department shall grant the license
10 under such restrictions as it shall deem proper as soon as the original licensing fee is paid.

11 (G) (1) Once issued, no license for operation of a massage establishment may be
12 transferred from one owner to another.

13 (2) A license may be transferred from one location to another only after inspection and
14 approval by the Board and receipt of an application and inspection fee set by rule of the
15 Board, not to exceed Php1500.

16 (3) A license may be transferred from one business name to another after approval by the
17 Board and receipt of an application fee set by rule of the Board, not to exceed Php 500.

18 (H)Renewal of license registration for massage establishments shall be accomplished
19 pursuant to rules adopted by the Board. The Board is further authorized to adopt rules governing
20 delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

21 (I) The Board is authorized to adopt rules governing the periodic inspection of massage
22 establishments licensed under this act.

23 SECTION 11. *Fees; Disposition.* -

24 (A) The Board shall set fees according to the following schedule:

- 25 (1) Massage therapist application and examination fee: not to exceed Php 2500;
26 (2) Massage therapist initial licensure fee: not to exceed Php1500;
27 (3) Establishment application fee: not to exceed Php 2000;
28 (4) Establishment licensure fee: not to exceed Php 1500;

- 1 (5) Biennial establishment renewal fee: not to exceed Php 1500;
- 2 (6) Biennial massage therapist licensure renewal fee: not to exceed Php 2000;
- 3 (7) Massage therapist reexamination fee: not to exceed Php 2500;
- 4 (8) Fee for apprentice: not to exceed Php 1000;
- 5 (9) Colonics examination fee: not to exceed Php 1000;
- 6 (10) Colonics reexamination fee: not to exceed Php 1000;
- 7 (11) Application and reactivation for inactive status of a massage therapist
- 8 license fee: not to exceed Php 2500;
- 9 (12) Renewal fee for inactive status: not to exceed Php 2500;

10 (B) The Department shall impose a late fee not to exceed Php 1500 on a delinquent
11 renewal of a massage establishment license;

12 (C)The Board may establish by rule an application fee not to exceed Php 1,000.00 for
13 anyone seeking approval to provide continuing education courses and may provide by rule for a
14 fee not to exceed Php 50.00 for renewal of providership;

15 (D)The Department is authorized to charge the cost of any original license or permit, as
16 set forth in this chapter, for the issuance of any duplicate licenses or permits requested by any
17 massage therapist or massage establishment;

18 (E) All moneys collected by the Department from fees authorized by this Act shall be
19 paid into the National Treasury.

20 SECTION 12. *Grounds for disciplinary action by the Board.* -

21 (A)The following acts constitute grounds for denial of a license or disciplinary action:

- 22 (1) Attempting to procure a license to practice massage by bribery or fraudulent
23 misrepresentation.
- 24 (2) Having a license to practice massage revoked, suspended, or otherwise acted
25 against, including the denial of licensure, by the licensing authority of another
26 state, territory, or country.
- 27 (3) Being convicted or found guilty, regardless of adjudication, of a crime in any
28 jurisdiction which directly relates to the practice of massage or to the ability to

1 practice massage. Any plea of nolo contendere shall be considered a
2 conviction for purposes of this chapter.

3 (4) False, deceptive, or misleading advertising.

4 (5) Aiding, assisting, procuring, or advising any unlicensed person to practice
5 massage contrary to the provisions of this chapter or to a rule of the
6 Department or the Board.

7 (6) Making deceptive, untrue, or fraudulent representations in the practice of
8 massage.

9 (7) Being unable to practice massage with reasonable skill and safety by reason of
10 illness or use of alcohol, drugs, narcotics, chemicals, or any other type of
11 material or as a result of any mental or physical condition. In enforcing this
12 paragraph, the Department shall have, upon probable cause, authority to
13 compel a massage therapist to submit to a mental or physical examination by
14 physicians designated by the Department. Failure of a massage therapist to
15 submit to such examination when so directed, unless the failure was due to
16 circumstances beyond her or his control, shall constitute an admission of the
17 allegations against her or him, consequent upon which a default and final
18 order may be entered without the taking of testimony or presentation of
19 evidence. A massage therapist affected under this paragraph shall at
20 reasonable intervals be afforded an opportunity to demonstrate that she or he
21 can resume the competent practice of massage with reasonable skill and safety
22 to clients.

23 (8) Gross or repeated malpractice or the failure to practice massage with that level
24 of care, skill, and treatment which is recognized by a reasonably prudent
25 massage therapist as being acceptable under similar conditions and
26 circumstances.

27 (9) Practicing or offering to practice beyond the scope permitted by law or
28 accepting and performing professional responsibilities which the licensee
29 knows or has reason to know that she or he is not competent to perform.

