

**Response to Minnesota Statute 214.002
and Chair Tina Liebling's Additional
Questions Regarding the State Regulation
of Massage & Bodywork Therapy
in Minnesota**

A report in support of the regulation of a health-related or non-health-related occupation must address the following issues as specifically as possible:

(1) The harm to the public that is or could be posed by the unregulated practice of the occupation or by continued practice at its current degree of regulation;

There are several categories of risk to the public, each of which are addressed by this bill:

- Physical injuries caused by malpractice: Currently in MN malpractice by massage therapists is not an actionable offense. One liability insurance carrier reports paying medical bills, pain and suffering for these ‘in session’ injuries in MN: Fractured thigh bone; displaced collar bone; dislocated breastbone; torn rotator cuff; Three cases of improper hot stone massage leading to 2nd degree burns; fractured rib; herniated disc.

Policy response: Malpractice is listed as an actionable offense in this bill.

- Under-trained practitioners: The same liability carrier recently raised the cost for massage schools to insure their students since student-caused injuries accounted for 12% of the carrier’s total claims despite school policies being less than 0.5% of the policy base - Under-trained practitioners put public at risk.

Policy response: RMBTs would have training recognized as the minimum to practice competently.

- Contraindications: Professional training programs include conditions that contraindicate massage therapy. If massage therapy posed no risk of harm, this would be unnecessary. One example: a deep vein thrombosis, or blood clot, can be mechanically loosened by massage causing the clot to become a life-threatening embolism. Medical Journal case studies have illustrated this many times over.

Policy response: RMBTs would be trained to recognize contraindications and to know when and to whom a client should be referred. RMBTs who do not can be held professionally accountable.

- Practicing outside the level of training: Appropriate treatment in the presence of some medical conditions can be beneficial, if the therapist is trained to work with that specific population/condition, e.g.:
 - Pregnancy – Training is needed on how to safely position the client on the massage table, how much pressure to use and the modifications necessary for the different stages of pregnancy.
 - Cancer – Massage can reduce pain and nausea associated with treatment with training for safe work:
 - Pressing on a tumor site can cause cancer to spread to adjacent tissues by “direct seeding”
 - The therapist should ask about recent lab results and know which results are relevant

- After lymph node removal, firm pressure around remaining lymph vessels can cause lymphedema - a painful, and in some cases, irreversible condition
 - Elderly – Massage treatments using excessive pressure can fracture brittle bones
- Policy response: To become an RMBT, one must have requisite training, which protects clients***
- Risk to other health care providers for referring a client to a massage and bodywork therapist
 In the April 16, 2002 Annals of Internal Medicine, an article out of Harvard Medical school describes, “Vicarious liability for referral to a ‘known incompetent’ applies if a physician refers to an uncredentialed provider.
Policy response: By enacting this state credential, this risk is removed for referring providers.
- Failure of a practitioner to refer a client to a health care provider Examples include:

 - Meningitis presenting as neck pain and a severe headache - If other signs are missed, a therapist can assume the neck muscles are simply tight. A trained massage therapist would recognize these signs and refer the client to an emergency room for proper evaluation.
 - Skin cancer and Diabetic Ulcers: Massage therapists are often the first line of defense for many clients who do not or cannot look at their own back, legs or feet. A client with a dangerous mole, or a diabetic client with a small crack in the skin of the heels should be referred to their physician.

Policy response: RMBTs must refer out cases as the condition requires, or be held accountable.
- Risk of Emotional Harm - State-dependent memory and Trauma In many cases, when trauma occurs muscles become tense. This tension can last months or years after the trauma ended. When massage releases that muscle tension, memories and emotions from the trauma can also release. An untrained therapist may not handle the client’s reaction appropriately and can re-traumatize the client by being uncompassionate causing shame or overly-sympathetic leading to an inappropriate transference of emotions.
Policy response: Malpractice by a RMBT is an actionable offense under this bill
- Practitioners moving to MN from out of state who should not be working in the field
 Practitioners with disciplinary sanctions in other states can move to Minnesota and begin practicing without reporting anything to anyone, regardless of the nature of their infraction. The only protection the public has is a patchwork of largely ineffective city massage ordinances, with very little injunctive or prosecutorial power.
Policy response: Clients and employers can know that an RMBT has passed a background check.
- Risk of harm involving sexual assault, rape and human trafficking

 - With no non-proactive therapist screening a registered sex offender could open a massage business. MN Statute 146A only protects the public *reactively* after a practitioner has stepped outside the bounds of ethical and professional behavior, and unfortunately only with a client who knows the law is in place. Minnesota has no

proactive measure in place to protect the public from those who should not be entering the treatment room in a position of authority in the first place.

