

# TITLE XXX

## OCCUPATIONS AND PROFESSIONS

### CHAPTER 328-B

#### MASSAGE THERAPISTS AND MASSAGE ESTABLISHMENTS

##### Section 328-B:1

**328-B:1 Regulation of Massage Therapists and Massage Establishments.** – The general court, to protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a regulatory program for massage therapists, including establishing basic qualifications for licensure of massage therapists.

**Source.** 1990, 12:1. 1996, 47:11, eff. June 23, 1996. 2009, 64:1, eff. Aug. 8, 2009.

##### Section 328-B:2

**328-B:2 Definitions.** – In this chapter:

I. "Applicant" means a person who has submitted to the commissioner an application for a license pursuant to this chapter.

II. "Advisory board" means the advisory board of massage therapists.

III. "Compensation" means the receipt of:

(a) Money, goods, services, or other things of value; or

(b) A promise to deliver money, goods, services, or other things of value.

IV. "Commissioner" means the commissioner of the department of health and human services, or designee.

V. "Licensee" means a person to whom a license has been issued pursuant to this chapter.

VI. "Massage" means the application of a system of structured touch which includes holding, pressure, positioning, or causing movement, by manual means, for the purpose of promoting, maintaining, and restoring the health and well-being of the client. Massage is designed to promote general relaxation, improve movement, relieve somatic and muscular pain or dysfunction, stress and muscle tension, and provide for general health enhancement, personal growth, and the organization, balance, and integration of the body.

VII. [Repealed.]

VIII. "'Massage therapist" means a licensed individual who performs massage for compensation. Titles used may include: massage therapist, massage practitioner, bodywork practitioner, bodyworker, muscle therapist, massotherapist, or somatic therapist practitioner. A massage therapist uses visual, kinesthetic, and palpatory skills to assess the body, and may evaluate the client's condition to the extent of determining whether massage is indicated or contraindicated.

**Source.** 1990, 12:1. 1995, 310:159, 183. 1996, 47:2-4,12, I, eff. June 23, 1996. 2009, 64:2, eff. Aug. 8, 2009.

### **Section 328-B:2-a**

**328-B:2-a Scope of Practice.** – A massage therapist may do any of the following when performing massage, including, but not limited to:

I. Use of heat and cold, hydrotherapy, heliotherapy, and external application of herbal or topical preparations not classified as prescription drugs.

II. Analysis of posture and movement.

III. Provision of education in self-care and stress management.

IV. Performance of techniques in which the massage therapist had been trained intended to affect the systems of the body.

**Source.** 1996, 47:5, eff. June 23, 1996. 2009, 64:3, eff. Aug. 8, 2009.

### **Section 328-B:3**

**328-B:3 Prohibited Acts.** – No person shall:

I. Act or advertise as a massage therapist for compensation without holding a license issued pursuant to this chapter.

II. [Repealed.]

III. Fail to comply with an order of the commissioner issued pursuant to this chapter.

IV. Fail to comply with a rule adopted by the commissioner pursuant to this chapter.

V. Violate any other provision of this chapter.

VI. Hire as an employee massage therapist any person not holding a license issued pursuant to this chapter.

**Source.** 1990, 12:1. 1995, 310:183. 1996, 47:10, 12, II, eff. June 23, 1996. 2009, 64:4, 5, eff. Aug. 8, 2009.

### **Section 328-B:4**

**328-B:4 Powers and Duties of the Commissioner; Rulemaking.** – The commissioner shall have the power and duty to:

I. Issue, suspend, revoke, renew, and deny licenses in accordance with rules adopted under RSA 541-A.

II. Hold hearings, and conduct investigations, public or confidential, and issue orders relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-36 shall apply when a person is aggrieved by a decision of the commissioner under this chapter. Appeals shall be made in accordance with RSA 541.

III. Require licensees to file special or periodic sworn reports, in accordance with rules adopted under RSA 541-A.

IV. Request the commissioner of safety to provide a report of state and federal criminal records of any applicant, if the commissioner believes such information would be useful in evaluating an applicant's application. Upon such a request, the commissioner of safety shall provide the report.