1 (10) Delegating professional responsibilities to a person when the licensee
2 delegating such responsibilities knows or has reason to know that such person
3 is not qualified by training, experience, or licensure to perform.

4 (11) Violating a lawful order of the Board or Department previously entered in
5 a disciplinary hearing, or failing to comply with a lawfully issued subpoena of
6 the Department.

7 (12) Refusing to permit the Department to inspect the business premises of the
8 licensee during regular business hours.

9 (13) Failing to keep the equipment and premises of the massage establishment
10 in a clean and sanitary condition.

11 (14) Practicing massage at a site, location, or place which is not duly licensed
12 as a massage establishment, except that a massage therapist, as provided by
13 rules adopted by the Board, may provide massage services, excluding colonic
14 irrigation, at the residence of a client, at the office of the client, at a sports
15 event, at a convention, or at a trade show.

16 (B) The Board may enter an order denying licensure or imposing any of the penalties
17 in this Section against any applicant for licensure or licensee who is found guilty of violating any
18 provision of subsection (1) of this section.

19 (C) The Board shall have the power to revoke or suspend the license of a massage
20 establishment licensed under this act, or to deny subsequent licensure of such an establishment,
21 in either of the following cases:

22 (1) Upon proof that a license has been obtained by fraud or misrepresentation.

23 (2) Upon proof that the holder of a license is guilty of fraud or deceit or of gross
24 negligence, incompetence, or misconduct in the operation of the
25 establishment so licensed.

26 SECTION 13. *Advertisement.* - Each massage therapist or massage establishment
27 licensed under the provisions of this act shall include the number of the license in any
28 advertisement of massage services appearing in any newspaper, airwave transmission, telephone

1 directory, or other advertising medium. Pending licensure of a new massage establishment
2 pursuant to the provisions of Section 10(6), the license number of a licensed massage therapist
3 who is an owner or principal officer of the establishment may be used in lieu of the license
4 number for the establishment.

5 SECTION 14. *Penalties.* -

6 (A) It is unlawful for any person to:

7 (1) Hold himself or herself out as a massage therapist or to practice massage
8 unless duly licensed under this chapter or unless otherwise specifically
9 exempted from licensure under this chapter.

10 (2) Operate any massage establishment unless it has been duly licensed as
11 provided herein, except that nothing herein shall be construed to prevent the
12 teaching of massage in this state at a Board-approved massage school.

13 (3) Permit an employed person to practice massage unless duly licensed as
14 provided herein.

15 (4) Present as his or her own the license of another.

16 (5) Allow the use of his or her license by an unlicensed person.

17 (6) Give false or forged evidence to the Department in obtaining any license
18 provided for herein.

19 (7) Falsely impersonate any other license holder of like or different name.

20 (8) Use or attempt to use a license that has been revoked.

21 (9) Otherwise violate any of the provisions of this Act.

22 (B) Any person violating the provisions of this section is guilty of a misdemeanor of the
23 first degree, punishable as provided in the pertinent provisions of the Penal Code.

24 SECTION 15. *Sexual misconduct in the practice of massage therapy.* - The massage
25 therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of
26 massage therapy means violation of the massage therapist-patient relationship through which the
27 massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to
28 engage or attempt to engage the patient, in sexual activity outside the scope of practice or the

1 scope of generally accepted examination or treatment of the patient. Sexual misconduct in the
2 practice of massage therapy is prohibited.

3 SECTION 16. *Civil proceedings.* - As cumulative to any other remedy or criminal
4 prosecution, the Department may file a proceeding in the name of the state seeking issuance of a
5 restraining order, injunction, or writ of mandamus against any person who is or has been
6 violating any of the provisions of this act or the lawful rules or orders of the Department.

7 SECTION 17. *Power of province, city, or municipality to regulate massage.* - A
8 province, city or municipality, within its jurisdiction, may regulate persons and establishments
9 licensed under this chapter. Such regulation shall not exceed the powers of the State under this
10 act or be inconsistent with this act. This section shall not be construed to prohibit a county or
11 municipality from enacting any regulation of persons or establishments not licensed pursuant to
12 this act.

13 SECTION 18. *Appropriations.* - The amount necessary to carry out the provisions of this
14 Act shall be included in the budget of concerned government agencies in the General
15 Appropriations Act of the year following its enactment into law and thereafter.

16 SECTION 19. *Repealing Clause.* - All laws, decrees, executive orders, administrative
17 orders or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended
18 or modified accordingly.

19 SECTION 20. *Separability Clause.* - If any provision of this Act is held invalid or
20 unconstitutional, other provisions not affected thereby shall continue to be in full force and
21 effect.

22 SECTION 21. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following
23 its complete publication in the Official Gazette or in at least two (2) newspapers of general
24 circulation.

Approved,