

MODEL MASSAGE THERAPY PRACTICE ACT



FSMTB
FEDERATION OF STATE
MASSAGE THERAPY BOARDS

Model Massage Therapy Practice Act

First Edition
2014

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FSMTB MISSION STATEMENT

The mission of the Federation is to support its Member Boards in their work to ensure that the practice of massage therapy is provided to the public in a safe and effective manner.

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INTRODUCTION

The Federation of State Massage Therapy Boards (FSMTB) is pleased to present the FSMTB Model Massage Therapy Practice Act. This document is the culmination of 42 months of development undertaken by the FSMTB Model Practice Act Task Force in conjunction with the FSMTB Board of Directors. In addition, the Federation solicited and received comments from interested stakeholders and input from the public was collected through two public comment periods. Input from the public provided the Task Force and Board of Directors with numerous perspectives before finalizing the document. It must be emphasized that the Model Practice Act is a fluid document subject to periodic review and modification as circumstances dictate. The FSMTB Board of Directors intends to charge a committee with the ongoing responsibilities of consistent review of the Model Practice Act and with making recommendations for modification where necessary.

Massage Therapy in the United States has evolved via many different pathways, in both a formalized fashion and via avenues that are far less formal. One of the first schools of Massage Therapy in the United States was established in 1916; as the immigrant population grew, they brought with them the cultural norms that the practice was a fundamental part of their health services; and the ongoing introduction of laws addressed the protection of title to recognize the practice as an established profession. Today, Massage Therapists are frequently working with other professionals as part of a team of health care providers yet they are often excluded from receiving compensation due to lack of both standardization and recognition as an established profession. Massage Therapists are often a first point of contact for the consumer in prevention, identification, assessment, treatment and rehabilitation of many pathologies and conditions. The need for regulation to facilitate the primary Board responsibility of protecting the public and regulating the profession is of paramount importance.

The intent of this document is to provide a comprehensive resource to FSMTB Member Boards and Agencies and to assist regulators with statutory language based upon the collective wisdom of the Massage Therapy regulatory community. FSMTB is keenly aware of the need for flexibility in drafting statutes and rules/regulations as well as the rights of each particular jurisdiction to address the unique needs of each state. However, and as set forth in its mission, vision and values statements, FSMTB promotes uniformity where appropriate and the Model Practice Act is intended to enhance this mission.

The component elements of the scope of practice included three determinants:

- (1) an established history of inclusion in education and training;
- (2) an established history of inclusion in clinical practice; and
- (3) specific statutory authority.

Readers are encouraged to study the definition of the scope of practice to understand the confines of the regulated practice. This step is very important as the profession progresses to a uniformly regulated practice. In addition, the document refers to *licenses, states, and boards* as uniform terminology but the use of these and other

generic terms is with all due respect to alternative words and phrases that describe a regulated profession. It is noted that *states, territories, commonwealths, districts* and other descriptive terms are used to identify the numerous jurisdictions. Also, *license, register, certify* and other terms are used to identify the regulatory credential.

FSMTB is understanding of the need for a certain amount of customization necessary to allow for the concepts contained in this model to be of assistance in each jurisdiction. However, the Model Massage Therapy Practice Act does emphasize a scope of practice and the need for protection of the various titles used by licensees. Readers will also note the protected phrases identifying the many terms and acronyms used within the profession. Again, the intent is to protect the public by limiting both the practice and the use of identified terms and acronyms to those duly licensed by the Board.

From a formatting perspective, the Model Massage Therapy Practice Act is set up in a way that includes the suggested statutory language in the left column with selected comments and other explanations in the right column. It is emphasized that while debate and discussions occurred on virtually every aspect of the suggested model language, not all such discussions can, nor should be captured in the comments. Comments are included in sections where significant debate and discussion took place, as well as in areas where particular interest, debate and/or controversy were identified in the opinion of the expertise of the task force members. FSMTB also relied upon regulatory experts and legal counsel for editing and citations to relevant jurisprudence where necessary.

Readers are encouraged to refer to and use the FSMTB Model Massage Therapy Practice Act as necessary and within the confines of the regulatory structures of their respective state. As noted, this is a fluid document subject to modification as deemed necessary. Readers are encouraged to provide FSMTB staff with written questions and suggestions for review and consideration. Of course, FSMTB Member Boards and Agencies also have a mechanism through the resolution process to stimulate constructive debate and discussions regarding future changes to the FSMTB Model Massage Therapy Practice Act.

Again, the FSMTB Board of Directors and Member Boards and Agencies should be proud of this very important resource document. We convey a special thanks to the Model Practice Act Task Force members and other contributors who made this document a reality. The volunteers provided countless hours of their time to the project and their efforts are hereby acknowledged and recognized. We invite both your use of this Model Massage Therapy Practice Act and your ongoing interest in future versions of this essential resource for Member Boards and Agencies and the public we serve.

ACKNOWLEDGEMENTS

The Model Practice Act Task Force of the Federation of State Massage Therapy Boards served from April 2011 until the completion of their task in October 2014. Acknowledgment and appreciation are extended to them, to Federation staff, to the Entry Level Analysis Project work group and to many others who reviewed and contributed comments, particularly during the public comment periods.

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ARTICLE I. TITLE, PURPOSE

SECTION 101. TITLE OF ACT

This Act shall be known as the _____ (name of jurisdiction) Massage Therapy Practice Act.

SECTION 101. TITLE OF ACT

The decision to name the Act, "Massage Therapy Practice Act," is based on historical use of terminology in the United States, on consumer recognition of terms, on legal recommendations, and on the similarity of job tasks performed by an increasingly wide range of practitioners.

