

**Q: May a massage therapy student who completes more than 600 hours of classroom instruction over a period of more than one year, but who has not yet graduated from the MT program, sit for the State licensing exam?**

**A: No, a student must complete the course of instruction prior to sitting for the exam. Section 4731.19, ORC, requires the examinee to hold a diploma or certificate from an MT school in good standing.**

**Q: Where may I find the Standards of Practice of the American Massage Therapy Association (AMTA)?**

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**Q: Is it appropriate for a licensed massage therapist (LMT) to advertise using the word "rehabilitation"?**

A: Although there is no prohibition per se, the Medical Board discourages an LMT's use of the word rehabilitation when advertising services. According to the Merriam-Webster Online Dictionary, rehabilitation, in part, is "to restore or bring to a condition of health or useful and constructive activity." The practice of massage therapy as the "treatment of disorders of the human body" seems to fit within the popular definition of rehabilitation. However, there is a more technical meaning of rehabilitation within the healthcare community, which encompasses, among other tasks, the establishment of a problem list, a comprehensive care plan and the structuring of therapeutic goals. The more technical definition falls within the scopes of practice of such professionals as physicians, physical therapists, speech pathologists, athletic trainers and occupational therapists. Furthermore, a prohibition included in the recently passed scope of practice for LMTs is "[t]he prescription of therapeutic exercise for the purpose of rehabilitation or remediation of a disorder of the human body," Ohio Administrative Code Section 4731-1-05 (F)(5). For the aforementioned reasons, use of the word rehabilitation by an LMT may be misleading in the context of the healthcare profession.

**Q: Why are massage therapists being taxed?**

A: The Legislature, in consultation with the Department of Taxation expanded the base of "taxable events" for purposes of the state sales tax. Language was included in House Bill 95 (the Budget Bill) to expand the tax base to cover "personal services," including massage "and other similar services." The relevant statute, Ohio Revised Code Section 5739.01(B)(3)(r), adds to the definition of taxable events for purposes of the State sales tax: "On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair."

**Q: What is considered a “taxable event” covered by the sales tax?**

A: A taxable event is when there is an actual sale of massage services, including massage therapy. If you perform a treatment on a patient who is not seeing you on a doctor’s order, and the patient or a third party pays you, you must collect and report that tax. Where service providers barter for services from one another, the sales tax still applies because the payment by service is a form of compensation.

**Q: As a massage therapist, what are my responsibilities under the new law?**

A: If you are a massage therapist and perform massage that is subject to the sales tax, you have two overarching responsibilities: you must collect the tax from your clients, and you must report and remit the tax to the state. Additionally, to claim any exemption, massage therapist must rely, in good faith, upon the physician's order.

**Q: Are alternative massage modalities subject to the sales tax?**

A: The law states that massage services or other similar services are subject to the tax. The Department of Taxation will define "other similar services," though relaxation massage and bodywork are to be included. The Medical Board, with the assistance of the Massage Therapy Advisory Committee, will provide counsel to the Department of Taxation regarding the nature of alternative modalities.

**Q: Will insurance companies reimburse providers for the amount of the sales tax?**

A: Depending on the circumstances, an insurance company that will cover massage therapy may or may not also pay for the sales tax. Whether or not a third party payer will reimburse for the sales tax, the massage therapist is required to collect and remit the tax.

**Q: Will a massage therapist now be required to obtain a vendor's license?**

A: Yes, a massage therapist will be required to obtain one of two types of vendor's licenses. The type you need depends on your practice. If a massage therapist operates out of a fixed location, the massage therapist must obtain a vendor's license through the county auditor in the county where the business is located. Information on contacting county auditors can be found at <http://www.caa.org/DIRECTORY/index.htm>

If a massage therapist does not operate out of any specific location but rather provides services at different locations, the massage therapist should obtain a transient vendor's license from the State Department of Taxation. The forms are available at [http://www.state.oh.us/tax/business\\_forms\\_Sales.html](http://www.state.oh.us/tax/business_forms_Sales.html)

A vendor's license through the county auditor's office costs \$25.00. The transient vendor's license through the Department of Taxation also costs \$25.00.

