

A bill for an act
relating to health occupations; providing registration for massage therapists;
amending Minnesota Statutes 2008, section 116J.70, subdivision 2a; proposing
coding for new law in Minnesota Statutes, chapters 148; 325F; repealing
Minnesota Rules, part 2500.5000.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

MESSAGE THERAPY REGISTRATION

Section 1. [148.981] CITATION.

Sections 148.981 to 148.9886 may be cited as the "Minnesota Massage Therapy Act."

Sec. 2. [148.982] DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Advertise.** "Advertise" means to publish, display, or disseminate information, and includes, but is not limited to, the issuance of any card, sign, direct mail, Internet posting or the causing or permitting in one's name for any sign or marking on or in a building, vehicle, or structure or in a newspaper, magazine, any listing in any directory under a classification or heading that includes the words "massage," "massage therapist," "therapeutic massage," or "massage therapeutic," or commercials broadcast by any means.

Subd. 3. **Advisory council.** "Advisory council" means the Registered Massage Therapist Advisory Council established under section 148.9861.

Subd. 4. **Applicant.** "Applicant" means an individual applying for massage therapy registration or registration renewal.

Subd. 5. **Approved continuing education program.** "Approved continuing education program" means a continuing education program that meets the continuing education requirements in section 148.9881 and is approved by the board.

Subd. 6. **Approved massage therapy program.** "Approved massage therapy program" means a university, college, or other postsecondary education program leading to eligibility for state registration in massage therapy that meets the requirements of section 148.988.

Subd. 7. **Board.** "Board" means the Minnesota Board of Nursing.

Subd. 8. **Client.** "Client" means a recipient of massage therapy services.

Subd. 9. **Contact hour.** "Contact hour" means an instructional session of at least 50 consecutive minutes, excluding coffee breaks, registration, meals without a speaker, and social activities.

Subd. 10. **Credential.** "Credential" means a license, registration, or certification.

Subd. 11. **Competency exam.** "Competency exam" means a massage therapy competency assessment that is approved by the board and is psychometrically valid, based on a job task analysis, and administered by a national testing organization.

Subd. 12. **Health care provider.** "Health care provider" means a person who is credentialed to practice the following: medicine as defined in section 147.081, chiropractic as defined in section 148.01, podiatry as defined in section 153.01, dentistry as defined in section 150A.05, physical therapy as defined in section 148.65, advanced practice nursing as defined in section 148.171, or other state-credentialed providers.

Subd. 13. **Massage or massage therapy.** "Massage" or "massage therapy" means a health care service involving systematic and structured touch and palpation, pressure and movement of the muscles, tendons, ligaments, and fascia, in order to reduce muscle tension, relieve soft tissue pain, improve circulation, increase flexibility, increase activity of the parasympathetic branch of the autonomic nervous system, or to promote general wellness, by use of the techniques and applications described in section 148.983.

Subd. 14. **Massage therapist.** "Massage therapist" means a health care professional registered under this chapter for the practice of massage therapy.

Subd. 15. **Municipality.** "Municipality" means a county, town, city, or other municipal corporation or political subdivision of this state.

Subd. 16. **Physical agent modality.** "Physical agent modality" means modalities that use the properties of light, water, temperature, sound, and electricity to produce a response in soft tissue.

Subd. 17. **Practice of massage therapy.** "Practice of massage therapy" means to engage professionally for compensation or as a volunteer in massage therapy or the instruction of professional technique coursework.

Subd. 18. **Professional organization.** "Professional organization" means an organization that represents massage therapists, was established before the year 2000, offers professional liability insurance as a benefit of membership, has an established code of professional ethics, and is board-approved.

Subd. 19. **State.** "State" means any state in the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, Canadian province, or foreign country, except "this state" means the state of Minnesota.

Sec. 3. **[148.983] MASSAGE THERAPY.**

(a) The practice of massage therapy by a registered massage therapist includes the following:

(1) use of any or all of the following techniques using the hands, forearms, or elbows or handheld mechanical or electrical devices that mimic or enhance the actions of the human hands: effleurage or gliding; petrissage or kneading; vibration and jostling; friction; tapotement or percussion; compression; fascial manipulation; passive stretching within the normal anatomical range of motion; and

(2) application and use of any of the following: oils, lotions, gels, rubbing alcohol, or powders for the purpose of lubricating skin to be massaged; essential oils, or creams, with the exception of prescription-requiring medicinal creams; hot or cold stones; salt glows and wraps; and ice.

(b) The practice of massage therapy does not include any of the following:

(i) diagnosing any illness or disease; or

(ii) changing recommendations of a state-credentialed health care provider without consulting that health care provider prior to altering a course of recommended massage therapy;

(2) prescription of drugs or medicines;

(3) intentional adjusting, manipulating, or mobilizing any articulations of the body or spine, including by means of a high velocity, low amplitude thrusting force or as described in section 146.23 or 148.01; or

(4) application of physical agent modalities or injection therapy.

