



NATIONAL HEALTH FREEDOM ACTION

PMB 218, 2136 Ford Parkway
St. Paul, MN 55116-1863
Phone 507-663-9018, Fax 507-663-9013
E-mail: similar@aol.com,
www.nationalhealthfreedom.org

Board of Directors

*Bruce Curtis
Larry Hanus
Anthony Stephan
President: Bonita Yoder JD*

Director of Law and Public Policy
*Diane Miller JD
Anne Tenner JD Assistant Attorney*

I.

NHFA Opposition Statement 2014 MN SF 1792

Registration of Massage and Bodywork Therapy

SF 1792 Definition of Massage and Bodywork Therapy. SF 1792 attempts to capture and offer up for regulation and jurisdiction the term “bodywork” and a large portion of the world of bodywork. It claims that it is justifiable given that it is set forth to be a “voluntary” regulatory scheme of registration only. It is our position that “massage” and “bodywork” should not be regulated by registration of any kind and that the term “bodywork” is a general term in the public domain and should have no part in any regulatory language. The following comments will explain why this proposed law is unnecessary, and how such a law can unnecessarily establish jurisdiction that can grow in the future to create a negative impact on the entire healing community.

SF 1792 is not just about the public’s understanding of massage. The bill contains a definition of massage and bodywork that is expansive and comprehensive including many bodywork therapies and offers no formal statement as to the difference between the definition of massage and the definition of bodywork. The bill has no statement regarding those persons that it does not wish to negatively impact in the future except for a broad statement regarding MN146A. Since the definition is broad, and the regulatory creep is expected, this bill needs to be much more explicit and narrow and include a statement of intent to establish the difference between massage and bodywork. Most states that regulate massage provide such clarification.

SF 1792 states expansively:

Subd. 12. Massage and bodywork therapy. "Massage and bodywork therapy"

2.18 means a health care service involving systematic and structured touch and palpation;

2.19 pressure and movement of the muscles, tendons, ligaments, and fascia, in order to reduce

2.20 muscle tension, relieve soft tissue pain, improve circulation, increase flexibility, increase

2.21 activity of the parasympathetic branch of the autonomic nervous system, or to promote

2.22 general wellness, by use of the techniques and applications described in section 148.983.

Sec. 3. [148.983] MASSAGE AND BODYWORK THERAPY.

3.8(a) The practice of massage and bodywork therapy by a registered massage and

3.9 bodywork therapist includes the following:

3.10(1) use of any or all of the following techniques using the hands, forearms, elbows,

3.11 knees, or feet, or handheld mechanical or electrical devices that mimic or enhance the

3.12 actions of the human hands: effleurage or gliding; petrissage or kneading; vibration and

3.13 jostling; friction; tapotement or percussion; compression; fascial manipulation; passive

3.14 stretching within the normal anatomical range of motion; and

- 3.15(2) application and use of any of the following: oils, lotions, gels, rubbing alcohol,
- 3.16 or powders for the purpose of lubricating the skin to be massaged; essential oils; or
- 3.17 creams, with the exception of prescription-requiring medicinal creams; hot or cold stones;
- 3.18 salt glows and wraps; and/or heat or ice.
- 3.19(b) The practice of massage and bodywork therapy does not include any of the
- 3.20 following:
 - 3.21(1) diagnosing any illness or disease;
 - 3.22(2) altering a course of recommended massage and bodywork therapy when
 - 3.23 recommended by a state-credentialed health care provider without first consulting that
 - 3.24 health care provider;
 - 3.25(3) prescription of drugs or medicines;
 - 3.26(4) intentional adjusting, manipulating, or mobilizing any articulations of the body
 - 3.27 or spine, including by means of a high velocity, low amplitude thrusting force or as
 - 3.28 described in section 146.23 or 148.01; or
 - 3.29(5) application of physical agent modalities or injection therapy.