The FSMTB Model Practice Act Task Force spent considerable time discussing terminology and is sympathetic to the variety of terms and phrases used throughout the industry and regulation thereof. Indeed, the title of the document was the subject of significant debate and discussion before arriving at a title that includes practice sometimes referred to as "bodywork," yet places the consumer as the guiding force in terms of recognition and use of the term "Massage Therapy." The intent of the title "Massage Therapy Practice Act" is to capture the broad and varying terms, phrases and scopes into one universal title. This decision was based, in part, on recognition of the many approaches to practice, but is not meant to create differing scopes, nor exemptions, for each such approach.

With the selection of the title "Massage Therapy Practice Act," the regulation of Massage Therapy is inclusive of bodywork approaches to professional practice that manipulate soft-tissue or use structured touch. The focus of regulation is upon public protection, primarily consumers

receiving massage therapy services, and as such, Massage Therapy is the term that is used and recognized by a large percentage of the consuming public with near universal recognition. In addition, Massage Therapy is recognized by the professions and society at large, and it is the most prevalent designation used by States that include the practice of bodywork in regulation.

Bodywork methods based on movement or the manipulation of energy where the body is not physically touched, would not be regulated by this Act. However, any practitioner, regardless of the title designation he or she adopts, that uses methods that manipulate soft-tissue and are covered by the Massage Therapy scope of practice, would be subject to the provisions of this Act. Practitioners who manipulate soft-tissue in any way, must hold Massage Therapy credentials as defined in this Act.

This Model Massage Therapy Practice Act attempts to bring together a unified system of recognition that will protect the consumer and assist in portability of licensure. The broad umbrella of the Model Practice Act will most effectively protect the public in the future as the profession continues to grow.

SECTION 102. LEGISLATIVE DECLARATION

The purpose of this Act is to protect the health, safety and welfare of the public. The Legislature declares that the practice

SECTION 102. LEGISLATIVE DECLARATION

It must be specifically recognized that the protection of the public is the purpose for the enactment of this Practice Act. A legislative

of Massage Therapy is a healthcare profession in need of regulation and that only qualified persons be permitted to engage in the practice as defined herein.

It is declared that the practice of Massage Therapy merit and receive the confidence of the public through the enforcement of this Act, any applicable regulations, and other relevant laws. It is further declared that this Act is intended to fully occupy the entire field of Massage Therapy and that any city, county, or subdivision thereof is prohibited from adopting laws that infringe on the scope of this Act. This Act shall be liberally construed to effectuate the broad purpose of protecting the health, safety and welfare of the public.

SECTION 103. DEFINITIONS

- (A) Applicant means an individual seeking licensure under this Act who has submitted an application and fee to the Board.

- (B) Approved Massage Therapy Education Program means a school or educational program that meets the criteria established in rule by the Board, at a minimum includes 625 Clock Hours, and is both authorized in the jurisdiction in which it is located and that reflects a curriculum acceptable to an accrediting body recognized by the U.S. Department of Education. Education received outside of the

declaration is an essential component to set forth the purpose of the law and affirmatively state the public protection mission.

Based upon recent case law, this declaration also includes an intent for the statute to encompass the entire field of regulating the profession, to the exclusion of ad hoc regulation on a local basis.

Further, the public confidence is dependent upon the state to evaluate and affirm the qualifications for licensure of Massage Therapists, thus ensuring the public safety through licensure and regulation.

SECTION 103. DEFINITIONS

Definitions of terms used throughout the Model Practice Act are necessary to ensure that terms are defined and consistently used throughout the document and provide the basis for the legal interpretation of the law by regulators, legislators and courts. Readers will note that capitalized terms used throughout the Model Practice Act can be found in the definitions section.

SECTION 103(B). DEFINITIONS

- (B) Consistent with the comprehensive review and analyses undertaken by the Entry Level Analysis Project (ELAP) workgroup, the Model Practice Act acknowledges the 625 hours of entry-level education recommended by the ELAP. The ELAP recommends that the 625 hours include the following content areas:

United States must be substantially equivalent to the criteria of this Act and must be recognized by the jurisdiction in which it is located.

1. Massage Theory and Principles
2. Massage Professional Practices
3. The Therapeutic Relationship
4. Anatomy, Physiology, and Pathology
5. Assessment and Documentation
6. Massage and Bodywork Application
7. Palpation and Movement
8. Adapting Sessions for Clients; and
9. Career Development

It is the intent of the Model Practice Act to suggest that the details of the educational requirements be promulgated into rules/regulations, rather than specifically included in the statute. The specifics of the ELAP findings and recommendations can be found in a separate document (www.elapmassage.org).

In addition to the recognition of the ELAP recommendations, it is intended that eventually all those who enter the profession shall have received an accredited education. Accreditation enables State Boards to approve massage schools through a nationally established standard of accreditation and would promote educational quality and increase portability by eliminating the need for individual states to devise their own standards.

Currently, programmatic accreditation is available for a diverse array of programs such as Asian bodywork therapy, Massage Therapy, structural integration and reflexology. However, during a transitional period before accreditation is accepted as a standard of education, as the profession evolves, it is recommended that all educational institutions adopt a curriculum that

reflects the ELAP recommendations and that is acceptable to an accrediting body recognized by the U.S. Department of Education.

- (C) Board means the State Board of Massage Therapy as provided in this Act or its authorized representatives.
- (D) Client means the individual that seeks or receives Massage Therapy services. Client status is not dependent on billing or payment of fees for such services.
- (E) Clock Hour means a full sixty (60) minute period, with at least fifty (50) minutes of instruction or learning activities.
- (F) Consumer Member means a person who is a resident of this state for not fewer than three (3) years, who has attained 21 years of age, and shall not be nor ever have been a Massage Therapist or the spouse thereof, or a person who has had a material financial interest in the profession of Massage Therapy.
- (G) Continuing Education means education and training that maintains, improves, or enhances Massage Therapy practice.