Sec. 4. **[148.984] LIMITATIONS ON PRACTICE; REFERRALS.**

If a medical condition is beyond the scope of practice established by this chapter or by rules of the board for a registered massage therapist, the massage therapist must refer the client to a health care provider as defined in this chapter.

Sec. 5. **[148.985] PROTECTED TITLES AND RESTRICTIONS ON USE.**

Subdivision 1. **Designation.** An individual regulated by this chapter is designated as a "registered massage therapist" or "RMT."

Subd. 2. **Title protection.** No individual may use the title "registered massage therapist," or use, in connection with the individual's name, the letters "RMT," or any other titles, words, letters, abbreviations, or insignia indicating or implying that the individual is registered or eligible for registration by this state as a registered massage therapist unless the individual has been registered as a massage therapist according to this chapter.

Subd. 3. **Identification of practitioners.** (a) A massage therapist registered in Minnesota shall be identified as a "registered massage therapist." If not written in full, this must be designated as RMT. A student attending a massage therapy training program and providing massage therapy services to the public as part of the student's training must be identified as a "Student Massage Therapist." This abbreviated designation is "Student MT."

(b) The board may adopt rules for the implementation of this section, including the identification of terms or references that may be used only by registered massage therapists as necessary to protect the public.

(c) A practitioner who is credentialed by another state, or who holds certification from organizations, agencies, or educational providers is not prohibited from using those terms, letters, or any figures, signs, or insignia to indicate that credential in advertising, provided the state and the credentialing body are clearly identified in the advertisement.

(d) A practitioner who is licensed in another state may advertise as being a licensed practitioner provided the state and the licensing agency are clearly identified in the advertisement.

Subd. 4. **Other health care providers.** Nothing in this chapter may be construed to prohibit, nor restrict the practice of, nor require massage therapy registration of any of the following:

(1) a person holding a credential granted by this state, who utilizes massage therapy techniques within the scope of that credential, provided the practitioner does not imply that they are registered under this chapter; or

(2) the natural health procedures, practices, and treatments in section 146A.01, subdivision 4, provided that those services are not advertised, designated, or implied to

be from a registered massage therapist or other terms or abbreviations protected under this chapter.

Sec. 6. **[148.986] POWERS OF BOARD.**

The board, acting with the advice of the Registered Massage Therapist Advisory Council, shall issue registrations to duly qualified applicants and shall exercise the following powers and duties:

- (1) adopt rules necessary to effect the provisions of sections 148.982 to 148.9886;
- (2) conduct a competency exam that an applicant may use as the basis for establishing competence to be registered under section 148.987;
- (3) cause the prosecution of all registrants or applicants for violating sections 148.982 to 148.9886 and have power to incur any associated expense;
- (4) impose discipline as described in section 148.9884;
- (5) maintain a record of names and addresses of massage therapists registered by this chapter;
- (6) keep a permanent record of all its proceedings; and
- (7) employ and establish the duties of personnel necessary to carry on its work.

Sec. 7. **[148.9861] REGISTERED MASSAGE THERAPIST ADVISORY COUNCIL.**

Subdivision 1. **Creation; membership.** (a) The Registered Massage Therapist Advisory Council is created and is composed of seven members appointed by the board. All members must have been residents of this state for at least three years prior to appointment. The advisory council consists of:

- (1) three public members, as defined in section 214.02; and
- (2) four members who, except for initial appointees, are registered massage therapists.

(b) Initial appointees shall possess the qualifications necessary to become registered massage therapists and must do so as soon as applications for registration are available. A person may not be appointed to serve more than two consecutive full terms.

Subd. 2. **Administration.** The advisory council shall be organized and administered under section 15.059. The council shall not expire.

Subd. 3. **Duties.** The advisory council shall advise the board regarding:

- (1) standards of practice and a code of ethics for registered massage therapists;
- (2) distribution of information regarding massage therapist standards;
- (3) enforcement of sections 148.982 to 148.9886;

(4) applications and make recommendations of applicants for registration or registration renewal;

(5) complaints and recommendations regarding disciplinary matters and proceedings according to sections 214.10, 214.103, and 214.13, subdivisions 6 and 7;

(6) competency exams and approval of continuing education programs; and

(7) perform other duties authorized for advisory councils under chapter 214, or as directed by the board.

Sec. 8. **[148.987] REGISTRATION REQUIREMENTS.**

Subdivision 1. **Registration.** To be eligible for registration under this chapter, an applicant must:

(1) pay fees under section 148.9886;

(2) submit to procedures specified by the board for obtaining a criminal background check. The applicant shall pay fees associated with obtaining the criminal background check. The background check shall include records of the Minnesota Bureau of Criminal Apprehension and the Federal Bureau of Investigation and the results shall be forwarded directly to the board; and

(3) file a written application on a form provided by the board that includes:

(i) the applicant's name, Social Security number, home address and telephone number, business address and telephone number, and business setting;

(ii) provide proof, as required by the board, of:

(A) having obtained a high school diploma or its equivalent;

(B) being 18 years of age or older;