Clarifications needed: The complexity and ramifications of massage regulation can be seen when reviewing sample clarifying language, similar to that which is being introduced and passed in other states, such as the following language used for teaching purposes by NHFA:

NHFA Example of definitional exemptions: The Practice of Massage does not include: Individuals or healers who do not represent themselves as massage therapists and do not designate or imply that their services are massage or massage therapy including but not limited to: persons whose practices are limited to manual massage techniques of the hands, feet, and ears; persons who use touch, words or directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement including but not limited to, the Feldenkrais Method of somatic education , the Rolf Institute's Rolf Movement Integration, the Trager Approach to movement education and Body-Mind Centering; persons who use touch to affect the energy systems, acupoints or Qi meridians, or channels of energy, of the human body including but not limited to, Polarity, Polarity Therapy, Polarity Bodywork Therapy, Asian Bodywork Therapy, Acupressure, Jin Shin Do, Qi Gong, Reiki and Shiatsu.

SF 1792's exclusive use of the term bodywork is unacceptable as the term "bodywork" is a term that has been in the public domain for centuries. The following exclusive titles that include "bodywork" are unacceptable:

- Subdivision 1. Designation. An individual regulated by this chapter is designated as*
- 4.5a "registered massage and bodywork therapist" or "RMBT."*
- 4.6 Subd. 2. Title protection. No individual may use the title "registered massage and*
- 4.7 bodywork therapist," or use, in connection with the individual's name, the letters "RMBT,"*
- 4.8 or any other titles, words, letters, abbreviations, or insignia indicating or implying that the*
- 4.9 individual is registered or eligible for registration by this state as a registered massage*
- 4.10 therapist unless the individual has been registered according to this chapter.*
- 4.11 Subd. 3. Identification of registrants. (a) A massage and bodywork therapist*
- 4.12 registered according to this chapter shall be identified as a "registered massage and*
- 4.13 bodywork therapist." If not written in full, this must be designated as "RMBT."*
- 4.14(b) The board may adopt rules for the implementation of this section, including the*
- 4.15 identification of terms or references that may be used only be registered massage and*
- 4.16 bodywork therapists as necessary to protect the public.*

National Conversation: Numerous times over the past few years NHFA has been involved in either assisting healing communities in opposing attempts by the massage community to dominate and regulate healing practices, or conversations where massage licensing authorities have prohibited various types of healers from practicing. Practitioners have had to get politically involved and protect their rights to practice the broad base of healing arts and their client's access to them. Nine states now have broad exemption laws with various forms of parameters for complementary and alternative health care

practitioners from registration or occupational licensing requirements. And numerous states have experienced regulatory creep for massage and now are passing bodywork exemptions in the massage laws. For example, in 2013 and 2014: Practitioners were banned by the existing massage board in New Jersey from practicing Reiki; recent bills in Maryland would have banned practitioners from doing Energy healing, laying on of hands and healing touch unless practitioners had one of three certification credentials (the bill was withdrawn this week); and in Texas, a law was passed banning any type of touch without a massage license and is now being resisted. In the recent Maryland battle, within two days the alternative health care community had 5,500 signatures on a Petition opposing the bills and the national Health Touch organization, representing 75 different types of healing bodywork professionals, was part of the opposition.

II.

Response to Minnesota Statute 214.002 and to Additional Questions from Representative Tina Liebling, Chair of Health and Human Services Committee, Regarding the State Regulation of Massage & Bodywork Therapy in Minnesota

The following comments are directed specifically at paragraphs from Representative Liebling's Questions:

Physical injuries caused by malpractice: The advocacy document gives the impression that there is no tort liability for harm caused by a person offering services when that practitioner is not licensed by the state. That is not true. Many people in the culture at large who are not licensed by the state have a multiplicity of occupations that involve people and tort liability is part of the legal remedies. Even MN146A, which many unlicensed complementary and alternative health care practitioners practice under, including Massage therapists, addresses the existence of malpractice claims. That is why we have a legal system - for citizens to use. Our legal system handles these problems well and licensing massage therapists will not make malpractice claims disappear. It is part of life.

