



Business League for Massage Therapy & Bodywork (BLMTB)

PO Box 4686 · Butte, MT 59702

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Newsletter / Legislative Update December 16, 2008

#0027

Happy Holidays!

The BLMTB submitted a list of changes to the Massage Therapy Licensure bill. The vast majority of our suggested changes were not accepted. We hope to influence the process by working with the sponsor of the bill to make changes to the bill to ensure that

1. no one is put out of business,
2. our scope of practice remains intact,
3. the massage therapy licensure board is not given unchecked power, and
4. exemptions to the bill are comprehensive and don't attempt to define new law.

If you want to see the changes to the bill that need to be made in order for us not to oppose the bill, those are attached.

In other news, the Health Freedom bill is moving forward and we need volunteers to help. We need volunteers to contact legislators and to recruit friends, family, colleagues, and clients. Send them to www.montanahealthfreedom.org for more information (See the attached) to find out how you can help.

Remember, health freedom creates an exemption in the law with appropriate consumer protections that allows unlicensed practitioners to practice legally without licensure, registration or state certification. Please don't be a bystander – if licensure doesn't pass, then we still need to pass health freedom. Right now, it is unlikely that licensure will move forward once again.

1. the AMTA is unwilling to do what is needed to meet our conditions above – which we think are issues important to legislators too – and
2. there is an anti-licensure faction out there that will defeat the bill, even if the BLMTB were to remove its opposition.

We also asked the position of the AMTA and the AMTA/MTGRC on health freedom legislation. Here's their response:

"At this time the board does not have a position due to the fact that the Montana state legislature does not have anything to compare or contrast the act to." [note: the board referred to is the AMTA board of directors]

"The MTGRC will not have a formal position statement as the Committee mission is only to develop a massage therapy licensure act."

We've asked for further clarification for the AMTA Board's position (on Nov. 14) but have received no response.

Thanks for your support!

Yours in Health,
The BLMTB Board of Directors:
Vianna, Patty & Deb



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Massage Therapy Bill Issues – LC 859 – 2009 Legislative Session

The changes outlined below are those needed for the BLMTB to withdraw its opposition to the bill.

Category 1: To ensure current practitioners are not put out of business.

- **See Category 4 Below: Section 4. Exemptions: (8) –**
Rationale: Zone Therapists may be put out of business unless this provision is changed.
- **Section 3. Definitions**
~~(4) "Massage therapy" and "massage" are equivalent terms, and any reference in this chapter to either term includes the other.~~
Plus remove "massage" where it stands alone
Insert:
Section 4. Exemptions.
(12) This chapter recognizes that massage and touch is not the exclusive privilege of massage therapists and their use by practitioners not licensed to practice massage therapy is not prohibited by this chapter provided that
(a) the practitioner does not imply, hold out or state that the person is licensed by the state as a massage therapist, and
(b) the terms "massage" or "massage therapy" may not be used in advertising in any media or included in any promotional materials as a service or treatment provided by the person.
Rationale: massage is an act, massage therapy is a practice. Making both equivalent is bad form as it has the effect of massage therapy owning "massage." Massage therapists can protect the practice while allowing others to massage or touch the body.
"Owning" massage would put any practitioner out of business who incidentally touches the body.
See also Category 3.
- **Section 8: Qualifications for licensure.**
(2) The applicant shall, in addition, meet one of the following criteria:
(a) successfully complete massage therapy studies in a minimum 500-hour course of in-class teacher supervised instruction ~~and~~ (b) receive a passing score on an examination selected by the board; or
~~(b)~~ (c) possess a current license, or certification, or registration, in good standing, from another state;
Rationale: A practitioner who does not have the education, but has taken the test will not qualify for licensure. Previously practitioners were allowed to take the test without a full 500 hours of training.
- **Section 9. Grandfathering license applications.** An applicant for a grandfathered license shall:
a. meet the requirements of section 8(1) ~~(a)(b)(d) and (e);~~
Rationale: This removes the high school diploma or equivalent requirement for a person who has been in practice and who is to be grandfathered in. Requiring a high school diploma or equivalent for these people who have gotten along fine without it is discriminatory and would put them out of business.
- **Section 9. Grandfathering license applications.**
(2) be in ~~active, continuous~~ professional massage therapy practice for a minimum of one year prior to the ~~effective date.~~ ~~date of application.~~
Rationale: a. active and continuous may be defined so as to put current practitioners out of business (See Category 3). b. Applications may not be issued prior to or even one year or 13 months after the effective date listed below, putting people out of business. c. One year prior to the effective date is prior to the date the bill has been signed, making it retroactive – also putting people out of business.

