



To: The Economic Affairs Interim Committee

From: Montana Board of Massage Therapy

Date: June 10, 2013

Subject: HB525 – LMT response to the Economic Affairs Interim Committee questions

1• What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

The regulation of Massage Therapists through licensure serves the public interest by protecting the public against massage therapy practices that may result in unreasonable risk of physical injury to the client. Proper training in the use of a system of structured touch pressure, positioning, or holding to soft tissues of the body in order to restore health and well-being by promoting pain relief, stress reduction and relaxation. In addition, regulation of the practice of massage therapy helps protect the public against inappropriate or criminal sexual conduct and practices engaged in by the illegitimate or unethical practitioner.

2 • If your profession/occupation were not licensed, what public protection would be lost?

Licensure of Massage Therapists is preceded by and premised upon strict standards of education and periods of supervised experience. The failure to regulate those who would assume the role of a Massage Therapist would be exposing the public to unqualified individuals that would potentially harm a client. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints. The board sets the standards needed to insure that competency is met for Massage Therapists who practice in Montana.

3 • If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate educational, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Massage Therapy is comprised of five members who include a public member, one member who is a licensed health care provider, and three massage therapists licensed in Montana. This combination of individuals provides the necessary knowledge and perspective on the board that is most appropriate to deal with oversight issues.

4 • Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. The board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to be Massage Therapists. The board frequently investigates and reviews issues concerning human trafficking, erotic massages and false advertising.

5 • People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

The safe and competent practice of massage therapy requires 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the national commission for certifying agencies or its equivalent and receive a passing score on an examination prescribed by the board. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.

6 • How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Presiding Officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Also, having a mix of public and professional members who serve together on the board is another safeguard. There are no other professions licensed by this board.

7 • Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.

8 • Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Yes, insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of massage therapists, so licensure through an administrative agency is not strictly required but is clearly helpful for insurance coverage of massage services. However, with the passage of the Affordable Care Act (ACA), also known as Obamacare, there is a strong non-discriminatory clause covering treatment by all licensed providers. This is intended to include alternative health care professions. It remains to be seen how the ACA will affect insurance coverage for massage therapy in Montana. The board is not aware of any alternative billing method.

9 • What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board has the expertise of the massage therapist members along with a healthcare member who understands the technical aspects of the profession and one public member to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.

10 • Is there an optimum ratio between licensees, board size, or public representation?

There may be, and the number might differ for different boards. What we have now, four professional and one public member, appears to work well. A board is unwieldy if it is too large, and the current number (five board members) seems sufficient for the work load.

11 • If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

A disinterested third party would spend significant time and money learning the profession and hiring or consulting with massage therapists and medical professionals in various areas of the profession to address issues as they arise. Massage Therapists have specialized skills of assessing professional abilities (and lack thereof) that governmental employees will not typically have. To best protect the public, the regulating entity must have adequate knowledge of "standards of care," with which the board is already uniquely equipped because of its professional members.

12 • If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The scope of practice involving massage therapy could overlap with other professions. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third-party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.

13 • Should any board have the ability to limit use of certain terminology to only a licensee?

Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimal qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.