Under-trained practitioners, contraindications, practicing outside the level of training: Massage is not an inherently dangerous activity and this fact has been established in MN hearings time and time again. People have provided massage to each other in all cultures since the beginning of time. People provide massage for each other within friend groups and family members, and within healing businesses including of a broad range of massage and bodywork techniques. It has been a part of the culture of the human family eternally. It is a grand travesty to have a continual attempt to try to characterize massage as an inherently dangerous act so that the government can have jurisdiction. Persons seeking the benefits of massage and bodywork should have their right to access these basic services protected in the least restrictive means possible and, under MN146A, they do just that. Under MN146A, massage therapy is practiced and the client is well informed as to whether he/she is going to obtain services from a person who has a lengthy experience giving massage or a student in a conventional massage school. A MN Senator once testified that he would much rather get a massage from an unlicensed person who gives great relaxing massages because it is his/her natural vocation than from a licensed person who does not have a natural gift for the art of massage. Massage should never be characterized as a dangerous activity in our culture; it is an art.

Regarding contraindications and referrals, clients are responsible for their health and will seek out a health care provider when they believe it is necessary. People understand that massage therapists are not doctors and are not diagnosticians. Clients can currently choose whatever type of massage therapists they want including various types and levels of training that meets their preferences. Massage therapists of all types, like all persons in a client's life, can give feedback to a person if they share something that is notable. This is not unique to massage therapists. This is unique to persons that are involved in the client's life. MN 146A has already addressed this issue adequately for non-invasive therapists practicing under MN146A stating a duty for all unlicensed practitioners:

(w) Failure to provide a complementary and alternative health care client with a recommendation that the client see a health care provider who is licensed or registered by a health-related licensing board or the commissioner of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider.

(MN 146A.08 Subd. 1 (w))

Risk of emotional harm: All people with trauma history will experience the impact of that trauma in many venues of their lives. They and their trusted family or friends will be their own best experts at choosing how to move through life and what type of healer they wish to access. MN146A empowers clients because of its extensive list of prohibited acts and its disclosures enabling the client to really learn more about their practitioner and get comfortable with them. Clients can always review practitioner disclosures and choose a therapist who has special talents for nurturing and encouraging strength and wellness after trauma or has good relations with the mental health community, and clients can choose licensed mental health practitioners to help them cope when needed. The most important aspect is not whether the state has bestowed a license and a particular curriculum mandate for massage but, rather, whether the client has the information he/she needs to choose a practitioner that resonates with his/her expectations and needs.

Sex offenders: State licensure of an occupation is a misplaced solution and not a reasonable and contained solution for this issue. Setting up an entire State Occupational Board for an inherently safe activity that has been part of the culture forever, and mandating occupational licensure including a particular type of schooling for a particular group of people and excluding many persons with vocations from practicing the activity, does nothing to address the issue raised. For example, in some states, persons prone to improper sexual behavior have gone to massage school and gotten licensed and were found to be acting improperly as licensed persons. The public policy issue of the whereabouts of sex offenders is a conversation best addressed outside of the occupational educational licensing issue of mandating curriculums for occupations. For example, MN146A requires the public disclosure of the practitioner information:

"... name, complementary and alternative health care title, business address, and telephone number of the unlicensed complementary and alternative health care practitioner;..."

MN146A.11 Subd. 1 (a) (1)

There are 17 paragraphs of disclosure requirements and these disclosures must be posted as follows:

(a) All unlicensed complementary and alternative health care practitioners shall provide to each complementary and alternative health care client prior to providing treatment a written copy of the complementary and alternative health care client bill of rights. A copy must also be posted in a prominent location in the office of the unlicensed complementary and alternative health care practitioner.

MN146A.11 Subd. 1 (a)

This type of public disclosure requirement goes a long way toward putting the public and any police officer or investigator on notice of who the person is that is providing the business on that premise if more investigation is necessary.

