

## ACT 99

H.B. NO. 2037-86

A Bill for an Act Relating to Massage.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 452, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§452- **Disciplinary actions.** (a) The board may take disciplinary action against any licensee, including, but not limited to, revocation, suspension, fine, or a combination thereof, or may refuse to grant or renew a license for any of the following reasons:

- (1) Procuring a license through fraud, misrepresentation, or deceit or permitting an unlicensed person to perform activities which require a license under this chapter;
- (2) Conviction of any crime involving moral turpitude;
- (3) Practicing massage while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Failure to display a license as provided in this chapter;
- (5) Professional misconduct, gross carelessness, or manifest incapacity in the practice of massage;
- (6) Violating this chapter or the rules adopted pursuant thereto;
- (7) Failing to comply with a board order;
- (8) Any other conduct constituting fraudulent or dishonest dealings; and
- (9) Making a false statement on any document submitted or required to be filed by this chapter.

(b) Any person who violates any of the provisions of this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.”

SECTION 2. Chapter 452, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§452- **Right of injunction.** The department of commerce and consumer affairs, in addition to any other remedies available, may apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter.”

SECTION 3. Chapter 452, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§452- **Cumulative remedies.** The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 4. Section 452-6, Hawaii Revised Statutes, is amended to read as follows:

“§452-6 Powers and duties of the board. (a) The board shall adopt rules pursuant to chapter 91 for the purposes of this chapter.

(b) The board may grant, or upon proof of violation of this chapter or the rules adopted by the board governing the practice under this chapter, revoke, suspend, or refuse to renew a license as provided in this chapter.

[(c) The board may refuse to grant a license to or may refuse to renew or may revoke a license of a person found guilty of fraud in meeting any requirement of this chapter or an offense involving moral turpitude; addicted to liquor or drugs; or failing to display a license as provided in this chapter.

(d) (c) The board shall adopt rules pursuant to chapter 91 relating to massage therapist apprenticeship including rules establishing qualifications for apprenticeship permits and the requirements to be met by massage therapist apprentices prior to taking the massage therapist license examination.

[(e) (d) The executive secretary, under the direction of the board, shall issue subpoenas for the attendance of witnesses before the board with the same effect as if [they] the subpoenas were issued in an action in the circuit court, and shall, under the direction of the board, administer oaths in all matters pertaining to the duties of [his] the executive secretary's office or connected with the administration of the affairs of the board. Disobedience of [such] a subpoena and false swearing before the executive secretary or the board shall be attended by the same consequences and be subject to the same penalties as if [such] the disobedience or false swearing occurred in an action in the circuit court.”

SECTION 5. Section 452-13, Hawaii Revised Statutes, is amended to read as follows:

“§452-13 Requisites for admission to examination and licensing of massage therapists, massage establishments, and out-call massage services. (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing.

(1) A nonrefundable application fee [and an examination fee, which shall be refunded only if the board finds that the applicant is not qualified to take the license examination,] shall be paid to the board at the time of the application.

(2) [The board shall satisfy itself as to the good moral character of the applicant, may require the submission of certification as to good moral character by reputable citizens, and, in its discretion, may independently investigate the applicant's moral character.] The examination fee shall be refunded only if the applicant is found not qualified to take the license examination.

(3) An applicant for examination shall have spent at least six months as a massage therapist apprentice and have met all other requirements set for apprentices by the board pursuant to section 452-6(d).

[(4) The board may waive the examination of an applicant upon the payment of the application fee and if the applicant is licensed in another state, territory, or the District of Columbia, wherein the license requirements are found by the board to be comparable or more stringent than the requirements in force in this State.]

(b) An applicant desiring to license a massage establishment or an out-call massage service shall file with the board a written application under oath, on a form prescribed and supplied by the board, and setting forth that the applicant has complied with all of the requirements in a manner and detail as may be

required by the rules established by the board. A license fee shall be paid to the board together with the application fee.”

SECTION 6. Section 452-14, Hawaii Revised Statutes, is amended to read as follows:

**“§452-14 Examination.** The board may contract with professional testing services to prepare, administer, and grade the examinations and tests for applicants as may be required for the purposes of this chapter. The examination of applicants for licenses to practice massage shall be conducted under rules prescribed by the board and shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method, and [such] the examination shall be consistent with the practical and theoretical requirements of the occupation as provided by this chapter.”

SECTION 7. Section 452-15, Hawaii Revised Statutes, is amended to read as follows:

**“§452-15 Licenses.** If an applicant for an examination for massage therapist passes the examination to the satisfaction of the board, [or the board has waived the examination under section 452-13(a)(4), and the applicant has paid a license fee,] the board shall issue a license to that effect, signed by the chairman. The license shall be evidence that the person to whom it is issued is entitled to follow the practice stipulated therein as prescribed in this chapter. The license shall not be transferable and shall be conspicuously displayed in the place of business or employment.”

SECTION 8. Section 452-17, Hawaii Revised Statutes, is amended to read as follows:

**“§452-17 Fees.** (a) The fees for application, [examination,] licensing, and other registrations shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be paid in advance and deposited with the director of finance to the credit of the general fund.

(b) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. The examination fee may be paid directly to the testing agency by the director or the examinee or deposited with the director of finance to the credit of the general fund.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved April 28, 1986.)

**Note**

1. Edited pursuant to HRS §23G-16.5.