Policy response: A proactive credential relieves clients from our current “Buyer beware” system.

- It is also noteworthy that MN Statute 146A only has the power to revoke a practitioner’s ability to practice if they commit a crime related to their role in the CAM profession. If a practitioner has for instance sexually assaulted a person but the assault did not happen during the course of a therapy treatment, 146A can do nothing to prevent them from practicing.

Policy response: RMBT background studies would screen for any relevant crimes.

- A state with no entry-level massage credentials is ripe for human trafficking. Minnesota Office of Justice Programs reports human trafficking on the rise in the state, with more than 3,900 trafficking-related charges filed in Minnesota from 2003 to 2006. In Jan 2009 a Mounds View business made news for running a human trafficking ring under the guise of a massage business. The city of Mounds View revoked the business’s city massage license, but the operators could theoretically move to a city with no regulations, such as Mankato, or one with a city license that simply does not require a background check, such as Falcon Heights or Alexandria and re-open.

Policy response: Law enforcement can look to this credential to know that an RMBT was vetted.

(2) Any reason why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public;

The current regulatory scheme for this profession is inadequate and putting the public at unnecessary risk. Case examples from recent years include:

- In a 2013, a Roseville massage therapist was charged with sexually assaulting seven different clients between 2011 and 2013. Some of these clients had complained to the Roseville police, others to the MN OCAP office which administers Statute 146A, but it was not until the therapist was arrested in July 2013 that there was any public notice of a problem and he stopped practicing. The complaints to the OCAP office resulted in no prevention of the harm to the subsequent victims. According to news reports, the therapist told Roseville police he had been a “Licensed Massage Therapist” for seven years. He must have been referring to a Roseville city license, which also could have been revoked but was not.
- In March 2009, a practitioner in a Mankato chiropractic clinic was convicted of 4th degree criminal assault for inappropriately touching a client. The OCAP Disciplinary Actions list has no listing for this practitioner.

- In Dec 2008, two “masseuses” in Eagan were charged with soliciting prostitution. One had been granted a city massage license, the other had not. No charges were brought for working without the city license. Neither individual shows up in the OCAP Disciplinary Actions list.
- In August 2008, a practitioner sexually assaulted and raped several clients in an Eden Prairie Aveda Salon. In Oct 2009, the practitioner plead guilty to the charges for which he served 8 months in the county workhouse, had to register as a predatory offender and was prohibited by the court from practicing in the massage profession. Not until nearly a year later, the OCAP office revoked his right to practice (Sep 2010).
- Following a 2007 sexual assault in St Paul during a house-call appointment, the practitioner was placed on probation. A charge of practicing without a St Paul massage license was dismissed. The MN OCAP attempted to notify the practitioner of the complaint in May, 2009, to which the practitioner did not respond. The next step by the OCAP was nearly two years later (Apr 2011) when a second notice of complaint was sent. In May 2011, four years after the offense, his right to practice was finally indefinitely suspended.

Policy Response: Clients of RMBTs will have an easily identifiable pathway to report problems and an immediately revocable credential to know a practitioner has been vetted by MN standard criteria.

(3) Why the proposed level of regulation is being proposed and why, if there is a lesser degree of regulation, it was not selected;

Registration provides a layer of public protection not currently available:

- Creating a pool of practitioners from which the public can choose, who have been pre-screened for education/experience, relevant criminal history, malpractice insurance, CPR/First Aid, etc; and
- Establishing an efficient and effective means of handling of client complaints.

Statute 146A is a lesser degree of regulation and unfortunately has proven to be incapable of adequately protecting the public. And while massage therapy is certainly not as dangerous as the work of a surgeon or pharmacist, massage is not without risk. In a report on occupational state regulation, the Pew Foundation actually used massage therapy as an example of a profession for which a system of Registration is ideal.