When addressing public issues such as this, proposed solutions must target the actual public debate and not be used as a catch-all reason to establish a licensing board. Licensing boards constitutionally are set up because an activity, such as surgery, is deemed inherently dangerous to the public and a particular type of training is necessary for public safety. Massage is not one of those inherently dangerous activities. The call to license massage and prove that it is dangerous does a great disservice to the health care community. Rather, it is better to have the marketplace choose the type of massage therapists it is looking for, whether from a particular school, or training, or experience or apprenticeships, and to honor the academies on their reputations and merits. Allow the clients to choose the exact person they wish, instead of relegating their choice to using only a particular group of persons trained by a small group of schools.

Crime related to CAM: The statement made regarding this section is incorrect. A prohibited act for a MN146A practitioner also includes:

(b) Conviction of any crime against a person. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.2242; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, subdivision 1, clause (1); 609.561; 609.562; 609.595; and 609.72, subdivision 3.

MN146A.08 Subd. 1 (b)

Human trafficking: The statement offered does not explain the nexus or value of occupational licensing. Cities understand this issue more and more. It does not matter how many hours of massage you have or what school you went to when it comes to the world of sexual dysfunction. In fact, licensure can act as a false cover. The risk of sexual offenses in businesses has to do with public notice, informed clients, investigatory options, and business concerns of premise and use. It has nothing to do with what school a practitioners went to. Professionals traffic people too. The issue of occupational licensure is not the same issue as how to manage sex crimes.

Civil and Criminal Laws Adequate: The statements provided about prosecutions of persons who have caused client harm are examples of how the civil and criminal laws are working. Whether a practitioner is licensed under a Board or practicing under MN146A, the problem of crimes against a person is a public policy issue. The fact that persons are being reprimanded by the local authorities is a positive sign that the current laws are working. The statements regarding OCAP office not preventing harm appears to be used as a misplaced rationale for licensing massage therapists. It is a completely separate issue if the OCAP office knew of harm and did not use its authority to stop it. This has happened with agencies, where a licensed professional might have harmed a number of patients before they are stopped from practicing, and this is an issue with Board and agency procedures and it does not create a nexus to mandate that all persons practicing massage therapy should go to a particular school and practice a particular type of massage. MN146A is considered, by definition, a health related licensing board and all boards and agencies with the duty to investigate harm abide by their statutes. This is an argument that is pointing a finger but not creating a nexus rationale for exclusive licensure for massage.

Level of Regulation: In order to acquire the desired outcome of regulation, the advocates have painted a grim picture of massage: claiming it is dangerous, claiming that sexual conduct can be regulated by licensing massage and claiming that the OCAP office is not efficient or effective and goes so far as stating

that the office is “incapable”. As if setting up registration for massage would make all of these issues disappear. We firmly hold that massage is not a dangerous activity requiring the loss of the presumption of safety and needing the police power of the government to turn it into an exclusive occupation. We hold that sexual conduct should be addressed in the larger policy arena of civil and criminal procedure and public disclosure and information exchange. We believe that the OCAP office has the authority invested in it by the State of MN to carry out its statute and is appreciated by many for the work that it has done to ensure access to MN residents to the broad range of complementary and alternative health care practitioners that they currently enjoy.

The unequal treatment of registered and unregistered occupations: It appears that the registered massage therapy advocates are advocating for unequal treatment of their peers in the healing community which will start a harmful precedence for all non-invasive healing therapies. It appears that they wish themselves as registered to have an advantage over an unregistered person in the marketplace. For example in a municipality that requires licensure, registered massage advocates are recommending unequal treatment. This brings up a very important subject that is of intense discussion now at the municipal level.

