



# Business League for Massage Therapy & Bodywork (BLMTB)

PO Box 4686 · Butte, MT 59702  
[www.blmtb.org](http://www.blmtb.org) email: [info@blmtb.org](mailto:info@blmtb.org)

**Newsletter / Update May 30, 2008**

#0021

Greetings!

We want to announce the latest information that is out there.

The AMTA had their meeting on May 3-4. Two members of the BLMTB Board were in attendance. The AMTA expressed their interest in moving forward with licensure. While negotiations have taken place with the ABMP and negotiations are soon to take place with other occupational groups in June, the BLMTB Board has not yet been given a draft of the bill. We will keep you posted as we learn more.

The Other major piece of news is that the Montana Health Freedom Coalition is releasing its first draft of the Consumer Health Freedom and Access Act for feedback and input. We've included that information for your feedback. Please contact us at [info@blmtb.org](mailto:info@blmtb.org) to let us know what you think!

The Montana Health Freedom Coalition invites anyone who is interested to work on this project to contact them. You may email us at the BLMTB or join the MHFC discussion group at <http://groups.google.com/group/montanahfc>. At this point, the group is merely gauging interest in the issue. If there is no interest, this bill will not move forward.

Happy Reading!  
Deb, Vianna & Patty

## **Why does the BLMTB Board support a Health Freedom Bill?**

The BLMTB Board supports both meaningful licensure and Health Freedom. Both protect the consumer, but Massage Therapy licensure **only** protects massage therapists – but what about everyone else? There is no protection available for Rolfers, reiki practitioners, energy workers, etc. in a massage therapy-only bill. Their exemption means they won't be prosecuted for practicing massage therapy without a license but they are still able to be prosecuted for practicing another profession without a license. This is where Health Freedom comes in: it protects all of us including other unlicensed health care practitioners from malicious prosecution. Both types of protection can coexist.

Secondly, historically, massage therapy licensure has not been able to pass the legislature. It's time to include a "Plan B" in the event the same thing happens again this year. It is time that something be done so that the massage & bodywork (somatic) professions do **Not** remain unprotected for yet another 2 years, and the consumer's choices in alternative health care continue to be compromised again.

A case in point: the cosmetology board is going after massage therapists performing salt glows. Does this mean that licensure is the only protection? Not necessarily so. During the legislative process and during the rulemaking process once licensure passes, the boards have to duke it out: what actions belong to what boards, which may not guarantee our full scope of practice. But all of that is only if licensure passes. What if it doesn't? And history shows that it is unlikely that massage therapy licensure will pass again this year.

What Health Freedom does is require boards to ask different questions: the board cannot take punitive action against a person merely because the disputed action is part of their scope of practice, which is what they're doing now.

Rather than have it be a plan in the wings, we think both bills should work their way through the legislature – because the protections provided by massage therapy licensure are limited **only** to massage therapists, not everyone else.

## **Here's how Health Freedom works:**

No one needs to register with the state or become licensed under a Health Freedom Bill.

The assumption is that there are a lot of professions out there where the risk of harm is minimal and that licensure is not necessary. To ensure that the threshold of harm is not violated, a list of prohibited acts is included: they can't puncture the skin (except for finger pricking), they can't do surgery, or prescribe meds and x-rays, do high-velocity low-amplitude chiropractic adjustments, or use devices that require a prescription for use. All things that we don't do anyway.

In addition to the prohibited acts, the practitioner is required to have a written disclosure that the client signs and that the practitioner keeps on file. The public is protected in 5 ways:

- a. By signing a disclosure, they acknowledge that they've gotten a copy of the practitioner's training and credentials, and that the person is not a doctor or is otherwise licensed by the state. Right now, consumers don't know what our training is and assume we're all licensed, particularly when a practitioner uses the LMT credential (a fraudulent offense in the state because the state doesn't currently license). This would dispel that issue, and provide a layer of protection that is not currently in the law. As we all know, training does not guarantee competency, but the consumer now has the information to make decisions concerning the type and training of the practitioner that they choose to see.
- b. It protects the consumer's access to alternative and complementary care, by ensuring that they can seek out the alternative health care of their choice and not have their choices limited because a licensed occupation doesn't think that alternative and complementary health practitioners should be able to do some of the things that they do.
- c. It does NOT take away the consumer's legal right to sue anyone for malpractice or negligent behavior.
- d. It does NOT take away the occupational boards' right to go after someone who is practicing negligently.
- e. It does NOT take away the occupational boards' right to regulate their own licensees (something that a proposed bill in 2007 tried to do – it failed, and rightfully so).

What the Health Freedom bill does do is change how the occupational boards operate. Currently boards can go after anyone who is infringing upon their scope. Unfortunately, alternative and complementary health care infringes on just about everyone's scope. So, a board can go after a practitioner just for merely using a word, or performing an act that they've been trained to do, regardless of whether or not the public has been harmed. This is what the cosmetologists are doing right now. What Health Freedom does is require the board to ask different questions concerning the "offending" act. Rather than: is the person doing what I do? The question now becomes: is what the person doing creating harm or a risk of harm? If the person is not performing the prohibited acts and their clients have not been harmed, or are under the risk of harm, then the answer is "no" and the practitioner is not prosecuted. This is a shift – there is no longer a presumption that it is harmful for someone other than a licensed person to do a particular act. If someone does an act that they are not trained to do, there IS a presumption of harm and they should be stopped.

This type of law, at least as far as prosecution for practicing medicine, has a long basis in constitutional law. Many court cases have been decided in the practitioner's favor when the practitioner has been able to show that they haven't caused harm, aren't doing harmful acts, and the disclosure is used. A Health Freedom bill codifies it into law, rather than having it tried over and over again in the court system. What the national movement is about now (and so is the bill we propose), is expanding this law to apply to other occupations (not just the practice of medicine). In fact, we recommend that practitioners start using the disclosure outlined in the bill draft now – the herbalists have been doing this for some time now with some success in the courts.