(C) current cardiopulmonary resuscitation and first aid certification; and

(D) current professional liability insurance coverage, with a minimum of \$1,000,000 of coverage per occurrence;

(iii) unless registered under subdivision 3 or 4, evidence satisfactory to the board of the successful completion of an approved education program;

(iv) unless registered under subdivision 3 or 4, evidence satisfactory to the board of having passed a board-approved competency exam;

(v) a description of any continuing education programming in which the applicant claims or advertises competence;

(vi) a list of credentials or memberships held in other states or from private credentialing or professional organizations;

(vii) a description of any other state or municipality's refusal to credential the applicant;

(viii) a description of all professional disciplinary actions initiated against the applicant in any jurisdiction;

(ix) any history of drug or alcohol abuse, and any misdemeanor or felony conviction;

(x) additional information as requested by the board;

(xi) the applicant's signature on a statement that the information in the application is true and correct to the best of the applicant's knowledge; and

(xii) the applicant's signature on a waiver authorizing the board to obtain access to the applicant's records in this state or any other state in which the applicant has completed an education program approved by the board or engaged in the practice of massage therapy.

Subd. 2. Registration prohibited. The board may deny an application for registration if the applicant:

(1) has been convicted in this state of any of the following crimes, or in another state of equivalent crimes:

(i) prostitution as defined under section 609.321, 609.324, and 609.3242;

(ii) sexual attack as defined under section 611A.21;

(iii) criminal sexual conduct under sections 609.342 to 609.3451, or 609.3453; or

(iv) is a registered sex offender under section 243.166;

(2) has had the ability to practice the natural health procedures, practices, and treatments in chapter 146A revoked, suspended, or limited with conditions under the provisions of chapter 146A, if the board determines the denial is necessary to protect the public; or

(3) is charged or under investigation for complaints that would constitute a violation of the laws or rules established for the practice of massage therapy in this or any other state, the applicant shall not be registered until the complaints have been resolved in the applicant's favor. If a complaint is resolved in favor of the complainant, the application for registration may be denied.

Subd. 3. Registration by endorsement. (a) To be eligible for registration by endorsement, the applicant shall:

(1) meet the requirements for registration in subdivision 1, clauses (1), (2), and (3), items (i), (ii), and (v) to (xii); and

(2) provide proof of a current and unrestricted credential for the practice of massage therapy in another state that has credentialing requirements at least equivalent to the requirements under this chapter. Proof shall include records as required by rules of the board.

(b) In the event that a disciplinary proceeding or unresolved complaint is pending for a complaint regarding an action of the applicant that would constitute a violation

of sections 148.982 to 148.9886, or rules adopted by the board, the applicant shall not be registered in this state until the proceeding or complaint has been resolved in the applicant's favor. If a complaint is resolved in favor of the complainant, the application for licensure may be denied.

(c) Registrations issued by endorsement shall expire on the same schedule and be renewed by the same procedures as registrations issued under subdivision 1.

(d) An applicant for registration by endorsement may apply to the board for a temporary permit under subdivision 5.

Subd. 4. Registration by grandfathering. (a) To be eligible for registration by grandfathering, the applicant shall:

(1) meet the requirements for registration in subdivision 1, clauses (1), (2), and (3), items (i), (ii), and (v) to (xii); and

(2) provide proof specified by the board demonstrating the applicant has met at least one of the following qualifications:

(i) successful completion of at least 500 hours of supervised classroom and hands-on instruction relating to massage therapy which may be established by an official transcript, certificate of completion, or other record as approved by the board;

(ii) successful completion of one of the board-approved competency exams which shall be established by submitting records as required by the board;

(iii) employment for at least the previous two years prior to the effective date of sections 148.981 to 148.9886 in the practice of massage therapy which shall be established by Internal Revenue Service income tax return forms, business records, or other records as approved by the board; or

(iv) active membership in a professional organization for at least two years prior to the effective date of sections 148.981 to 148.9886 which shall be established by a letter verifying the applicant's initial membership date and current standing sent directly to the board from the professional organization, or other records as approved by the board.

(b) Registrations issued by grandfathering shall expire on the same schedule and be renewed by the same procedures as registrations issued under subdivision 1.

(c) Registration by grandfathering is effective for one year after the first date the board has made applications available.

(d) An applicant for registration by grandfathering may apply to the board for a temporary permit under subdivision 5.

Subd. 5. Temporary permit. The board may issue a temporary permit to practice as a registered massage therapist to an applicant eligible for registration under this section if the application for registration is complete, all applicable requirements in this section

have been met, and the fee required in section 148.9886 has been paid. The temporary permit is valid until the board makes a decision on the massage therapist's application for registration.

Sec. 9. **[148.9871] EXPIRATION AND RENEWAL.**

Subdivision 1. Registration expiration. Registrations issued under section 148.987 expire annually.