Municipalities understand that there is a difference between requiring a general business license and requiring an occupational credentialing license involving education and exams. It is one thing to ask for background checks but it is quite another thing to be the education authority and require a certain number of hours and special schools for an occupation. Cities do not have to be in the business of dictating what schools and how much training a person should have in a particular occupation, especially if that occupation is not inherently harmful to its citizens; there is a plethora of educations for vocations and occupations that consumers regularly access. Rather, cities can focus on addressing the key issues of public safety, which will often times include licensure of premises, health codes, space, disclosures and public records, and procedures for investigations and compliance.

The intent for unequal treatment of registered and unregistered practitioners and possibly the gradual ridding of competition in the marketplace is apparent in the language in the bill regarding the effect on municipal ordinances. If the intent was to assure that all massage therapists, both registered and unregistered, were to continue practicing and be accessible to consumers, then the section on municipalities is misleading and cause for alarm.

The bill states that the registration statute would preempt a municipality’s ability to license and regulate a state registered massage and bodywork therapist including criminal background investigation and examination for a municipality’s credential to practice:

Sec. 14. [148.9884] EFFECT ON MUNICIPAL ORDINANCES.

15.5 Subdivision 1. License authority. The provisions of sections 148.981 to 148.9885

15.6 preempt the licensure and regulation of a registered massage and bodywork therapist

15.7 by a municipality, including, without limitation, conducting a criminal background

15.8 investigation and examination of a massage and bodywork therapist or applicant for a

15.9 municipality's credential to practice massage and bodywork therapy.

However, it goes on to say that the municipality is not prohibited from prosecuting an unregistered person engaged in the practice of massage and bodywork therapy if the municipality requires licensure. The bill does not comment on what elements that license might include such as background checks, investigations, or mandatory occupational education. The language does not offer preemption or protect the unregistered persons from municipalities that will include occupational educational requirements in their licensure requirements. Then the bill goes on to highlight the registered persons

in a dissimilar manner by stating that a municipality is not prohibited from prosecuting a registered massage and bodywork therapist who is engaged in unlawful conduct, which would be true anyway.

15.15 Subd. 3. Prosecuting authority. The provisions of this chapter do not prohibit any

15.16 municipality of this state from prosecuting:

15.17(1) an unregistered person engaged in the practice of massage and bodywork therapy

15.18 if the municipality requires licensure; or

15.19(2) a registered massage and bodywork therapist who is engaged in unlawful conduct.

Ramifications: Regardless of the background checks and investigations, whether the state does them under a registration statute or the city does them under a licensure statute, the registered practitioners will have a certain type of education so the city will not be able to dictate the educational component and the practitioners will be able to practice. The cities will be able to include their own educational requirements for unregistered persons. In addition, the bill presents the potential that cities will start pointing to the state statute to set their own requirements, thus by default, changing the “voluntary” state statute into a “mandatory” requirement at the municipal level. This would eventually eliminate the MN146A practitioners, even though they might be exempt under the voluntary registration statute. The better solution is to have MN146A be the municipal threshold for preemption because MN146A does not require an exclusive type of education, but then still protect the municipalities’ right to provide public safety licensing requirements.

Long Range Negative Impact on Healing Community: Registration of a non-invasive therapy is unnecessary and raises constitutional concerns. States do not have the constitutional authority to regulate an occupation that does not pose an imminent risk of harm to the public as unregulated. The procedural impact of regulation is that, once the state takes the opportunity and the responsibility for the registration of a select group of people, the basis of that responsibility and investment of resources must be founded on public safety. Once there is a finding of danger and thus a loss of the presumption of safety, then the state has the authority to further regulate that activity. It has been shown that once the state begins to regulate a group, regulation increases; from permits, to registration, and then to exclusive licensure. Massage certification, registration, and finally licensure has been experienced in other states. In addition, rulemaking becomes part of the state’s activities. This amount of government involvement is unwarranted in occupations that are safe and non-invasive.

Thank you for your consideration.

Diane Miller JD
National Health Freedom Action
Director of Law and Public Policy
St. Paul, MN 55116
www.nationalhealthfreedom.org
Cell phone: 651-470-7367
Email: similars@aol.com