SECTION 103(D). DEFINITIONS

(D) The Client definition is inclusive of Massage Therapy services provided with or without compensation. Massage Therapy practice as defined includes service without compensation. Client and Patient may be used interchangeably.

SECTION 103(G). DEFINITIONS

(G) The Practice Act empowers the Board to approve and recognize Continuing Education. Such delegation of authority from the state legislature to a governmental agency is constitutionally acceptable.

- (H) Continuing Professional Competence means a set of requirements Licensees must meet that are designed to ensure the minimum standards necessary for public protection and licensure renewal.
- (I) Conviction shall include a finding of guilt, an admission of guilt or plea of nolo contendere, regardless of adjudication.
- (J) Currently Enrolled Student means a student who is actively participating in an Approved Massage Therapy Education Program.
- (K) Examination means a standardized test or examination of entry-level massage and bodywork knowledge, skills, and abilities that is developed and administered by the Federation of State Massage Therapy Boards and approved by the Board.
- (L) Felony means a criminal act as defined by this state or any other state, or by definition under federal law.
- (M) Final Adverse Actions under this statute are intended to encompass, at a minimum, all actions that require reporting to state or federal authorities, including but not limited to the Healthcare Integrity and Protection Data Bank (HIPDB)/ National Practitioner Data Bank (NPDB).

SECTION 103(I). DEFINITIONS

(I) The Conviction definition is intended to include all results that are entered by the criminal court.

SECTION 103(M). DEFINITIONS

(M) Final Adverse Action means any action taken or order entered by the Board, whether through a consent agreement, as the result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against a Licensee, Applicant or individual which is public information under applicable law and which impacts the licensure status or record, practice status or record, or other related practice privileges. Final Adverse

Actions include, in addition to the above and without limitations, denial of licensure applications, denial of licensure renewal applications, and surrender of licensure. Board actions or orders are Final Adverse Actions irrespective of any pending appeals.

- (N) Licensee means a person duly licensed under this Act.
- (O) Massage Therapist means an individual licensed to practice Massage Therapy.
- (P) Massage Therapy means the practice defined in Section 104.

SECTION 104. PRACTICE OF MASSAGE THERAPY

- (A) The practice of Massage Therapy means the manual application of a system of structured touch to the soft tissues of the human body, including but not limited to:
 - (1) Assessment, evaluation, or treatment;
 - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion or vibration;
 - (3) Active or passive stretching of the body within the normal anatomical range of movement;
 - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands;

SECTION 104. PRACTICE OF MASSAGE THERAPY

The statutory definition of the scope of practice is the foundation of legislation regulating a profession. Section 104 defines the practice of Massage Therapy and sets the parameters or scope of practice dictating who must become licensed to lawfully practice.

The definition uses broad descriptions reflecting practice rather than identifying therapeutic approaches by name.

This broad language recognizes the authority of the Board to interpret the services and activities defined in the scope through rulemaking and customary administrative operations.

The defined scope of practice takes into consideration the approaches, services and activities of current and evolving practice.

- (5) Use of topical applications such as lubricants, scrubs, or herbal preparations;
- (6) Use of hot or cold applications;
- (7) Use of hydrotherapy;
- (8) Client education.

This scope of practice will require otherwise unlicensed persons who currently engage in these practices to become licensed.

SECTION 105. SPECIAL PROVISIONS

(A) Temporary Practice

(1) Currently Enrolled Students

This Act shall not be construed to apply to or restrict a Currently Enrolled Student in an Approved Massage Therapy Education Program from engaging in the practice of Massage Therapy, provided the practice, conduct, activities or services constitute a part of a required course of study in the program and that such persons are identified as students.

(2) Planned Events

- (a) This Act shall not be construed to apply to or restrict an individual currently licensed and in good standing to practice Massage Therapy in another jurisdiction from engaging in the practice of Massage Therapy in this jurisdiction on a temporary basis for a period of not more than 30 days or not longer than the period of the event, whichever is less.

SECTION 105. SPECIAL PROVISIONS

Practice acts commonly include provisions to recognize that under certain circumstances, persons duly qualified and/or licensed may continue to lawfully engage in their practices.

Those persons licensed under professions with overlapping scopes are governed by and adhere to the rules of their own regulated professions.

The Practice Act specifically avoids the use of the term “exemptions” to reinforce the importance of licensure and promote the fact that persons must obtain governmental permission to practice based upon delineated criteria.

Permission to practice without licensure is established for several purposes:

- 1) To recognize students who are learning the practice and may offer the service, or use training titles related to the profession within an educational setting and under the auspices of the educational program;

- (b) Practitioners seeking temporary practice privileges under this section 105(A)(2) must submit a prior written application as prescribed by the Board. Such temporary practice privileges shall apply for no more than thirty (30) days per year and are limited to both the scope of practice of this state and the scope of permitted acts in section (c) below. Persons who wish to practice beyond the thirty (30) day temporary period must apply for and receive licensure.
- (c) The scope of permitted acts under this section 105(A)(2) is limited to acts related to the practice of Massage Therapy at planned event(s) and on identified persons of an identified team or participants at planned event(s) including visiting sports teams, planned athletic events, and education seminars. Practitioners under this subsection are not authorized to practice Massage Therapy on the general public.
- (d) Practitioners who provide services under this section 105(A)(2) shall be deemed to have submitted to the jurisdiction of the Board and be bound by the laws of this state.

(3) Declared Emergencies

- (a) This Act shall not be construed to apply to or

2) To recognize temporary practice at planned events such as travel to treat with sports teams, educational settings, and Client transitions. Such temporary practice is dependent upon an application submitted to the Board;

3) To ensure that those duly licensed in other professions whose scopes may overlap are specifically able to continue to engage in the activity;

4) To recognize those practitioners who engage in the practice in restricted settings that provide administrative oversight may continue to do so as a benefit to the public.