**Q: Is a massage therapist responsible for obtaining a vendor's license if he/she works out of a physician's office?**

**A:** Physical co-location with a physician does not confer an automatic exemption from the sales tax. Only when providing massage therapy services on the order of a physician or as an employee of the physician, is the massage therapist exempt from the taxation requirement and the need for a vendor's license. The physician does, however, need a vendor's license and must collect and remit the tax on any massage services not covered by a physician's order.

**Q: Are there any exemptions for massage therapy services being taxed?**

A: Yes, according to Ohio Revised Code Section 5739.01(B)(3)(r), a massage therapy procedure performed on the order of a physician is exempt from taxation. Although there is no specific language in the statute, the order should specify massage therapy services and be patient specific. There is no requirement that the order be written, but should there be a Department of Taxation audit, written orders may help a massage therapist document the exemptions. In addition, the fact that a third party payer may reimburse for a massage therapy procedure does not exempt the procedure from the sales tax, nor does employment in a physician's office provide a blanket exemption.

**Q: Who is encompassed within the definition of “physician”?**

**A:** Ohio Revised Code Section 5739.01(B)(3)(r), uses the terms "physician" and "chiropractor." The Department of Taxation has indicated that the term is meant, in this context, to include MDs, DOs, podiatrists and dentists, in addition to chiropractors.

**Q: Do massage services provided at clinics associated with massage therapy schools qualify as "taxable events" under the new law?**

**A:** Whether a school clinic is subject to the tax depends on whether the school is a government entity, which under other sections of the code enjoys exemption from taxation. State massage therapy schools are not required to collect and remit the sales tax for services rendered in their clinics. Proprietary schools are still responsible for the tax.

**Q: What records should be kept to prove compliance with the sales tax?**

A: Department of Taxation auditors would likely look at primary business records, i.e., invoices (which must include the taxable amount), account records, and records of the physician's order. Normal prudent business practices should be followed to best comply with the sales tax. The statute of limitations is four years, but the most cautious avenue is to keep business records for a longer period.

**Q: How often must massage therapists file taxes to be in compliance with the sales tax law?**

A: Generally, the deadline for filing and remitting sales taxes is the 23rd of each month, however certain types of business may be required to file more or less frequently. The amount that is collected in taxes determines the times at which the taxes must be remitted. The following page from the Ohio Department of Taxation's Annual Report sets out the schedule for remittance: [http://www.state.oh.us/tax/Publications/2001\\_Annual%20Report/26-sales.pdf](http://www.state.oh.us/tax/Publications/2001_Annual%20Report/26-sales.pdf)

**Q: What is the statutory requirement for the posting of a vendor's license?**

A: There is no requirement to display a regular county vendor's license. On the other hand, Ohio Revised Code Section 5739.17(E) requires every holder of a transient vendor's license to display the license or a copy of it, "prominently, in plain view, at every place of business of the transient vendor."

**Q: What are the penalties for failing to comply with the new sales tax?**

A: The penalty could be up to 50% of the total of taxes due, in addition to the original tax amount. The criminal penalty is up to \$1000. For "allowable ignorance," that is, cases in which a therapist did not comply with the law simply due to a lack of understanding of his or her responsibilities, there may be a 15% penalty.

**Q: What are my responsibilities regarding the sales tax when a gift certificate is purchased for massage therapy services?**

A: If the certificate is for the performance of a specified service (i.e. a certificate for a manicure or a one-hour massage) you need not collect tax from the recipient when that service is performed. Such certificates sold on and after August 1, 2003 are subject to sales tax when the certificate is sold. Any additional amount you charge the recipient for additional services would be taxable.

If the certificate is for a specified dollar value (i. e. fifty dollars toward any product or service at a salon), the certificate is treated the same as cash. When such a certificate is used to purchase taxable property or services, tax should be charged on the full price of the property or service.

**Q: What can be done about unlicensed persons or licensed massage therapists who are not complying with the new tax requirements?**

A: The Ohio Department of Taxation will investigate if it has knowledge of non-compliance. If you know of a person you believe to be not in compliance, you may report via e-mail, regular mail or by phone. By entering the Ohio Department of Taxation's website, [www.state.oh.us/tax/](http://www.state.oh.us/tax/), the form may be accessed by clicking on "Contact Us" and then clicking on an option called "E-mail US Suspected Tax Fraud." The form may be printed out and sent in or e-mailed to the Department of Taxation. The Ohio Tax Fraud Hotline is reached by calling 800-757-6091.

