



Business League for Massage Therapy & Bodywork (BLMTB)

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Economic Affairs Interim Committee
c/o Patricia Murdo
Legislative Services Division
PO Box 201706
Helena, MT 59620-1706

Dear Mr. Chairman, Members of the Committee, and Ms. Murdo:

We appreciate the opportunity to provide feedback to the Economic Affairs Interim Committee regarding SJ35 through participation in the study and other input. This letter is intended to discuss:

1. The concerns that we have about the questions in general and also areas that we, as a non-regulated profession were not allowed to give input.
2. Scope of Practice & Turf Wars: and how the survey does nothing to seek an answer to the root of the problem, much less provide an opportunity to discuss meaningful solutions.
3. Some suggestions / ideas.

Concerns:

As members of a currently unregulated profession, we are deeply concerned with the tone and tenor of the survey for the Study of Professional and Licensing Boards. It is common knowledge that an in-depth study cannot be accurate with a questionnaire that is limited to yes/no or multiple choice answers. These types of questions and the wording of the questions themselves tend to push the responder into a specific direction. As one example, Section C, Question 6 states: "Should there be a process for combining boards based on...." does not allow for questioning whether boards should be combined at all. In addition, the non-regulated professions were not really allowed to give clear feedback on the issues of combining boards and board representation as provided for in Section B (which we were not to answer). Questions in Section C pertaining to criteria for combining boards really leaves no room for feedback that boards should not be combined at all.

Some of the yes/no questions do not have simple yes/no answers. For example: Section C, Questions 1 & 2 are designed to look at the issue of Practice Acts vs. Title Acts. Doctors (an "invasive" profession) should be licensed (Practice Act), whereas in a "non-invasive" profession, like massage therapy, Title Acts are permissible. The questions did not address these nuances, and instead asked for an absolute, across the board answer – and there isn't one.

The same is true of the question "Should scope of practice be set by statute or rule?" (Section C, Question 4). We declined to answer this question because there is no simple answer. The

simplest way to say it: both should and both shouldn't. If the scope is set legislatively, then at its worst, the process is purely political with the profession that has the strongest lobby determining the scope of another's profession through turf battles. A prime example was the Athletic Trainer's bill in the last session.

Yet, rule making has its detractors too. It is still a political process, but less so, as boards are not bound by outside feedback. However, problems can arise with a combined board. With a combined board of several professions, each member does not have a specific understanding of another's professional scope. Emerging professions board members on an already established board will not have as strong a voice or will not be heard. The stronger professions tend to intimidate those board members of lesser background, lesser scope, lesser training, and lesser experience with board issues. In our experience, when we approached the Alternative Health Care Board during past licensing efforts, the midwives and naturopaths did not want massage therapists deciding issues affecting them due to scope issues, but did not feel the same about making decisions about massage therapy. This type of professional arrogance and the presumption of knowledge would be devastating to the practice of any emerging profession. Therefore the potential for turf battles will continue. Whereas if a board is constructed of members of one profession, everyone understands the scope of that profession and that board is not bound by outside feedback.

But a larger question begs to be asked: What or who determines scope of practice? This question appears to be at the core of many turf battles.

Scope of Practice & Turf Wars:

In our study of the issue, we have found *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (Report of the Taskforce on Health Care Workforce Regulation of the Pew Health Professions Commission, 1995) to be most helpful.

<http://www.futurehealth.ucsf.edu/summaries/reforming.html>

One impetus for SJ35 seems to have come out of the on-going "turf wars" that are presented to the Legislature each year. None of the questions in the survey directly address this issue or fulfill the mandate of the stated legislative intent for SJ35: "that the study...seek ways to resolve these disputes through consolidation, more specific delineation of authority *or other alternatives*." Where is discussion of other alternatives?

Further, we would suggest that a better mandate would be to explore why are there turf wars in the first place – how did they start, why are they perpetuating? It is not solely a "board" problem.

Turf Wars tend to be about scope issues, so the two are inextricably intertwined.

But how is a Scope of Practice developed? There is an assumption in the questions that the scope of practice is developed through either statute or rule. Neither is really the case. As a profession emerges and develops, standards of practice, core competencies, and scope of practice

(and maybe even a testing process) are also developing. The legislative process ideally should merely codify them.

According to the Pew Report, the manner in which scopes are codified is at the root of the turf war problem: granting some professions broader scope while limiting others causes those with the broad scope to protect their turf. In addition, these laws are written to define the differences between the professions, thus creating turf wars in an attempt to protect territory and maintain those boundaries. This protectionism does nothing to protect the consumer, but instead restricts access to services, drives up costs, and stifles development of new professions. From what we have seen in Montana, emerging professions have little chance of entering the legislative arena and emerging unscathed with an intact scope of practice: the legislative process and legislators tend to side with the more established professions and their needs rather than look very carefully at the competencies of the new profession. The Athletic Trainer's bill is an example of this: legislators appeared to be more interested in protecting the turf of established professions rather than learning about and examining the nationally accepted scope of the ATs.