It is noted that sections 105(A)(2) and 105(A)(3) recognize the right of duly licensed practitioners to temporarily practice within the state. However, such a practice privilege is not based on the issuance of a temporary license, but rather on the fact that such practitioner is licensed and in good standing in another state.

restrict an individual currently licensed and in good standing to practice Massage Therapy in another jurisdiction from engaging in the practice of Massage Therapy on a temporary basis and in response to a disaster or emergency declared by the appropriate authority or Governor of this state.

- (b) Practitioners seeking temporary privileges under this section 105(A)(3) must provide written notification to and as prescribed by the Board and are only eligible to engage in temporary practice during the time of such declared emergency.

(4) Other Licensed Practitioners

Practitioners licensed in other jurisdictions may participate in Continuing Education programs but are not authorized to practice Massage Therapy on the general public.

(B) Service to Family Members

This Act shall not be construed to apply to or restrict an individual from providing services related to the domestic care of any family member or household member as long as such persons do not offer, hold out, or claim to be a Massage Therapist.

SECTION 106. TITLE PROTECTION AND PROTECTED TERMS

- (A) No person or entity shall use the words *Massage Therapy*, *bodywork therapy*, or *massage-bodywork therapist*, *Massage Therapist*, *bodywork therapist*, or *massage*, or *Licensed Massage Therapist* or the acronym "LMT" or any other words, abbreviations or insignia indicating or implying, directly or indirectly, that Massage Therapy is provided, or supplied, unless such persons are licensed pursuant to this Act.
- (B) A Massage Therapist must conspicuously display the license to practice Massage Therapy and must use the acronym "LMT" to designate licensure under this Act.

SECTION 106. TITLE PROTECTION AND PROTECTED TERMS

This section addresses the various titles, acronyms and abbreviations used to describe Massage Therapists. The State Legislature grants scope of practice privileges and imposes certain restrictions on the use of titles and terms for public protection. The use of the title "Massage Therapist" connotes education and training in a unique body of knowledge and skill exclusive to Massage Therapists.

Title protection encompasses the titles, acronyms and abbreviations that are associated with Massage Therapy licensure. Section 106(A) addresses all such titles, acronyms and abbreviations applicable to Massage Therapy licensure.

Title protection as outlined in this Act prevents misuse of the title in order to avoid unethical, untrained, unlicensed and non-competent practice.

"LMT" is the protected professional regulatory title to be used by Massage Therapists in the United States under this Act. For public protection, this Act requires the Licensee to use the title when a Licensee interacts with Clients or advertises the availability of Massage Therapy. This Act does not prohibit additional advanced practice titles to also be recognized.

ARTICLE II. BOARD OF MASSAGE THERAPY

SECTION 201. DESIGNATION

The Legislature hereby creates the Board of Massage Therapy. The Board shall function to carry out the provisions of this Act in a manner that at all times promotes the highest interest of public health, safety and welfare.

SECTION 202. BOARD COMPOSITION AND QUALIFICATIONS

- (A) The Board shall be comprised of not fewer than seven (7) members, appointed by the Governor.
- (B) At all times, at least five (5) members shall be Massage Therapists licensed and in good standing who shall have been engaged in the practice of Massage Therapy for not less than five (5) consecutive years preceding the date of appointment.
- (C) At least two (2) members shall be Consumer Members.
- (D) At all relevant times each Board member shall be a citizen of the United States and a resident of this state for not fewer than three (3) years.

SECTION 201. DESIGNATION

This section creates the Board of Massage Therapy and affirms the legislative intent of protecting the public by establishing license qualifications for the practice of Massage Therapy and a governing body to enforce this Act.

SECTION 202. BOARD COMPOSITION AND QUALIFICATIONS

Not less than seven (7) members, including at least two (2) Consumer Members ensures representation from professionals and consumers for public protection.

While Consumer Members are specifically delineated in the Practice Act, all Board members must be uncompromising in their interests and advocacy on behalf of the public. A spouse or immediate family member of a Licensee shall not be a Consumer Member.

The Board should consider the requirement of new Board member orientation and training to properly introduce all duties and responsibilities of the Board and its members. This should include but is not limited to, providing up-to-date statutes and rules, Board policies, historical documents, roles of the department and other staff whose interaction with the Board is paramount, such as Board attorneys, executive director, prosecuting attorneys and administrative law judges.

SECTION 203. APPOINTMENTS

Members of the Board shall be appointed in accordance with the provisions of this Article and the State Constitution.

SECTION 204. TERMS OF OFFICE

- (A) Members of the Board shall be appointed for a term of four (4) years. Appointments to fill a vacancy of an unexpired term shall fill the unexpired portion of the term.
- (B) No member of the Board shall serve more than two (2) consecutive full terms. The completion of an unexpired term shall not constitute a full term for purposes of this subsection.
- (C) The terms of the members of the Board shall be staggered. The initial Board shall be comprised of three (3) members appointed for four (4) year terms, two (2) members for three (3) year terms, and two (2) members for two (2) year terms. Each such appointee to the initial Board shall only be eligible for reappointment for one (1) additional four (4) year term.

SECTION 205. VACANCIES

- (A) Vacancies on the Board occurring prior to the expiration of a term shall be filled in accordance with Section 203.

SECTION 204(C). TERMS OF OFFICE

Initial staggered appointments allow for the continuity of an experienced Board so that all Board Members do not rotate from the Board at the same time.

Four (4) year terms support the structure for gaining future qualified leadership and retention of experienced Board Members.

SECTION 205(A). VACANCIES

This section ensures that the Board maintains a quorum and is operating with no ongoing vacancies. A fully constituted Board preserves the Board's authority to fulfill its duties and responsibilities.

(B) If a vacancy is not filled within 12 months, the Board shall be empowered to fill such vacancy by a 2/3 majority vote of the remaining Board members.