Subd. 2. Renewal. To be eligible for registration renewal a registrant must:

(1) annually, or as determined by the board, complete a renewal application on a form provided by the board;

(2) submit the renewal fee;

(3) provide evidence every two years of a total of 12 contact hours of approved continuing education in section 148.9881; and

(4) submit any additional information requested by the board to clarify information presented in the renewal application. The information must be submitted within 30 days after the board's request, or the renewal request is nullified.

Subd. 3. Change of address. A registrant who changes addresses must inform the board within 30 days, in writing, of the change of address. Notices or other correspondence mailed to or served on a registrant at the registrant's current address on file shall be considered received by the registrant.

Subd. 4. Registration renewal notice. At least 60 days before the registration renewal date, the board shall send out a renewal notice to the last known address of the registrant on file. The notice must include a renewal application and a notice of fees required for renewal. The notice must inform the registrant that registration will expire without further action by the board if an application for registration renewal is not received before the deadline for renewal. The registrant's failure to receive this notice shall not relieve the registrant of the obligation to meet the deadline and other requirements for registration renewal. Failure to receive this notice is not grounds for challenging expiration of registered status.

Subd. 5. Renewal deadline. The renewal application and fee must be postmarked on or before October 1 of the year of renewal or as determined by the board. If the postmark is illegible, the application shall be considered timely if received by the third working day after the deadline.

Subd. 6. Inactive status and return to active status. (a) A registration may be placed in inactive status upon application to the board by the registrant and upon payment of an inactive status fee.

(b) A registrant seeking restoration to active from inactive status must pay the current renewal fees and all unpaid back inactive fees. The registrant must meet the criteria for renewal specified in subdivision 7, including continuing education hours equivalent to one hour for each month of inactive status, prior to submitting an application to regain registered status. If the inactive status extends beyond five years, a qualifying score on a competency exam is required.

Subd. 7. Registration following lapse of registration status for two years or less.
For an individual whose registration status has lapsed for two years or less, to regain registration status, the individual must:

- (1) apply for registration renewal according to subdivision 2;
- (2) document compliance with the continuing education requirements in section 148.9881 since the registrant's initial registration or last renewal; and
- (3) submit the fees required in section 148.9886 for the period not registered, including the fee for late renewal.

Subd. 8. Cancellation due to nonrenewal. The board shall not renew, reissue, reinstate, or restore a registration that has lapsed and has not been renewed within two years. A registrant whose registration is canceled for nonrenewal must obtain a new registration by applying for registration and fulfilling all requirements then in existence for initial registration as a massage therapist.

Subd. 9. Cancellation of registration in good standing. (a) A registrant holding active registration as a massage therapist in this state may, upon approval of the board, be granted registration cancellation if the board is not investigating the person as a result of a complaint or information received or if the board has not begun disciplinary proceedings against the registrant. This action by the board shall be reported as a cancellation of registration in good standing.

(b) A registrant who receives board approval for registration cancellation is not entitled to a refund of any registration fees paid for the registration period in which cancellation of the registration occurred.

(c) To obtain registration after cancellation, a registrant must obtain a new registration by applying for registration and fulfilling the requirements then in existence for obtaining initial registration as a massage therapist.

Sec. 10. [148.988] MASSAGE THERAPY PROGRAM.

Subdivision 1. Initial approval. An institution desiring to conduct a massage therapy program from which graduates will be eligible for registration under section

11.1 148.987 shall apply to the board, pay fees under section 148.9886, and submit evidence
11.2 that the institution is:

11.3 (1) teaching or prepared to teach a program of at least 500 contact hours of combined
11.4 massage therapy theory and practice training;

11.5 (2) licensed by the Minnesota Office of Higher Education or equivalent agency in
11.6 another state;

11.7 (3) accredited by an agency recognized by the United States Secretary of Education
11.8 for accrediting such programs or institutions:

11.9 (i) schools without accreditation must meet the requirements of clauses (1) and
11.10 (2), must be in the accreditation application process, and must gain accreditation within
11.11 two years of the effective date of sections 148.981 to 148.9886 or within two years of
11.12 commencing operations as a massage therapy program, whichever is later; and

11.13 (ii) an applicant for registration who graduates from a program prior to the program
11.14 becoming accredited must pass an approved competency exam; and

11.15 (4) prepared to meet other standards established by law and by the board.

11.16 Subd. 2. **Continuing approval.** An approved program shall annually make
11.17 application to continue approval based on the conditions of subdivision 1.

11.18 Subd. 3. **Loss of approval.** If the board determines that an approved massage
11.19 therapy program is not maintaining the standards required by applicable law and rules,
11.20 notice in writing specifying the defect shall be given to the program. If a program fails to
11.21 correct these conditions to the satisfaction of the board within a reasonable time set in
11.22 the notice of defect, approval of the program may be revoked and the program shall be
11.23 removed from the list of approved massage therapy programs.

11.24 Subd. 4. **Reinstatement of approval.** The board may reinstate approval of a
11.25 massage therapy program upon submission of satisfactory evidence that its program of
11.26 theory and practice, state licensure, and accreditation meets the standards required by law
11.27 and rules then in effect.