- **Section 9. Grandfathering license applications.**

(3) Section 9 terminates 13 months after the date the first applications for licensure are available. Add language that ensures that this date is widely advertised.

Rationale: The date applications are available may not be widely advertised. We advocate that clearer language is used that requires specific advertising so that it is widely known that a. applications are available or b. the end date for grandfathering in.

- **Section 11. Effective dates.** (1) [Sections ~~4 through~~ 5, 6 and 10 and this section] are effective ~~as of October 1, 2009~~ upon passage and approval. **[Note to drafter: we believe these sections are needed to activate the board and the rule making process immediately after passage. If this is not correct, please advise]**

(2) [Sections 1 through 4 and 7 through 9] are effective October 1, 2010.

Rationale: there are three issues with the current language:

- a. technically, the board cannot be appointed or begin its work until it is authorized to do so, which means on the effective date.
- b. Since no licenses will be issued by the effective date, everyone practicing on the effective date is now practicing illegally.
- c. 6 or so months is not enough time for the board to complete its work and issue licenses. Our suggestions address these issues.

Category 2: To ensure that the scope of practice remains intact.

- **Section 2. Purpose.**

(1) The legislature finds that the practice of massage therapy affects the health, safety, and welfare of the people of this state and declares that the practice of massage therapy is a distinct health care profession that contributes to freedom of choice in health care. Massage therapy has application in the health care, personal care, wellness, and fitness fields. [It is in the interest of the public health, safety and welfare that the access to such services be protected and regulated by the state of Montana]

Rationale: to ensure negotiating power is not diluted with cosmetologists and athletic trainers, this language needs to be included. Further, massage therapy is a diverse profession – not just about health care. This language ensures this application is protected.

- **Section 3. Definitions**

(5) "Massage therapy" means... and the use of hand held massage therapy tools that mimic, enhance or support the action of the hands.

Rationale: this word was previously in the bill and was most recently taken out. Thumpers go beyond mimicry and do not really support the action of the hands. They actually enhance the action of the hands. Removal of this language excludes the use of some of our tools. If there is concern about this word allowing massage therapists to use devices outside of our scope, then those devices should be specifically named.

Category 3: To ensure that the board does not abuse its power.

- **Section 4. Exemptions.**

(3) Massage therapy continuing education courses may be taught by teachers who do not reside in Montana. Such a teacher is not required to be licensed as a massage therapist to teach if that the teacher is in compliance with the laws of the state in which the teacher resides.

Rationale: We've restored language that was recently deleted. The un-amended language does 2 things:

- a. it allows a non-resident massage therapy teacher to set up a massage practice without a license and not in conjunction with an event (per exemption 2b). The underlined section makes it clear that the person can teach and only teach, unless they get a license to practice too.
- b. It leaves it to the board to determine the circumstances under which a non-resident can teach here, which leaves it open to board abuse. The board can set up requirements so stringent that it could keep many teachers from out of state from ever teaching here. The addition of the underlined section prevents some of this, because if a teacher is in compliance in their "home state" then they are in compliance here and cannot be prevented from teaching.

- **Section 3. Definitions**

~~(4) "Massage therapy" and "massage" are equivalent terms, and any reference in this chapter to either term includes the other.~~

Plus remove "massage" where it stands alone

Insert:

Section 4. Exemptions. (12) ...

Rationale: See Section 1 above. This also minimizes the ability of the board to go after other practitioners who are performing within their scope, not calling it massage therapy, but whose scopes overlap with massage therapy. We want to limit the board's ability to abuse its power.