SECTION 206. REMOVAL

A Board member may be suspended or removed for unprofessional conduct, refusal or inability of a Board member to perform his or her duties as a member of the Board in an efficient, responsible and professional manner, Conviction of a Felony or of any crime related to the practice of a health care profession, failure to meet the qualifications of this Act, or committing any act prohibited by this Act.

SECTION 207. OFFICERS AND TERMS OF OFFICE

- (A) The Board shall elect from its members a Chair and a Vice Chair and such other officers as it deems appropriate and necessary to conduct its business. The Chair shall preside at meetings of the Board, shall be responsible for the performance of all the duties and functions of the Board and shall perform those duties customarily associated with the position and such other duties assigned by the Board. The Vice Chair will serve in the absence of the Chair.
- (B) Officers shall serve terms of one (1) year commencing with the day of their election and ending upon election of their successors.

SECTION 205(B). VACANCIES

This section provides assurances that the duties and responsibilities of the Board will not be compromised due to vacancies and lack of quorum.

SECTION 206. REMOVAL

After a Board member is appointed, there must be a mechanism in place for removal of a Board member when conduct warrants such action.

SECTION 207(A). OFFICERS AND TERMS OF OFFICE

The Board Chair and Vice Chair will be elected by the Board. The Chair presides over meetings of the Board and conducts its business in an orderly fashion. The duties of Chair and Vice Chair shall be defined in Board rule or policy.

SECTION 208. COMPENSATION OF BOARD MEMBERS

- (A) Unless otherwise provided by law, a Board member shall receive a per diem and reimbursement in accordance with the state administrative code.
- (B) Each Board member shall receive compensation, as identified in 208(A), for attendance at official meetings of the Board and Board committees or any meeting that constitutes Board business, including teleconference calls or other Board responsibilities.

SECTION 209. MEETINGS

The Board shall meet at least once, in person, annually and may meet as often as is necessary to conduct Board business and conduct hearings. The Chair of the Board shall have the authority to call other meetings at her or his discretion. Meetings may be conducted by electronic medium and shall be in accordance with state meeting law. A quorum shall be necessary to conduct official Board business or any committee thereof. The Board may go into executive session according to relevant law.

SECTION 210. POWERS, RESPONSIBILITIES AND DUTIES

- (A) The Board shall have the authority to implement, interpret, and enforce this Act, including, but not limited to the authority to:
 - (1) Evaluate the qualifications of Applicants for licensure;

SECTION 209. MEETINGS

This section sets a minimum frequency that the Board must meet. Annual meetings may not be sufficient to carry out all functions of Board business and regulation of the profession.

All meetings must comply with any applicable state open meeting laws and state guidelines regarding access and notice to the public.

SECTION 210. POWERS, RESPONSIBILITIES AND DUTIES

This section identifies the Powers, Responsibilities and Duties of the Board. Boards of Massage Therapy are created and empowered by statute and can only undertake those activities authorized by law. This section outlines these fundamental duties and responsibilities and is

- (2) Assess entry-level competence through the use of the Examination;
- (3) Issue and renew a license to Applicants who meet licensure qualifications of this Act and all rules applicable to this Act promulgated by the Board;
- (4) Establish and enforce compliance with professional standards of practice and rules of conduct;
- (5) Establish and enforce educational standards for recognition, approval and withdrawal of approval of programs or schools of Massage Therapy;
- (6) Collect demographic data of Licensees and the profession;
- (7) Inspect any licensed person or facility/entity at reasonable hours for the purpose of enforcement of this Act;
- (8) Establish and collect fees necessary for sustaining regulation of this profession and carrying out this Act;
- (9) Maintain a database of all Licensees, including disciplinary data;
- (10) Employ personnel to carry out administrative work of the Board and the necessary functions of this Act;
- (11) Enter into contracts for services as necessary for enforcement of this Act;
- (12) Issue an annual report;

drafted broadly to ensure that it can effectively meet its public protection obligations.

Generally under Section 210 and specifically under (4) and (5), the Board is authorized to establish and enforce professional standards and educational standards. Similar to the reliance by the Board on a uniform licensure Examination developed and administered by the FSMTB, the Board can also recognize the necessary standards or educational criteria established by FSMTB or other relevant organizations. The recognition of the standards will be promulgated in the rules/regulations. Inclusions of such standards in the statute create legal and practical issues that may call into question its legal enforceability.

The Board is authorized to exercise its discretion in accepting a variety of programs as meeting required education under the Approved Massage Therapy Education Program definition. If deemed adequate, the Board may consider accepting accredited institutional or programmatic education as one criterion in determining acceptable education.

- (13) Exercise their authority to impose discipline in accordance with this Act;
- (14) Enter into appropriate data sharing information agreements according to state or federal law;
- (15) Establish and enforce standards of practice and codes of conduct;
- (16) Investigate and administratively prosecute any allegations of wrongdoing undertaken by any person, entity, Licensee, or organization;
- (17) Issue subpoenas for oral testimony, deposition testimony, and production of relevant documents necessary to investigate duly filed complaints and administratively prosecute persons accused of violating this Act;
- (18) Impose administrative discipline upon any person or entity, or organization as set forth in Section 402;
- (19) Undertake such other duties, powers, and authority as may be necessary to the enforcement of

SECTION 210(14). POWERS, RESPONSIBILITIES AND DUTIES

(14) Allows use of the FSMTB Massage Therapy Licensing Database, and other resources, in assessing licensure eligibility and complaints.

SECTION 210(15). POWERS, RESPONSIBILITIES AND DUTIES

(15) Provides the Board with the authority to establish a Code of Conduct and oversee the client-therapist relationship. A code of conduct is a summary statement of the standards of conduct that define ethical, professional practice of Massage Therapy.

this Act and rules duly promulgated hereunder, determined to be in the interest of public protection through the regulation of the profession.