11.28 Sec. 11. **[148.9881] CONTINUING EDUCATION.**

11.29 Subdivision 1. **Number of required contact hours.** A registered massage therapist
11.30 shall complete during every two-year period at least the equivalent of 12 contact hours of
11.31 continuing education in programs approved by the board.

11.32 Subd. 2. **Approved programs.** The board may approve continuing education
11.33 programs that have been taught, sponsored, or approved by:

11.34 (1) an approved credentialing or professional organization;

11.35 (2) state licensed health care facility;

12.1 (3) an accredited college or university; or

12.2 (4) a board-approved school.

12.3 Subd. 3. **Approval of continuing education programs.** The board may also
12.4 approve continuing education programs that do not meet the requirements of subdivision 2
12.5 but pay fees under section 148.9886 and meet all of the following criteria:

12.6 (1) the program content directly relates to the practice of massage therapy;

12.7 (2) each member of the program faculty is knowledgeable in the subject matter as
12.8 demonstrated by a degree from an accredited education program, verifiable experience in
12.9 the field of massage therapy, special training in the subject matter, or experience teaching
12.10 in the subject area;

12.11 (3) the program lasts at least 50 minutes per contact hour;

12.12 (4) there are specific, measurable, written objectives, consistent with the program,
12.13 describing the expected outcomes for the participants; and

12.14 (5) the program sponsor has a mechanism to verify participation and maintains
12.15 attendance records for three years.

12.16 Subd. 4. **Accumulation of contact hours.** A registrant may not apply contact hours
12.17 acquired in one two-year reporting period to a future continuing education reporting
12.18 period.

12.19 Subd. 5. **Verification of continuing education.** The board shall periodically select
12.20 a random sample of registrants and require those registrants to supply the board with
12.21 evidence of having completed the continuing education to which they attested.

12.22 Subd. 6. **Continuing education topics.** Continuing education program topics may
12.23 include, but are not limited to, techniques, modalities, and theory directly relating to
12.24 the practice of massage therapy, business practices, pathology, prevention of spreading
12.25 disease and medical errors, treatment contraindications, anatomy and physiology, areas of
12.26 professional ethics, research literacy, or other coursework as approved by the board.

12.27 Subd. 7. **Continuing education exemptions.** The board may exempt any person
12.28 holding a registration under section 148.987 from some or all of the requirements of
12.29 subdivision 1 upon application showing evidence satisfactory to the board of inability to
12.30 comply with the requirements because of physical or mental condition or because of other
12.31 unusual or extenuating circumstances. No person may be exempted from the requirements
12.32 of subdivision 1 more than once in any five-year period.

12.33 Sec. 12. **[148.9882] BOARD ACTION ON APPLICATIONS.**

12.34 (a) The board shall act on each application for registration according to paragraphs

12.35 (b) to (d).

(b) The board or advisory council shall determine if the applicant meets the requirements for registration or renewal under sections 148.987 and 148.9871. The board or advisory council may investigate information provided by an applicant to determine whether the information is accurate and complete, including requesting additional information or documentation.

(c) The board shall notify each applicant in writing of action taken on the application, the grounds for denying registration if registration is denied, and the applicant's right to review under paragraph (d).

(d) An applicant denied registration may make a written request to the board, within 30 days of the board's notice, to appear before the advisory council and for the advisory council to review the board's decision to deny the applicant's registration. After reviewing the denial, the advisory council shall make a recommendation to the board as to whether the denial shall be affirmed. An applicant is allowed only one request for review per registration period.

Sec. 13. [148.9883] GROUNDS FOR DISCIPLINARY ACTION;
MALTREATMENT OF MINORS.

Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or condition the registration of a massage therapist registered or applying for registration as a massage therapist or may otherwise discipline a registrant as described in section 148.9884. The fact that massage therapy may be a less customary approach to health care shall not constitute the basis for disciplinary action per se. The following are grounds for disciplinary action:

(1) failure to demonstrate the qualifications or satisfy the requirements for registration as a massage therapist contained in sections 148.982 to 148.9886, or rules of the board. A person applying for registration has the burden of demonstrating the required qualifications or satisfy the requirements;

(2) engaging in false, fraudulent, deceptive, or misleading advertising, including, but not limited to:

(i) advertising, representing, or presenting as a "Registered Massage Therapist" or any abbreviation or derivative of this to indicate this title, when the registration is not valid or current for any reason;

(ii) advertising, representing, or presenting as a "Licensed Massage Therapist" or any abbreviation or derivative of this to indicate this title, unless the practitioner currently holds a valid state license in another state and clearly indicates what state the credential is held in;

14.1 (iii) advertising to offer a service that would constitute a violation of sections
14.2 148.981 to 148.9886 or rules adopted by the board shall be considered grounds for
14.3 discipline, regardless of whether actual injury to a client is established; and

14.4 (iv) using fraud, deceit, or misrepresentation when communicating with the general
14.5 public, health care providers, or other business professionals;