(4) Any associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in Minnesota;

American Massage Therapy Association	800 members
Associated Bodywork and Massage Professionals	2300 members

Both associations are in full support of the HF1925.

These numbers do not account for the likely large number of practitioners who are not affiliated with either association. To estimate the total number of massage and bodywork therapists in MN, we found that in the 40 states with mandatory Licensing, there was an average of 768 adults per massage therapist. Using MN's 2010 census numbers, this leads to an estimated total of over 5200 massage therapists in MN.

(5) The functions typically performed by members of this occupational group and whether they are identical or similar to those performed by another occupational group or groups;

Typical functions of a massage and bodywork therapist:

- Communicating with the client and referring provider(s) to determine goals of the treatment.
- Initial and ongoing assessment to focus the session plans, reassessing effectiveness after a reasonable number of sessions, and when needed, referring a client out to other health care providers;
- The actual treatment itself includes pressure and movement applied to the soft tissues of the body (muscles, tendons, ligaments, etc) to reduce muscle tension and pain and to allow muscles to function more efficiently
- Maintaining session notes, communicating with providers on a client's treatment team to coordinate care
- Setting-specific functions can include: client scheduling, bookkeeping/billing, laundry, advertising, marketing and promotional work, volunteering/community outreach, teaching, participating in research, etc.

Identical/Similar functions to other occupations:

- Nurses, physical therapists, occupational therapists, chiropractors, osteopathic physicians, naturopathic physicians, athletic trainers, and acupuncturists all are trained to use massage and bodywork therapy techniques. Earlier drafts of this legislation have been passed before the professional associations representing all these professions and all were satisfied that the language would not negatively impact their practice. Because this law would be voluntary and only apply to the practice of those who self-select, none of these professions would be impacted by this bill.

(6) Whether any specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners have acquired that training, education, or experience;

Specialized training and education is the route to offering the safest and most effective service to the public. In Minnesota there are 33 programs offering that specialized training and over 1400 schools nationwide.

Policy Response: This bill codifies the national training standard already in place in MN schools and creates simplified reciprocity for applicants from other states.

(7) Whether the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience and, if so, why;

This bill would not force any changes on schools. All 33 schools in MN meet the criteria for applicants for Registration.

(8) Whether any current practitioners of the occupation in Minnesota lack whatever specialized training, education, or experience might be required to engage in the occupation and, if so, how the proposed regulation would address that lack;

No practitioner is required to Register. Practitioners who choose to Register but lack the necessary training can do so by Grandfathering as described in Item 10.

(9) Whether new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both;

As Registration is voluntary, new entrants to the profession would not be required to Register. For those choosing to Register, the national standard of 500 hours of education and passing an exam are the main competency-establishing criteria.

(10) Whether current practitioners would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, and, if not, why not;

No practitioner is required to Register. The Grandfathering provision creates a pathway for voluntary applicants who provide evidence of one of the following to establish competence via experience:

- Completed a minimum 500 hours of professional massage therapy training
- Having passed a board-approved written competency exam
- Documentation of having worked as a practicing therapist for 2 of the past 5 years
- Having been a member of a national professional association for 2 of the past 5 years

(11) The expected impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation.

As no providers will be fenced out of practice, no increase in the cost of service is expected. In fact, as RMBTs will be newly able to move across city boundaries, access to care will go up and

service costs may even *decrease*. The language of the municipal ordinance preemption was not only approved but actually drafted by the League Minnesota of Cities (LMC), who have as a legislative priority supporting state-level regulation for massage therapists.

In addition to the contents listed in subdivision 2, a report submitted by supporters of regulation of a health-related occupation must address the following issues as specifically as possible:

(1) Typical work settings and conditions for practitioners of the occupation;

In the 2012 AMTA Industry Report, respondents reported an average of 2.0 worksites, up from 1.6 in 2007. The following statistics are the settings in which massage therapist find themselves working at least part time:

Setting	Percentage reporting at least 1 worksite in this setting in 2012
Outcall	48
Office/Private Practice	39
Home Business	36
Spa/Salon/Hotel/Resort/Cruise	31
Healthcare Setting	27
Health Club/Athletic Facility	7
Massage Franchise/Chain	5

(2) Whether practitioners of the occupation work without supervision or are supervised and monitored by a regulated institution or by regulated health professionals.