- **Section 6. Powers and duties of board –**

~~(3) Issue subpoenas requiring the attendance of witness or the production of books or papers.~~

Rationale: this provision allows a board the ability to look at anyone's financials for any reason and goes above and beyond the provisions in the uniform codes MCA 37-1-307 (b). Delete it.

- **Section 6. Powers and duties of board –**

~~(4) Take disciplinary action necessary to protect the public.~~

Rationale: this provision may go above and beyond the provisions in the uniform codes MCA 37-1-136 and should be deleted. This provision could be abused by a bad board.

- **Section 9. Grandfathering license applications.**

(2) be in ~~active, continuous~~ professional massage therapy practice

Rationale: The board can define active and continuous in such a way as to be abusive and to restrict practice.

Category 4: To ensure that exemptions to the bill are comprehensive and don't attempt to define new law.

- **Section 4. Exemptions:** 7 (b) - the SI exemption appears to have been changed to address our issues. We will continue to monitor this.

- **Section 4. Exemptions:**

(8) The provisions of [sections 1 through ___] do not limit or regulate the practice of any person ~~using Reflexology applied to the whose manipulation of the soft tissues is restricted to the soft tissues of the feet, hands and outer ears and their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to, Reflexology and Zone Therapy.~~ **using**

Rationale: Zone therapists deserve an exemption too.

What You Can Do NOW (Action Alert):

- * Sign up to Volunteer before and during the legislative session. The session runs Jan - April, so the time frame is limited and we're not asking for much - just what you can do.
- * If a practitioner, recruit your clients, friends and fellow practitioners to help.
- * If a consumer, recruit your practitioner and friends.
- * Contact a legislator This is important to do, particularly if you know them personally. Even if you don't know them personally, contact them! Particularly if you know any of the ones below:
 - Billings – Sen. Roy Brown(R) / Reps. Arntzen(R), Smith (R), Becker (D), & Peterson
 - Box Elder – Sen. Jonathan Windy Boy (D)
 - Bozeman – Sen. Joe Balyeat (R) / Reps. Vance (R) & More (R-Gallatin Gateway)
 - Browning – Sen. Carol Juneau (D) & Rep. Shannon Augare (D) B&L
 - Buffalo – Sen. Jim Peterson (R)
 - Butte – Sen. Jim Keane (D) & Rep. Pat Noonan (D-Ramsay)
 - Cardwell – Sen. Terry Murphy (R)
 - Crow Agency – Sen. Sharon Stewart-Peregoy (D)
 - Darby – Rep. Ron Stoker (R)
 - Dillon – Rep. Jeffrey Welborn (R)
 - Great Falls – Sens. Joe Tropila (D), Schmidt (D), Bill Wilson (D) / Reps. Boland (D) & Milburn (R-Cascade)
 - Harlowton – Rep. Harry Klock (R)
 - Helena – Sen. Dave Lewis (R) / Reps. Hunter (D) & Caferro (D)
 - Kalispell AREA – Sens. Jackson (R) & Barkus / Reps. Beck (R-Whitefish) Reichner (R-Bigfork)
 - Missoula: Sens. Squires (D) & Larsen (D) / Reps. Reinhart (D), Furey (D-Milltown), McAlpin (D), & Sands (D)
 - Park City – Rep. David Howard (R)
 - Red Lodge – Rep. Paul Beck (D)
 - Roundup – Rep. Tom Berry (R)
 - Scobey – Rep. Julie French (D)
 - Sidney – Sen. Donald Steinbeisser (R)
 - St. Ignatius – Rep. John Fleming (D)
 - Thompson Falls – Sen. Greg Hinkle (R)
 - Thompson Falls – Rep. Pat Ingraham (R)
- * Start a petition: download the one on the website.
- * Volunteer to be an advocate/voice for your profession.
- * Volunteer to go to Helena to testify or be a "warm body" in the audience.
- * Do you have a story to tell? Let us know how you are impacted by the lack of health freedom in Montana.

To learn more about how to do any of these things go to www.montanahealthfreedom.org (click on the advocacy page)

Or
Call Deborah Kimmet 406-251-9704 for more information.

Or
Email: deb@debkimmet.com