V. Delegate any authority or assign any duty, conferred or imposed by this chapter upon the commissioner, to one or more subordinates.

VI. Establish and appoint an advisory board of massage therapists, as provided in RSA 328-B:5.

VII. Pursuant to RSA 541-A, adopt rules relative to:

(a) License application fees.

(b) The contents of license application forms.

(c) The qualifications required for a massage therapist which shall include demonstration of passage of the National Certification Examination for Therapeutic Massage Bodywork or any other nationally recognized certifying examination.

(d) [Repealed.]

(e) License modifications and license renewal applications and fees.

(f) The form, content, time, and retention of special and periodic reports required from licensees.

(g) Exemptions from licensure under RSA 328-B:10.

(h) Procedures for temporary licensure under RSA 328-B:5-a.

(i) Procedures for suspension or revocation of a license.

(j) The establishment of a program of continuing education for licensees, as reviewed by the advisory board, which shall require 12 hours of study over a 2-year period for completion before license renewal every 2 years.

(k) A schedule of administrative fines which may be imposed under RSA 328-B:11-a for violation of this chapter or the rules adopted pursuant to it.

(l) Procedures for notice and opportunity for hearing prior to the imposition of an administrative fine imposed under RSA 328-B:11-a.

**Source.** 1990, 12:1. 1991, 355:49. 1994, 412:38. 1995, 310:183. 1996, 47:6, 7, 10, 11, 12, III, eff. June 23, 1996. 2009, 64:6, 7, eff. Aug. 8, 2009.

## Section 328-B:5

**328-B:5 Advisory Board of Massage Therapists.** – The commissioner shall establish the advisory board of massage therapists. The board shall consist of 3 massage therapists who are licensees in the state of New Hampshire. The members shall be appointed for 3 years, staggered so that the term of one member expires each year, and they shall hold office until successors are appointed, and shall serve on the board without any compensation. In no event shall a member serve more than 2 full consecutive terms. The

board shall:

- I. Review the qualifications of applicants for licenses.
- II. Review the qualifications of individuals desiring to conduct massage workshops or seminars who are not licensed in this state.
- III. Review the continuing education programs for licensees.
- IV. Advise the commissioner regarding the implementation of this chapter.

**Source.** 1990, 12:1. 1995, 310:183. 1996, 47:8, 11, eff. June 23, 1996. 2009, 64:8, eff. Aug. 8, 2009.

## **Section 328-B:5-a**

### **328-B:5-a Temporary License for Massage Therapists. –**

I. The commissioner shall issue a temporary license to any person who has attended a massage therapy program in another state who does not currently meet the requirements for licensure, provided that he or she:

- (a) Is at least 21 years of age on the date of the application;
- (b) Submits documentation of New Hampshire residency;
- (c) Has met the requirements of RSA 328-B:6, I(a) and (c);
- (d) Has completed a massage therapy program with a minimum of 500 educational hours; and
- (e) Provides documentation of practicing as a massage therapist in another state for at least 3 of the preceding 5 years.

II. The temporary license shall be valid for only one year in order for the temporary licensee to complete any additional educational or examination requirements for a massage therapy license in accordance with RSA 328-B:4, VII(c) and the rules adopted under this chapter.

III. A temporary license shall not be renewed.

**Source.** 2009, 64:9, eff. Aug. 8, 2009.

## **Section 328-B:6**

### **328-B:6 License Issuance; Reciprocity. –**

I. The commissioner shall issue a massage therapist's license to each qualified applicant who:

- (a) Submits the required application form and fee.
- (b) Is at least 18 years of age on the date of the application.
- (c) Has not been convicted in New Hampshire or in any other state of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime.
- (d) Submits written evidence of being in good mental and physical health.

II. [Repealed.]

III. Except for the requirements of subparagraphs I(b) and (c) of this section, the commissioner may waive any requirements for licensure for any applicant for a massage

therapist's license who, on the date of application hereunder, holds a valid license issued by any other state or country, but only if the other licensing body's requirements are substantially equivalent to or not less than the requirements under this chapter.