- (B) The Board shall establish qualifications and uphold standards of entry-level competence for licensure into the profession in accordance with this Act. These requirements shall include but are not limited to educational training and experience, examination requirements and endorsement requirements for those licensed by other states or jurisdictions.
- (C) The Board shall establish a schedule of fees by rule sufficient to cover the costs of administering this Act.
- (D) In addition to any fees specifically provided for herein, the Board shall have the authority to assess additional fees for services rendered to carry out its duties and responsibilities as required under law, including but not limited to:
 - (1) Issuance of duplicate licenses;
 - (2) Copies of requested documents;
 - (3) Certification of documents;
 - (4) Certification of licensure status;
 - (5) Notices of meetings;
 - (6) Materials relevant to licensure and renewal of licensure.
- (E) Notwithstanding any other law to the contrary, the Board shall publish on a timely basis Final Adverse Actions duly entered. Publication of Final Adverse Actions shall include, but not be limited to, reporting to any applicable state and federal repository of final Board actions. The Board may report Final Adverse Actions to any data bank maintained by an organization of which the Board is a member.

SECTION 211. RULES

- (A) The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act.
- (B) Such rules shall be promulgated in accordance with state law.

SECTION 212. SOURCE OF EXAMINATION AND DATA SHARING

- (A) In making determinations under this Act and to promote uniformity and administrative efficiencies, the Board shall be empowered to:
 - (1) Recognize the Examination as a measure for entry-level competence;
 - (2) Accept and use the documentation and verified data gathered and stored by a not-for-profit organization whose membership and mission are consistent with the Board and its public protection mission.

SECTION 211. RULES

This section provides the Board with broad authority to adopt and revise specific rules that effectively implement the statute. Including general language in the enacted statute and more specific language in rules provides an ongoing opportunity for the Board to draw on the professional expertise of its Board members, as well as any interested stakeholders, while focusing on evolving issues of public protection related to the regulated profession.

SECTION 212. SOURCE OF EXAMINATION AND DATA SHARING

This section authorizes the Board to recognize the services and programs of the FSMTB as an organization whose membership and mission are consistent with its member Boards.

The FSMTB Massage & Bodywork Licensing Examination (MBLEx) is a legally defensible, entry-level Examination validated for use in a licensure setting and owned by the Member Boards that rely upon it in making eligibility determinations. It is imperative that the entry-level Examination be psychometrically valid and legally defensible for use in a licensure setting.

Some states by law may require an additional contractual relationship when taking advantage of these programs and services.

ARTICLE III. LICENSING

SECTION 301. QUALIFICATIONS FOR INITIAL LICENSURE

- (A) To obtain a license to practice Massage Therapy, an Applicant for initial licensure must provide evidence satisfactory to the Board, that the Applicant:
- (1) Has submitted a complete application in the form prescribed by the Board along with any required supporting documentation;
 - (2) Has paid all applicable fees specified by the Board relative to the licensure process;
 - (3) Is at least eighteen (18) years of age;
 - (4) Has a high school diploma or equivalent;
 - (5) Has graduated from an Approved Massage Therapy Education Program;
 - (6) Has successfully passed the Examination developed and administered by the Federation of State Massage Therapy Boards (FSMTB);

SECTION 301. QUALIFICATIONS FOR INITIAL LICENSURE

This section addresses the necessary criteria for initial licensure. The detailed procedural requirements for license applications should be outlined in rules and/or policy rather than statute. This allows the Board to determine the content of the application and the required documents, including consent to criminal history check and/or fingerprints.

SECTION 301(A)(6). QUALIFICATIONS FOR INITIAL LICENSURE

(6) Recognizes the FSMTB Examination has been validated for use in the licensure process as an entry-level determinant of competence. The additional language provides flexibility for the Board to determine which Examinations support portability and ensure entry level competence. This wording also permits state-specific exams on the law/rules.

(7) Has attested to knowledge of laws applicable to Massage Therapy in a manner prescribed by the Board;

(8) Is of good moral character; and

(9) Has submitted fingerprints for the purpose of a state and federal criminal records check pursuant to _____ (citation to statute). Criminal records checks will be considered for purposes of qualifications for licensure to the extent permitted by law.

SECTION 302. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT

(A) Persons who are licensed to practice Massage Therapy in another jurisdiction may seek licensure in this state through licensure by endorsement. To obtain a license to practice Massage Therapy by endorsement, the Applicant must provide evidence satisfactory to the Board that the Applicant:

(1) Is licensed in good standing in any other state, territory, or jurisdiction of the United States;

SECTION 301(A)(8). QUALIFICATIONS FOR INITIAL LICENSURE

(8) When information is received by the Board that indicates that an Applicant has been convicted of a crime or has committed an act which raises a reasonable question as to the Applicant's moral character, the Board shall undertake a process established by rule to determine that the Applicant possesses the good moral character required to protect the health, safety and welfare of the public.

SECTION 302. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT

This section provides a path to licensure for those who are currently licensed in another state or jurisdiction and demonstrate the ability to practice safely and competently.

- (2) Has actively practiced for at least two (2) of the last three (3) years;
- (3) Has passed the Examination or another examination acceptable to the Board which was taken for the purpose of licensure in that jurisdiction; and
- (4) Has presented to the Board proof that any other Massage Therapy license or any other professional license granted to the Applicant in any other state, territory, or jurisdiction in the United States has not been subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes.

SECTION 302(A)(2). QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT

(2) The Board will define active practice and establish it in rule.