14.6 (3) falsified information in a massage therapy registration or renewal application
14.7 or attempting to obtain registration, registration renewal, or reinstatement by fraud,
14.8 deception, or misrepresentation, or aided and abetted any of these acts;

14.9 (4) engaging in conduct with a client that is sexual or may reasonably be interpreted
14.10 by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning
14.11 to a client, or engaging in sexual exploitation of a client, without regard to who initiates
14.12 the behaviors;

14.13 (5) failure to refer a client to a general health care provider when the services
14.14 required by the client are beyond the level of competence of the massage therapist or
14.15 beyond the scope of practice of massage therapy in section 148.983;

14.16 (6) committing an act of gross malpractice, negligence, or incompetency, or failing
14.17 to practice massage therapy with the level of care, skill, and treatment that is recognized
14.18 by a reasonably prudent massage therapist as being acceptable under similar conditions
14.19 and circumstances, regardless of whether actual injury to the client occurs;

14.20 (7) actual or potential inability to practice massage therapy with reasonable skill
14.21 and safety to clients by reason of illness, as a result of any mental or physical condition,
14.22 or use of alcohol, drugs, chemicals, or any other material, regardless of whether actual
14.23 injury to the client occurs;

14.24 (8) being adjudicated as mentally incompetent, mentally ill, a chemically dependent
14.25 person, or a person dangerous to the public by a court of competent jurisdiction, within
14.26 or without this state may be considered as evidence of the inability to practice massage
14.27 therapy;

14.28 (9) being the subject of disciplinary action as a massage therapist by another state or
14.29 jurisdiction and the board or advisory council determines that the cause of the disciplinary
14.30 action would be a violation under this state's laws or rules if the violation occurred in
14.31 this state;

14.32 (10) failure to notify the board of having had a credential revoked, suspended,
14.33 or any other disciplinary action taken including restrictions on the right to practice, or
14.34 an application for credential refused, revoked, suspended, or otherwise disciplined by
14.35 authorities of another state, territory, or country; or surrendered or voluntarily terminated a

15.1 credential during a board investigation of a complaint, as part of a disciplinary order, or
15.2 while under a disciplinary order;

15.3 (11) being convicted of or pled guilty or nolo contendere to a felony or other
15.4 crime, an element of which is dishonesty or fraud, or proven to have engaged in acts
15.5 or practice showing that the applicant or registrant is incompetent or has engaged in
15.6 conduct reflecting adversely on the applicant's or registrant's ability or fitness to engage in
15.7 the practice of massage therapy;

15.8 (12) practicing or offering to practice beyond the scope of the practice of massage
15.9 therapy;

15.10 (13) improperly managing client records and information including, but not limited
15.11 to, failure to maintain adequate client records, comply with a client's request made under
15.12 sections 144.291 to 144.298, furnish a client record or report required by law;

15.13 (14) revealing a privileged communication from or relating to a client except when
15.14 otherwise required or permitted by law;

15.15 (15) providing massage therapy services that are in any way linked to the financial
15.16 gain of a referral source;

15.17 (16) obtaining money, property, or services from a client, other than reasonable
15.18 fees for services provided to the client, through the use of undue influence, harassment,
15.19 duress, deception, or fraud;

15.20 (17) engaging in abusive or fraudulent billing practices, including violations of
15.21 federal Medicare and Medicaid laws or state medical assistance laws;

15.22 (18) failure to consult the client's health care provider who recommended a course
15.23 of massage therapy treatment if the treatment needs to be altered from the original
15.24 written recommendations to conform with standards in the massage therapy field or the
15.25 practitioner's level of training or experience;

15.26 (19) failure to cooperate with an investigation of the board or its representative,
15.27 including responding fully and promptly to any question raised by or on behalf of the
15.28 board relating to the subject of the investigation, executing all releases requested by
15.29 the board, providing copies of client records, requested by the board to assist it in its
15.30 investigation, and appearing at conferences or hearings scheduled by the board or its staff;

15.31 (20) interfering with an investigation or disciplinary proceeding, including by willful
15.32 misrepresentation of facts or by the use of threats or harassment to prevent a person from
15.33 providing evidence in a disciplinary proceeding or any legal action;

15.34 (21) violating a law, rule, order, or agreement for corrective action that the board
15.35 issued or is otherwise authorized or empowered to enforce;

(22) failure to report to the board other massage therapists who commit violations of this chapter; or

(23) failure to notify the board, in writing, of the entry of a final judgment by a court of competent jurisdiction against the registrant for malpractice of massage therapy or any settlement by the registrant in response to charges or allegations of malpractice of massage therapy.

The notice in clause (23) must be provided to the board within 60 days after the entry of the judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action.

Subd. 2. **Maltreatment of minors.** Nothing in sections 148.981 to 148.9886 shall restrict the ability of a local or state agency to take action regarding the maltreatment of minors under section 609.378 or 626.556. A parent who obtains massage therapy services for the parent's minor child is not relieved of the duty to seek necessary medical care consistent with the requirements of sections 609.378 and 626.556. A registered massage therapist who is providing services to a child who is not receiving necessary medical care must make a report under section 626.556. A registered massage therapist is a mandated reporter under section 626.556, subdivision 3.