**Source.** 1990, 12:1. 1995, 310:183. 1996, 47:10, 12, IV, eff. June 23, 1996. 2009, 64:10, eff. Aug. 8, 2009.

### **Section 328-B:7**

**328-B:7 License Renewal.** – All licenses issued pursuant to this chapter shall expire 2 years after the date of issue. License renewals shall be granted upon approval of the commissioner of the renewal application and submission of the required renewal fee.

**Source.** 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995.

### **Section 328-B:8**

**328-B:8 License Revocation or Suspension.** – After notice and opportunity for hearing, as provided for under RSA 541-A, the commissioner may revoke or suspend any license issued pursuant to this chapter if the licensee:

- I. Violates this chapter or any rule or order adopted or issued under it;
- II. Knowingly makes any false statement regarding the application or license or in any report the commissioner requires to be made;
- III. Fails to respond to any lawful inquiry of the commissioner; or
- IV. Is convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime or a crime involving moral turpitude.
- V. [Repealed.]

**Source.** 1990, 12:1. 1995, 310:183. 1996, 47:12, V, eff. June 23, 1996. 2009, 64:11, eff. Aug. 8, 2009.

### **Section 328-B:9**

**328-B:9 Inspections, Records, and Reports.** – [Repealed 1996, 47:12, VI, eff. June, 23, 1996.]

### **Section 328-B:10**

**328-B:10 Exemptions; Application of Chapter.** –

I. Nothing in this chapter shall prevent a person licensed by this state pursuant to any other provision of law, or any person employed by such a licensee as an assistant, from performing the occupation for which he or she is licensed.

II. Nothing in this chapter shall be construed to prevent or restrict the practice of any person in this state who uses touch, words, and directed movement to deepen awareness

of existing patterns of movement as well as to suggest new possibilities of movement, while engaged within the scope of practice of a profession with established standards and ethics, provided that their services are not designated as or implied to be massage or massage therapy. Such practices include, but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, the Alexander technique, and body-mind centering.

III. Nothing in this chapter shall be construed to prevent or restrict the practice of any person in this state who uses energy or superficial touch to affect the energy systems of the human body while engaged within the scope of practice of a profession with established standards and ethics, provided that their services are not designated as or implied to be massage or massage therapy. Such practices include, but are not limited to, polarity therapy, therapeutic touch, and reiki.

**Source.** 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 2009, 64:12, eff. Aug. 8, 2009.

### **Section 328-B:11**

**328-B:11 Violations; Penalty.** – Any person practicing massage within the meaning of this chapter, without first obtaining a license as required by this chapter, or who violates any of the provisions of, or rules adopted under this chapter, shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person, for the first offense. For a subsequent offense, a person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Each day such facility shall operate or person shall practice this activity after a first conviction shall be considered a subsequent offense.

**Source.** 1990, 12:1. 1996, 47:9, eff. June 23, 1996.

### **Section 328-B:11-a**

**328-B:11-a Administrative Fines.** – The commissioner of the department of health and human services, after notice and opportunity for hearing, pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter or rules adopted pursuant to it. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The commissioner shall adopt rules in accordance with RSA 541-A relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

**Source.** 1991, 355:50. 1995, 310:182, 183, eff. Nov. 1, 1995. 2009, 64:13, eff. Aug. 8, 2009.

## **Section 328-B:12**

**328-B:12 Injunctive Relief.** – The practice of massage by a person without a license issued under this chapter or whose license has been suspended or revoked, or has expired is declared to be a danger to the public health and welfare. In addition to any other civil, criminal, or disciplinary remedy, the attorney general, the commissioner, the prosecuting attorney of any county or municipality where the person is practicing or purporting to accordance with the laws of this state, maintain an action to enjoin that person from practicing massage until such person secures a valid license. An injunction without bond is available to the commissioner for enforcement of this chapter.

**Source.** 1990, 12:1. 1995, 310:183. 1996, 47:9, eff. June 23, 1996.

## **Section 328-B:13**

**328-B:13 Home Rule.** – [Repealed 2009, 64:14, eff. Aug. 8, 2009.]