SECTION 303. RECOGNITION OF PRACTITIONERS ON THE EFFECTIVE DATE

- (A) Notwithstanding the qualifications under Section 301 and for a period not to exceed two (2) years from the effective date of this Act, persons who have engaged in the practice of Massage Therapy or have taught core clinical courses at an Approved Massage Therapy Education Program may be eligible for licensure. Applicants for licensure under this Section 303 must provide evidence satisfactory to the Board of the following:
 - (1) Has submitted a complete application in the form prescribed by the Board along with any required supporting documentation;

SECTION 303. RECOGNITION OF PRACTITIONERS ON THE EFFECTIVE DATE

This section addresses a transitional period whereby individuals currently practicing are recognized by statute as having a right to continue to practice. "Grandparenting" provisions commonly apply to the sections of law that address licensure, for a limited period of time, for persons engaged in the practice of the profession under specific conditions prior to the effective date of the licensure law. These provisions take into consideration the need to recognize an existing practitioner's right to work. Individuals under this section must still apply for and be granted a license in order to lawfully continue to practice.

- (2) Has paid all applicable fees specified by the Board relative to the licensure process;
- (3) Is at least eighteen (18) years of age;
- (4) Has a high school diploma or equivalent;
- (5) (a) Has regularly practiced Massage Therapy in this state for at least two (2) of the last three (3) years; or
 - (b) Has regularly taught core clinical courses at an Approved Massage Therapy Education Program in this state for two (2) of the last three (3) years; and
- (6) Has attested to knowledge of laws applicable to Massage Therapy in a manner prescribed by the Board;
- (7) Is of good moral character; and
- (8) Has submitted fingerprints for the purpose of a state and federal criminal records check pursuant to _____ (citation to statute). Criminal records checks will be considered for purposes of qualifications for licensure to the extent permitted by law.

SECTION 303(A)(5). RECOGNITION OF PRACTITIONERS ON THE EFFECTIVE DATE

(5) Requires Applicants under this section to have remained in current practice or have taught at an Approved Massage Therapy Education Program in this state for at least two of the last three years. As noted, practice/teaching must have occurred in this state in order to qualify for licensure with the intent of not allowing practice/teaching in other states to be a qualifying event(s).

SECTION 304. LICENSURE RENEWAL REQUIREMENTS

The Board shall establish by rule, the time and manner for renewal of licensure that shall include Continuing Education requirements and renewal fees. The Board may request additional information from renewal Applicants.

SECTION 305. CONTINUING PROFESSIONAL COMPETENCE

The Board shall establish by rule the Continuing Education requirements for licensure renewal including the acceptable program content.

SECTION 304. LICENSURE RENEWAL REQUIREMENTS

This section ensures that licensure renewal continues to protect the public by requiring Licensees to regularly meet the qualifications for continued licensure.

SECTION 305. CONTINUING PROFESSIONAL COMPETENCE

This section is consistent with the FSMTB Licensure Renewal recommendation.

The requirements for the promulgation of rules/regulations regarding license renewal promote the Board's mission of public protection. Under this section the Board has the flexibility to determine the nature of such Continuing Education requirements, taking into consideration factors related to continuing competence.

ARTICLE IV. DISCIPLINE

SECTION 401. COMPLAINTS

- (A) The Board is authorized to initiate and investigate complaints alleging a violation of the Act or rules.
- (B) The Board shall keep a record of all complaints received and the resolution of each complaint, including any Final Adverse Action rendered.

SECTION 402. DISCIPLINARY ACTIONS, SUMMARY SUSPENSION, GROUNDS

- (A) Disciplinary Actions: The Board, upon proper notice and with opportunity for a hearing, may impose the following disciplinary actions upon any person or entity for one or more of the Grounds for Disciplinary Action in 402(C) of this subsection:
 - (1) Refuse to issue, renew, or reinstate a license;
 - (2) Revoke, suspend, restrict, or limit a license;
 - (3) Place a license holder on probation, including placing limits on the Licensee's practice and/or requiring supervision;
 - (4) Issue a reprimand;
 - (5) Issue a cease and desist letter;
 - (6) Require payment of a fine;

SECTION 401. COMPLAINTS

This section ensures that the Board fulfills its public protection mission by addressing complaints through a formal process while recognizing the legal rights of all parties involved. Usually such legal rights are set forth in an Administrative Procedures Act and covered under constitutional due process protections.

SECTION 402. DISCIPLINARY ACTIONS, SUMMARY SUSPENSION, GROUNDS

This section establishes that the Board has the authority to resolve complaints by imposing one or more of an extensive list of disciplinary actions against persons alleged to have violated the Act or rules/regulations.

Note that a license surrender that resolves a complaint is considered disciplinary action.

- (7) Require payment of the investigative and administrative costs associated with the complaint and any administrative prosecution thereof, including attorney’s fees;
 - (8) Require completion of remedial education;
 - (9) Require physical or mental evaluation for fitness to practice and/or relevant treatment;
 - (10) Enter into a consent order or settlement agreement;
 - (11) Such other administrative discipline necessary to carry out the mission of public protection of this Act.
- (B) Summary Suspension: The Board may impose an immediate suspension of licensure in cases where continued practice by a Massage Therapist poses an imminent and continuing threat to public health, welfare or safety so long as the Board schedules a hearing to occur within 60 days of the effective date of the suspension order.
- (C) Grounds for Disciplinary Action: The following shall be grounds for the Board to impose one or more disciplinary actions:
- (1) Conduct that violates any provision of this Act or Board rules adopted hereunder,

SECTION 402(B). DISCIPLINARY ACTIONS, SUMMARY SUSPENSION, GROUNDS

Section 402(B) authorizes the Board to impose immediate license suspension without a hearing to protect the public, while preserving the Licensee’s right to request a hearing on the allegations within a reasonable amount of time as determined by state law. This summary suspension authority is limited to circumstances involving imminent and continued threat to the public.