Although we realize that this view may anger or alienate some and may have a negative effect on our profession's bid to seek licensure, The BLMTB believes that "turf wars" are not a "board problem" but instead are due to a flawed legislative process that places more emphasis on the political and disregards the fact that more than one profession can provide similar services (based on competencies of the profession) and that combining boards or changing the configuration of boards will not solve the problem.

Suggestions / Ideas

The Pew Report posed several options, and we found it most helpful. We also have some ideas. In short, there are several possible solutions to the problem:

The first step is for the legislators to acknowledge that no one profession has the "lock" on a particular service area. From the Pew Report: *"a regulatory system that maintains its priority of quality care, while eliminating irrational monopolies and restrictive scopes of practice would not only allow practitioners to offer the health services they are competent to deliver, but would be more flexible, efficient, and effective."*

Secondly, it is important for legislators to acknowledge that in the current arena of turf wars, emerging professions sometimes seek legislation in order to, out of necessity, protect their own turf. As we discuss this, we do not imply that everyone in our profession takes this same view. However, in Montana, the BLMTB believes that one reason why it is imperative for massage therapists to seek legal protection is precisely because turf wars exist, and because our scope is being eroded by the various professions already licensed. For example, trained massage therapists learn how to do salt glows, scalp and face massage. These are all regulated by the cosmetology board. Massage therapists also are trained in soft tissue rehabilitative techniques, which include not only massage, but also the use of hot and cold packs, ice, postural evaluations, stretching, Swedish gymnastics, manual therapy, myofascial release, and movement therapy, etc. These are regulated by the boards of medicine and physical therapy. However, in entering the

legislative arena to "carve out" our place, we very well could end up NOT being able to perform all of what we have been trained to do. This is problematic in that it discourages formation of professions and drives up consumer costs, while doing nothing to protect the health, safety and welfare of the public.

We would suggest the following:

1. Adopt a competency-based platform for developing legislation. As mentioned before, legislation brings out professions intent on protecting their turf. Adopting a competency-based platform would require that the parties show why they are or why they are not competent in a particular area based on standards of practice, national tests, etc. If the competency is there, no profession should be able to lobby to prevent a profession from performing that competency.
2. Revising all scopes of practice to be competency based could be phased in over time. In the meantime, this concept could be applied to development of scopes of practice of new professions.
3. Encourage development of new professions by passing a "Freedom of Access" law similar to ones in Minnesota and California. These laws allow consumers to access alternative health care modalities and for providers to exist without fear of prosecution if there is full disclosure present. Providers are to obtain a signed consent form from the consumer that outlines specific items required by the law: training, certifications, years of practice, the nature of the services to be provided, etc. This could solve a lot of problems. If an emerging profession felt protected enough by a statute of this nature, they would not seek regulation, therefore avoiding another turf battle. The members of that emerging profession could then practice without fear of prosecution from a profession intent on protecting their turf. The consumer is fully informed and should therefore be protected.
4. Consumer Advocacy Screening / Arbitration Panels. These panels would be set up to hear all sides of the "merits of the case" (or dispute) and make decisions/recommendations based on competency, rather than protectionism of turf. They would be required to take the time to learn about the facts of the issues presented, and take evidence based on that presented by the disputing parties.

To avoid bias and potential conflicts of interest, there should be a separate board for health related issues versus non-health related issues. In health related issues, consumers would NOT be health professionals or members of health boards – there is an inherent bias by health professionals toward other professions and health related issues. A minimum of 5 persons are needed to provide for good discussion and to bring more insight into the panel. In addition, there should be not more than one or two legislators on the panels. A legislator's presence would be helpful to provide insight into that process. It would be helpful to have members who have experienced both allopathic and naturopathic health care for those staffing the health care panel.

These panels could be used in two ways:

- a) To screen legislation prior to the session to pre-arbitrate any differences between the professions, and to hear the "merits of the case" should there be any irreconcilable differences. They can then make recommendations to the

legislature, which could adopt or reject those recommendations. It could even be required by statute that any legislation affecting professions must be heard by a screening panel first.

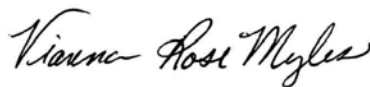
- b) To hear disputes between boards and make decisions as to how these differences should be handled.

We hope that you find the material included here to be helpful. We appreciate your attention and your time with these issues and are confident that any solutions determined by the EAIC will be fair to all.

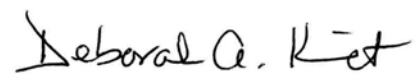
Sincerely,



Paige Asten
The BLMTB Board of Directors



Vianna Rose Myles



Deborah A. Kimmet

Note: The BLMTB is a professional advocacy group based (and incorporated) in Montana. Our members (over 60) live and work in the state of Montana. Two of the three Directors live and work in Montana. The third is a Montana native who continues to be active in Montana massage therapy politics and teaches courses in Montana. All three Directors are empowered to speak for and represent the BLMTB with regard to Montana issues. Should you have any questions please email us at info@blmtb.org.