Subd. 3. **Evidence.** In disciplinary actions alleging a violation of subdivision 1, a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of the violation.

Subd. 4. **Examination; access to medical data.** (a) The board may take the following actions if it has probable cause to believe that grounds for disciplinary action exist under subdivision 1, clause (7) or (8):

(1) direct the applicant or massage therapist to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a massage therapist registered under sections 148.987 to 148.9871 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege. Failure of the applicant or massage therapist to submit to an examination when directed constitutes an admission of the allegations against the applicant or massage therapist, unless the failure was due to circumstances beyond the person's control, and the board may enter a default and final order without taking testimony or allowing evidence to be presented. A massage therapist affected under this paragraph shall, at reasonable intervals, be given an opportunity to demonstrate that the competent practice of massage therapy can be resumed with reasonable skill and safety to clients.

Neither the record of proceedings nor the order entered by the board in a proceeding under this paragraph may be used against a massage therapist in any other proceeding; and

(2) notwithstanding sections 13.384, 144.651, and 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a registered massage therapist or applicant for registration without that person's consent.

The medical data may be requested from a provider as defined in section 144.291, subdivision 2, paragraph (h), an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released according to a written request under this subdivision unless the information is false and the provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals as defined in section 13.02.

Sec. 14. [148.9884] DISCIPLINE; REPORTING.

For purposes of this chapter, registered massage therapists and applicants are subject to sections 148.262 to 148.266.

Sec. 15. [148.9885] EFFECT ON MUNICIPAL ORDINANCES.

Subdivision 1. **License authority.** The provisions of sections 148.981 to 148.9886 preempt the licensure and regulation of a registered massage therapist by a municipality, including, without limitation, conducting a criminal background investigation and examination of a massage therapist or applicant for a municipal credential to practice massage therapy.

Subd. 2. **Business license or permit.** The provisions of this chapter do not prohibit a municipality from requiring a massage therapist to obtain a license or permit to transact business within the jurisdiction of the municipality, if the license or permit is required of other persons, regardless of occupation or profession, who transact business within the jurisdiction of the municipality. A massage therapist working under a business license or permit must follow the requirement in section 325F.816.

Subd. 3. **Prosecuting authority.** The provisions of this chapter do not prohibit any municipality of this state from prosecuting:

(1) an unregistered person engaged in the practice of massage therapy; or

(2) a registered massage therapist who is engaged in unlawful conduct.

Sec. 16. [148.9886] FEES.

18.1 Subdivision 1. Fees. Fees are as follows:

18.2 (1) initial registration with application, \$272;

18.3 (2) annual registration renewal, \$172;

18.4 (3) initial school approval with accreditation, \$300;

18.5 (4) initial school approval without accreditation, \$450;

18.6 (5) school approval renewal, \$175;

18.7 (6) continuing education program approval, \$40;

18.8 (7) duplicate registration certificate, \$30;

18.9 (8) late fee, \$40;

18.10 (9) inactive status and inactive to active status reactivation, \$100;

18.11 (10) temporary permit, \$50; and

18.12 (11) returned check, \$35.

18.13 Subd. 2. Proration of fees. The board may prorate the initial registration fee. All

18.14 registrants are required to pay the full fee upon registration renewal.

18.15 Subd. 3. **Penalty fee for late renewals.** An application for registration renewal
18.16 submitted after the deadline must be accompanied by a late fee in addition to the required
18.17 fees.

18.18 Subd. 4. **Nonrefundable fees.** All of the fees in subdivision 1 are nonrefundable.

18.19 Subd. 5. **Deposit.** Fees collected by the board under this section shall be deposited
18.20 into the state government special revenue fund.

18.21 **Sec. 17. EFFECTIVE DATE.**

18.22 This article is effective August 1, 2010.

ARTICLE 2

CONFORMING AMENDMENTS

18.25 Section 1. Minnesota Statutes 2008, section 116J.70, subdivision 2a, is amended to
18.26 read:

18.27 Subd. 2a. **License; exceptions.** "Business license" or "license" does not include
18.28 the following:

18.29 (1) any occupational license or registration issued by a licensing board listed in
18.30 section 214.01 or any occupational registration issued by the commissioner of health
18.31 pursuant to section 214.13;

18.32 (2) any license issued by a county, home rule charter city, statutory city, township, or
18.33 other political subdivision;