SECTION 402(C). DISCIPLINARY ACTIONS, SUMMARY SUSPENSION, GROUNDS

This section delineates the grounds for discipline intended to specify the bases for adverse actions against persons. Some of the grounds for

including a violation of the standards of practice and codes of conduct adopted by the Board;

- (2) Aiding or abetting another person in the violation of this Act or Board rules;
- (3) Fraud, deceit or misrepresentation in obtaining or attempting to obtain or renew a license or;
- (4) Aiding and or abetting another person or entity in the unlicensed practice of Massage Therapy;
- (5) Misuse of a license certificate, including sale or barter of a license; use of another's license; or allowing use of a license by an unlicensed person or entity;
- (6) Practicing outside the scope of authority, training and education;
- (7) Delegation of professional responsibilities to a person who is not educated or trained to undertake such responsibilities;
- (8) Incapacity or impairment that prevents such Licensee from engaging in the practice of Massage Therapy with reasonable skill, competence, and safety;
- (9) Conviction of:
 - (i) a felony;
 - (ii) any crime related to the practice of Massage Therapy;
- (10) Violations of the laws or rules of this state, violations of the laws or rules of any other state or violations of the laws or rules of the federal government;

disciplinary actions are general, while many of them relate specifically to the license and the license certificate which the Act authorizes the Board to issue.

Note that engaging in acts identified in this Section 402(C) may be used for denial of a license or renewal application as well as to administratively prosecute persons.

- (11) Failure to pay the costs or fines assessed by the Board;
- (12) Conduct that violates the security of any licensure examination, including but not limited to obtaining access to examination questions prior to the exam, reproduction of examination questions, dissemination of examination questions whether for or not for compensation, or any other conduct that breaches the security of a licensure examination or any other examination used to qualify Applicants for licensure or renewal;
- (13) Being subject to any disciplinary sanction from this or any other jurisdiction against any professional license, including any license related to the practice of Massage Therapy;
- (14) Engaging in unprofessional conduct as determined by the Board;
- (15) Negligence, gross negligence, incompetence or gross incompetence;
- (16) Deceptive, untrue, or fraudulent billing, charges, use of title, terms or representations in the practice of Massage Therapy;
- (17) Failure to cooperate in any investigation including the submission of documents duly requested by the Board;

SECTION 402(C)(12). DISCIPLINARY ACTIONS, SUMMARY SUSPENSION, GROUNDS

This section provides, as a basis for administrative discipline, acts that violate the security of the licensure Examination(s) used by the Board. As more incidents of examination security breaches are uncovered, the relevance and importance of this language is emphasized. On many occasions, security breaches are uncovered after the fact and Applicants may have already been licensed. This section allows the Board to pursue administrative remedies against violators of policies which protect the integrity of the examination program.

- (18) Failure to comply with any Board order, including a Final Adverse Action.

SECTION 403. UNLAWFUL PRACTICE AND UNLICENSED PRACTICE

- (A) It is unlawful for any person or entity to:
 - (1) Practice Massage Therapy without a valid license;
 - (2) Own, operate, or manage a business which employs, contracts with, or allows one or more unlicensed persons to offer or provide Massage Therapy;
 - (3) Represent, hold out, offer or advertise that he or she is a licensed Massage Therapist unless licensed by the Board.
- (B) The Board may:
 - (1) Fine any individual whom or entity which, after a hearing, is found by the Board to have unlawfully engaged in the practice of Massage Therapy; such fine is not to exceed (\$_____) for each offense. Each such violation of this Act or Board rules pertaining to having unlawfully engaged in the practice of Massage Therapy shall also constitute a crime punishable upon Conviction as provided in the Criminal Code of this state.
 - (2) Seek a civil penalty, seek an injunction, issue a cease and desist order and/or make a criminal referral in order to restrain a violation of the Act.

SECTION 403. UNLAWFUL PRACTICE AND UNLICENSED PRACTICE

This section establishes both scope and title protections for the profession. It ensures that administrative penalties for unlicensed practice are authorized in an administrative setting.

SECTION 403(B). UNLAWFUL PRACTICE AND UNLICENSED PRACTICE

Section 403(B) ensures that the Board has administrative jurisdiction over all persons who are accused of violating the Act. It also establishes that the Board has the authority to fine persons for the unlicensed practice of the profession. This section is essential to ensuring the board has authority over all persons, not just Applicants and Licensees.

SECTION 404. UNLAWFUL ADVERTISING

- (A) It is unlawful for any person or business entity to:
- (1) Advertise or use the words *Massage Therapy, massage, massage-bodywork therapy, bodywork therapy, or massage-bodywork therapist, bodywork therapist,* or the letters "LMT" or any other words, abbreviations or insignia indicating or implying that Massage Therapy is provided, or supplied, unless such persons providing the services are licensed pursuant to this Act.
 - (2) Advertise a service, the provision of which would constitute a violation of this Act or rules established by the Board.

SECTION 405. CRIMINAL PENALTIES

Nothing herein shall be construed to prohibit criminal prosecutions under the applicable criminal code for violations of this Act.

SECTION 404. UNLAWFUL ADVERTISING

This section ensures that persons cannot hold themselves out as Massage Therapists unless duly licensed. It also requires licensure for persons using the acronyms and derivatives of the various titles used in the profession.

ARTICLE V. OTHER

SECTION 501. SEVERABILITY

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other persons or circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

SECTION 502. EFFECTIVE DATE

This Act shall be in full force and effect on _____(insert date).

SECTION 501. SEVERABILITY

This section establishes that if any part of this Act is unconstitutional or illegal, the Act will remain in full force without the invalid provisions.

SECTION 502. EFFECTIVE DATE

The enactment date and the date that the law goes into effect may be two different dates. For example, the bill will be enacted one year but the next year it will go into effect because funding has to be appropriated. Because this is a Model Practice Act, no date is specified.

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FSMTB

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