

Opposition Statement

2014 MN HF1925

Registration of Massage and Bodywork Therapy and Therapists

History: As far back as 1987 it has been concluded that there is not a need for licensure for massage therapists in Minnesota. These conclusions were drawn based on MN Statute 214. During the year 2002 a 214 review was conducted. Among the findings by the Council of Health Boards: the documentation does not support the proposal for registration of massage therapists and oriental bodywork therapists. AND the committee do[es] not support a change from the existing system of regulation for this profession through the Office of Unlicensed Complementary and Alternative Health Care Practice of the Minnesota Department of Health.

A more recent Council of Health Boards Review came to a slightly different conclusion, but failed to mention what has changed in the behavior of Massage Therapists that suddenly required additional Consumer Protection. (Interestingly, the opposition groups who had asked to be part of this review process were not invited to the meetings.) The Minnesota Senate Health and Human Services Committee did not agree that additional protection was necessary when **the proponents were unable to demonstrate that harm had occurred or was highly likely to occur.**

Our opposition is based on the following points:

- 1. MN Statute 214.01 states that when determining whether an occupation needs licensing, the potential for harm must be “recognizable and not remote.”**

The proponents of HF 1925 have presented many possible problems which could arise with a massage, but they have not presented any statistics on the likelihood of any of these things occurring. How often do they occur? We can only assume that they are only a remote possibility or more statistics would have been presented.

The proponents of HF 1925 have several paragraphs of potential harms that may come to a consumer of massage therapy, but have only one paragraph of harms that were reported to have occurred in MN. But not really any details of these harms. Is this all that happened? Over what period of time? Three days? Three months? Three years? MN 214 does not state that an unregulated occupation must not show ANY harm at all, but that it must rise to a certain level of frequency and severity at the same time before occupational regulation can be imposed.

Lack of evidence of harm in Minnesota is what got the massage therapy registration bill tabled in the MN Senate Health and Human Services committee in 2010.

The comment on Risk of Emotional harm must be mentioned. There are many licensed practitioners, including MDs, who do not know how to handle their patients in a compassionate manner. This is one of the biggest complaints that people have about their doctors. A registration or license is not going to protect the patients from this type of harm.

2. Regulating Massage Therapists does not stop Prostitution or Sex Trafficking.

Massage Therapists are not prostitutes. Therefore, they should not be regulated in this way. The regulation should be imposed on the criminals.

Licensing Massage Therapists does not prevent prostitution. Former St. Paul Police Chief and State Senator John Harrington stated in a conversation, that he felt that Massage parlours were passé in terms of a front for prostitution and that social media was going to be the way of the future for prostitutes.

Florida has licensed massage therapists for over 50 years. A quick Google search on Massage Therapists Prostitutes Florida, shows that in spite of the regulation, they are still arresting Prostitutes who are posing as Massage Therapists.

In their Sex Trafficking in Minnesota: Prosecutors Training Manual, the Advocates for Human Rights—MN does not even mention Massage Therapists as a prime front for sex traffickers.

The proponents mention that no requirements for entry-level massage credentials makes the state “ripe for human trafficking.” However, they give no details on whether Minnesota is a hotbed for trafficking compared to other states which do license and whether the traffickers who are posing as Massage Therapists have anything to do with those numbers.

Why does a massage therapist have to prove he or she is not a prostitute?

3. Regulating Massage Therapists does not stop Predatory Behavior or Sexual Assault.

There is always a risk when disrobing for a medical practitioner that there will be a sexual assault. Unfortunately, there are many stories in every state of LICENSED practitioners being charged with sexual assault of their patients. So, clearly this does not stop predatory behavior.

Indeed, the proponents of HF 1925 have given several examples of city licenses which did nothing to prevent a sexual assault, even with the presumed background check.

In an incident reported in their documentation about a 2007 sexual assault in St. Paul, the proponents failed to mention that St. Paul has licensed Massage Therapists since 1993, and yet, this incident occurred. What they also failed to mention is that the OCAP office was unallotted 2009 by Governor Pawlenty so they were unable to respond in a timely manner before 2011.