The table above indicates 27% of massage therapists report working in at least one worksite that is a healthcare setting, where they would be under the supervision of a regulated health professional. These settings would include hospitals and hospice programs, chiropractic, medical and dental clinics, clinics of rehabilitation/sports medicine, oncology treatment and birthing centers. In many cases the massage therapists in these facilities work under the supervision of and as an adjunct to a treating physician, nurses and/or physical or occupational therapists. Otherwise, the vast majority of massage therapists are working in at least one worksite without direct supervision, most often working in outcall, sole proprietor or home businesses, or working in spa/salon settings.

Response to Additional Questions from Chair Tina Liebling

1. What other professions are likely to be impacted by the proposed regulatory changes?

HF 1925 proposes a Registration credential for Massage and Bodywork Therapists. As Minnesota defines Registration as a title protection act that is voluntary (Statute 214.001), there will be no impact on other professions. The only practitioners impacted will be those massage and bodywork therapists who self-select and qualify for the credential.

2. What position, if any, have professional associations of the impacted professions taken with respect to your proposal?

The following MN credentialed professions reviewed our proposal in 2010 and again in the lead up to the 2014 session. Here are their responses:

Professional Association

<u>Representing</u>	<u>2010 Position</u>	<u>2014 Position</u>
Acupuncturists	Neutral	Still discussing
Athletic Trainers	Neutral	Neutral
Chiropractors	Neutral	Neutral
MN Hospital Assc	Neutral	Still discussing
Nurses	Neutral	Neutral
Occupational Therapists	Neutral	Support
Physical Therapists	Neutral	Support

Additionally, the following professions from the Complementary/Alternative Health field operating under Chapter 146A, many of whom use techniques that could be considered massage and bodywork therapy techniques, were asked to review our proposal:

Professional Association

<u>Representing</u>	<u>2010 Position</u>	<u>2014 Position</u>
Alexander Technique	Neutral	Neutral
Amer Massage Therapy Assc	Support	Support
Aromatherapists	None	Neutral
Asian Bodywork Therapists	Oppose	Support
Associated Bodywork & Massage Professionals	Oppose	Support
Feldenkrais	Neutral	Neutral
MN Holistic Nursing Assc	Neutral	Neutral
MN Natural Health Coalition	Oppose	No response, assume Oppose
Polarity Therapy	Neutral	Neutral

Reflexology	Neutral	No response
Rolfing	Neutral	Neutral
Somatic Movement Educators	Neutral	Neutral
Structural Integrators	Neutral	Neutral
Trager Approach Practitioners	Neutral	Neutral

Bold indicates change in position for 2010 to 2014.

3. Please describe what efforts you have undertaken to minimize or resolve any conflict or disagreement described above.

We have made great effort to make language changes to the bill following input from the members and leadership of the above professional associations. In 2010 there were several large associations who were opposed. Through our work with them over three years, all but one now support or remain neutral on the bill. The Occupational Therapists, Physical Therapists, and the Associated Bodywork and Massage Professionals, a professional association for massage and bodywork therapists having over 2300 members in MN, are now officially in support of our bill as noted above.

In addition, the most active opponent to the bill in 2010, a group of Asian Bodywork Therapists lead by a massage and bodywork therapy school in Minneapolis (CenterPoint Massage and Shiatsu Therapy School and Clinic), are now in full support. In fact the same school owners who lead the charge against the bill in 2010 are now on the leadership committee for our grassroots coalition advocating for HF1925.

To bring these formerly opposing groups on board, we have delineated the educational criteria for the bill, required a referral for medical evaluation for clients who have conditions outside the training of a massage and bodywork therapist, added a criminal history background study to align with recently passed legislation for other health care professions, and set the fees slightly more conservatively to ensure costs for the administration of the new law will be covered.

The one group who was opposed in 2010 and we assume remains opposed for 2014 is the MN Natural Health Coalition. In our attempts to meet with them, they would not even agree to sit down with us. They have been, and remain, philosophically opposed to the proactive regulation of massage and bodywork therapists, even if the regulation helps protect the citizens of Minnesota.