**Q: Does the application of endermologie to the human body require a license in Ohio?**

A: Yes. Endermologie is the practice of medicine and within the limited branch of massage therapy.

§4731.34(A)(3)(b) of the Ohio Revised Code defines the practice of medicine, in part, as the examination or diagnosis for compensation of any kind, direct or indirect; or prescribing, advising, recommending, administering, or dispensing for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

Rule 4731-1-05 of the Ohio Administrative Code defines the scope of practice of massage therapy as the “treatment of disorders of the human body by the systematic external application of touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and passive joint movements within the normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices.” It further defines mechanical devices as “any tool or device which mimics or enhances the actions possible by the hands.”

The endermologie machine mimics the rolling, fulling and kneading techniques employed by massage therapists. Endermologie is a procedure intended to dissipate cellulite, increase circulation, restore collagen function and expel toxins and abnormal water buildup. Endermologie, then, is the practice of medicine and within the scope of practice of massage therapists. Section 4731.41 of the Revised Code requires persons practicing medicine and surgery or one of its limited branches to be licensed.

**Q: Is any special training required to use an endermologie device?**

A: All licensed health care professionals are required to meet minimal standards of care to help ensure the safety of patients and the effectiveness of treatments. One must have sufficient education and training to ensure the ability to perform the procedure within minimal standards of care. In the case of endermologie, instruction in techniques as well as in physiological effect, pathologies and contraindications would be important for any practitioner. Accordingly, a massage therapist is permitted to perform endermologie, provided that he or she is trained in the proper techniques and understands the contraindications.

**Q: Are endermologie devices medical devices?**

A: Yes. The FDA stated in a letter to the manufacturer of endermologie devices: "Under a United States Federal law, the Federal Food, Drug, and Cosmetic Act, the ES 1 [endermologie machine] is considered to be a medical device because it is being used to diagnose or treat a medical condition or to affect the structure or function of the body." The FDA's complete definition of a medical device can be found here:

<http://www.fda.gov/cdrh/devadvice/312.html>.

**Q: May a physician delegate the use of an endermologie device to an unlicensed person?**

A: No. Endermologie is the practice of medicine as defined in Section 4731.34 of the Revised Code; Section 4731.41 of the Revised Code indicates that unlicensed persons cannot practice medicine in Ohio. There are exceptions to that prohibition, spelled out in law, which state that certain components of the practice of medicine may be performed by persons other than those licensed as physicians. There is no such specific authorization regarding endermologie.

Physicians also have a more general delegatory authority found in Section 4731.053 of the Revised Code. Under 4731.053, physicians have the authority to delegate the performance of medical tasks to persons "not licensed or otherwise authorized by the Revised Code to perform the task." But there are limits on what may be delegated, spelled out in 4731.053 and also in Chapter 4731-23 of the Administrative Code, known as the delegation rules. Rule 4731-23-03 (A) states that "A physician shall not delegate the practice of medicine as defined in section 4731.34 of the Revised Code unless specifically authorized to do so..." Physicians have no specific authorization to delegate the performance of endermologie. The rule goes on to specify that the class of tasks eligible for delegation are those that are self-contained, discrete tasks that do not require continuing assessment or medical judgments. Endermologie requires the practitioner to determine where and how to apply the treatment and to assess on an ongoing basis the physiological effects of the treatment and fails, therefore, to meet that standard.

**Q: May massage therapists delegate the use of an endermologie device?**

**A: No, massage therapists are never allowed to delegate their duties, including the use of endermologie devices. Delegation falls outside of the scope of practice for massage therapists. Pursuant to Section 4731.053 of the Revised Code, only physicians may delegate medical tasks**

**Q: May endermologie be performed in salons and spas?**

A: Yes, endermologie may be performed in spas and salons under the proper circumstances. The individual performing the procedure must be authorized to do so, such as a physician or licensed massage therapist. In addition, however, when done in a spa or salon, a practitioner must meet the requirements of the Board of Cosmetology. According to Section 4713.14 of the Revised Code, in order for a salon to provide massage services, the person giving the massage must have a valid state license to perform massages, and the room in which the massage is given must be compliant with Section 4713.14(A) of the Revised Code.