It is also important to note that when the OCAP office revokes the rights of an individual to practice, it isn't just the modality they were practicing at the time of the complaint. It is ANY

unlicensed complementary practice that is forbidden. So it actually has a broader reach than the court.

There seems also to be, according to their documentation, a number of cities which fail to enforce their own ordinances. Does this mean the state must take over for them? When their own police departments are the likely proponents of the city licensing? This bill will not protect against sloppy police work or city attorneys who are unwilling to enforce the laws of their city.

The proponents mention a Roseville Massage Therapist who was charged with sexually assaulting seven different clients between 2011 and 2013. There seems to be a sense of injustice expressed by the proponents that this person was allowed to practice so long. There was likely some sensitive police work involved in this case. Are the proponents suggesting that the massage therapist should not receive due process or that HF 1925 would remove a person from practice without a trial or being proven guilty?

It is worth noting that MN Statute 609 was amended to make it a felony for a massage therapist to sexually assault his or her client. This amendment was passed in the face of opposition by those who were proposing licensing for massage therapists.

4. Background Checks

Most Massage Therapy schools, and certainly those that are state supported, require a background check prior to matriculation. And given that there are 33 massage therapy schools in Minnesota, according to the proponents documentation, most people are going to school to become massage therapists. Do the proponents have any statistics on how many massage therapists are practicing without having done any formal schooling or education?

5. Referrals TO Licensed Practitioners and Referrals FROM Licensed Practitioners.

MN Statute 146A already requires that Massage Therapists and other 146A practitioners refer to a licensed health care provider when necessary. It is not necessary to have another law in this regard.

The proponents make mention of ‘Vicarious liability for referral to a “known incompetent”’ if a physician refers to an uncredentialed provider. We don’t know what these credentials mean in this context, but surely a diploma from a massage therapy school would qualify one as being competent. State credentials aren’t absolutely necessary, or this would also have mentioned. MD’s are responsible for making sure they know the background of any person to whom they refer their patients, licensed or unlicensed. And if they make a general suggestion of getting a massage, but don’t refer to a particular therapist, there is no liability. Why would they refer to a “known incompetent?” That seems risky.

6. Support from Other Organizations, etc.

The Minnesota Natural Health Legal Reform Project (MNHLRP) was not contacted to garner support for this bill. Minnesota Natural Health Coalition has been largely inactive for a number of years.

The League of Minnesota Cities modified their stance on state wide licensing. “The League supports the provision in Minn. Stat. ch. 146A and calls for legislation that would allow cities to prosecute violations of Minn. Stat. ch. 146A.” Please review the League of Minnesota Cities 2014 City Policies document, page 31.

<http://www.lmnc.org/media/document/1/2014citypolicies.pdf?inline=true>

7. Voluntary Nature of the Bill

If the harms are severe enough to require regulation, why is this voluntary? Reading through the proponent’s documentation makes the regulation seem mandatory, not voluntary. It reads like a licensure bill, not a registration bill. Will this law accomplish anything? Making a regulation voluntary is a common tactic across the country to make the regulation seem innocuous and then regulatory creep sets in. Making it MORE difficult to work is not wise legislation in a fragile economy.

8. Massage Therapy Licenses in Cities.

One argument repeatedly presented by the proponents of licensure is that it is difficult for massage therapists to move from city to city, as many work in more than one city, thus needing a license to prove they are not prostitutes from each city they work in. This is ironic, as the proponents of HF 1925 have been seen assisting cities in passing massage therapy licensure ordinances in the recent past. It appears they helped to create a situation whereby their state wide regulation would appear more necessary and appealing.

One possible solution to the city licensing dilemma is to negotiate reciprocity between cities for their licenses. Perhaps a state wide requirement of reciprocity for neighboring cities would be an option.

9. Summary

In summary, this bill seems to be unnecessary. The proponents of HF 1925 have presented few facts, and facts that were presented were either out of context, or incomplete. They have not shown that the potential harm is recognizable and not remote and the cases of harm that were presented did not simultaneously rise to a certain level of risk and frequency. They have not presented any data on the number of injuries caused by Massage Therapists in Minnesota, nor the severity of serious injuries. If they had satisfied the requirements of MN Stat 214, their bill would have presented mandatory licensure, not voluntary registration.

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