- 19.1 (3) any license required to practice the following occupation regulated by the
19.2 following sections:
- 19.3 (i) abstracters regulated pursuant to chapter 386;
 - 19.4 (ii) accountants regulated pursuant to chapter 326A;
 - 19.5 (iii) adjusters regulated pursuant to chapter 72B;
 - 19.6 (iv) architects regulated pursuant to chapter 326;
 - 19.7 (v) assessors regulated pursuant to chapter 270;
 - 19.8 (vi) athletic trainers regulated pursuant to chapter 148;
 - 19.9 (vii) attorneys regulated pursuant to chapter 481;
 - 19.10 (viii) auctioneers regulated pursuant to chapter 330;
 - 19.11 (ix) barbers and cosmetologists regulated pursuant to chapter 154;
 - 19.12 (x) boiler operators regulated pursuant to chapter 183;
 - 19.13 (xi) chiropractors regulated pursuant to chapter 148;
 - 19.14 (xii) collection agencies regulated pursuant to chapter 332;
 - 19.15 (xiii) dentists, registered dental assistants, and dental hygienists regulated pursuant
19.16 to chapter 150A;
 - 19.17 (xiv) detectives regulated pursuant to chapter 326;
 - 19.18 (xv) electricians regulated pursuant to chapter 326;
 - 19.19 (xvi) mortuary science practitioners regulated pursuant to chapter 149A;
 - 19.20 (xvii) engineers regulated pursuant to chapter 326;
 - 19.21 (xviii) insurance brokers and salespersons regulated pursuant to chapter 60A;
 - 19.22 (xix) certified interior designers regulated pursuant to chapter 326;
 - 19.23 (xx) midwives regulated pursuant to chapter 147D;
 - 19.24 (xxi) nursing home administrators regulated pursuant to chapter 144A;
 - 19.25 (xxii) optometrists regulated pursuant to chapter 148;
 - 19.26 (xxiii) osteopathic physicians regulated pursuant to chapter 147;
 - 19.27 (xxiv) pharmacists regulated pursuant to chapter 151;
 - 19.28 (xxv) physical therapists regulated pursuant to chapter 148;
 - 19.29 (xxvi) physician assistants regulated pursuant to chapter 147A;
 - 19.30 (xxvii) physicians and surgeons regulated pursuant to chapter 147;
 - 19.31 (xxviii) plumbers regulated pursuant to chapter 326;
 - 19.32 (xxix) podiatrists regulated pursuant to chapter 153;
 - 19.33 (xxx) practical nurses regulated pursuant to chapter 148;
 - 19.34 (xxxi) professional fund-raisers regulated pursuant to chapter 309;
 - 19.35 (xxxii) psychologists regulated pursuant to chapter 148;

20.1 (xxxiii) real estate brokers, salespersons, and others regulated pursuant to chapters
20.2 82 and 83;
20.3 (xxxiv) registered nurses regulated pursuant to chapter 148;
20.4 (xxxv) securities brokers, dealers, agents, and investment advisers regulated
20.5 pursuant to chapter 80A;
20.6 (xxxvi) steamfitters regulated pursuant to chapter 326;
20.7 (xxxvii) teachers and supervisory and support personnel regulated pursuant to
20.8 chapter 125;
20.9 (xxxviii) veterinarians regulated pursuant to chapter 156;
20.10 (xxxix) water conditioning contractors and installers regulated pursuant to chapter
20.11 326;
20.12 (xl) water well contractors regulated pursuant to chapter 103I;
20.13 (xli) water and waste treatment operators regulated pursuant to chapter 115;
20.14 (xlii) motor carriers regulated pursuant to chapter 221;
20.15 (xliii) professional firms regulated under chapter 319B;
20.16 (xliv) real estate appraisers regulated pursuant to chapter 82B;
20.17 (xlv) residential building contractors, residential remodelers, residential roofers,
20.18 manufactured home installers, and specialty contractors regulated pursuant to chapter 326;
20.19 (xlvi) licensed professional counselors regulated pursuant to chapter 148B; or
20.20 (xlvii) registered massage therapists regulated pursuant to chapter 148;
20.21 (4) any driver's license required pursuant to chapter 171;
20.22 (5) any aircraft license required pursuant to chapter 360;
20.23 (6) any watercraft license required pursuant to chapter 86B;
20.24 (7) any license, permit, registration, certification, or other approval pertaining to a
20.25 regulatory or management program related to the protection, conservation, or use of or
20.26 interference with the resources of land, air, or water, which is required to be obtained
20.27 from a state agency or instrumentality; and
20.28 (8) any pollution control rule or standard established by the Pollution Control
20.29 Agency or any health rule or standard established by the commissioner of health or any
20.30 licensing rule or standard established by the commissioner of human services.

20.31 **Sec. 2. [325F.816] MUNICIPAL OR CITY BUSINESS LICENSE; MASSAGE.**

20.32 An individual who is issued a municipal or city business license to practice massage
20.33 is prohibited from advertising as a licensed massage therapist unless the individual has
20.34 received a professional credential from another state; is current in licensure; and remains
20.35 in good standing under the credentialing state's requirements.

- 21.1 Sec. 3. REPEALER.
- 21.2 Minnesota Rules, part 2500.5000, is repealed.

APPENDIX
Article locations in H1503-2

ARTICLE 1 MESSAGE THERAPY REGISTRATION Page.Ln 1.7
ARTICLE 2 CONFORMING AMENDMENTS Page.Ln 18.23