## **How was the Bill Drafted? / Who wrote it?**

The proposed bill was specifically NOT re-written to conform with Montana's bill drafting manual. This is to reflect the fact that this bill draft comes from a national template. It can later be converted without compromising any of the intent of the bill.

The BLMTB helped found the Montana Health Freedom Coalition (MHFC) in 2007. The steering committee of the MHFC appointed a bill drafting committee. The committee's work is now complete and they've unveiled the draft for feedback and input.

We'd like to know what you think about this bill and encourage your feedback. Please let us know.

The Bill Drafting Committee Process:

Health Freedom is a big issue nationally. The most notable states to pass Health Freedom are Minnesota, California and Idaho. The MHFC wanted to take advantage of this nationally available expertise and that is reflected in the committee make-up. The bill drafting committee consisted of 4 people: Adam Sellars, a nationally recognized herbalist and

consultant from California, Kim Sharples, a nationally recognized Nature's Sunshine consultant and Health Freedom advocate from Colorado, Deb Kimmet the MHFC legislative liaison (and BLMTB Board member) and Vianna Myles, Reiki master and BLMTB Board member. The committee started with the national template provided by Diane Miller, the director and legal counsel for the National Health Freedom Coalition (NHFC) and made a few modifications specific to Montana. Diane participated in the discussions and decision making on the final draft to ensure that the bill draft complied with national standards, and to gain support from the NHFC.

## **The Text of the Bill Draft**

May 12, 2008

### **MODEL DRAFT Consumer Health Freedom and Access Act** A bill to be entitled

An act relating to access to the healing arts, creating (new sections); providing popular names; providing findings and intent; authorizing persons who are not health care practitioners licensed, certified, or registered by this state to provide certain health care services; prohibiting certain acts; requiring certain disclosure; providing penalties; amending (sections ) relating to unlicensed practice of a health care profession, to conform.

Be It Enacted by the Legislature of the State of Montana:

Article 1. Section 1000 Montana Statutes, is created to read:

Section 1000. Consumer Health Freedom and Access Act

#### **(1) POPULAR NAME.—**

This section shall be known by the popular name "The Consumer Health Freedom and Access to Health Care Services Act."

#### **(2) FINDINGS AND INTENT.--**

(a) Based upon research data, it is evident that a significant number of Montanans are presently receiving a substantial amount of health care from providers of health care services who are not licensed, registered, or certified by this state.

(b) Notwithstanding the widespread utilization of these health care services by residents of this state, the provision of such services may be in technical violation of the occupations and professions practice acts governing licensed practitioners.

As a result, a provider of the healing arts who is not licensed, certified, or registered by this state under an occupation or professions act could be subject to fines, penalties, and the restriction of his or her practice.

(c) Because this state finds that these health care services are widely used and desirable under certain circumstances as outlined in this [section] and in order to maximize and protect consumer options in health care and for the public's health and welfare, the Legislature intends to remove current barriers to the public's access to unlicensed practitioners providing health care services with appropriate consumer protections, as provided in this section.

#### **(3) DEFINITION.—**

As used in this section, "health care services" means health care and healing therapies and methods which are not prohibited by subsection (4) of this Act and which are provided by a person who is not licensed, certified, or registered, under the Occupation or Profession Title 37 of the Montana Code .

#### **(4) PROHIBITED ACTS.--**

(a) Notwithstanding any other provision of law, a person who provides health care services in accordance with this section, but who is not licensed, certified, or registered by this state to practice under an Occupations or Professions Act, , shall not be in violation of a law based on the unlicensed practice or provision of service of an Occupation or Profession regulated un Title 37 of the Montana Code. unless the person:

1. Performs surgery or any other procedure that punctures the skin except for finger pricking screening purposes of a person;

2. Prescribes or administers X-ray radiation to any person;

3. Prescribes or administers a legend drug, a device that requires a prescription for use., or controlled substance to any person;

4. Performs a chiropractic adjustment of the articulations of joints or the spine that uses a high velocity low amplitude thrusting force;

5. Diagnoses and treats a health condition of an individual, in a manner that causes that individual an imminent and significant risk of discernable and significant physical or mental injury, under circumstances in which the health care practitioner , in the exercise of reasonable care should have known, would result in such injury.

; or

6. Holds out, states, indicates, advertises, or implies to any person that he or she is licensed, certified, or registered, by this state to provide health care services.

**(5) DISCLOSURE.--**

(a) Any person providing health care services according to this Chapter shall, prior to providing such services, disclose to the client in a plainly worded written statement:

1. The practitioner's name, business address, and telephone number.
2. The fact that he or she is not licensed, certified, or registered, as a health care practitioner by this state.
3. The nature of the health care services to be provided.
4. The degrees, training, experience, credentials, or other qualifications if any of the practitioner regarding the health care services being provided.

(b) Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak the language of the providing practitioner.

(c) Before a practitioner provides health care services to a client for the first time, such practitioner must obtain a written acknowledgment from the client stating that he or she has been provided with the information described in this subsection. The client shall be provided with a copy of this written acknowledgment and it must be maintained for at least 2 years as a confidential health document by the person providing the services. If the disclosure information has changed then the practitioner has a duty to repeat part (a)(b)and (c) if a client obtains services after the change.

(d) A person who violates any provision of this chapter is subject to a cease and desist order under Title 37-1-411. However before enforcement proceedings begins regarding Section (5) on disclosure compliance, a notification, educational, or mediative approach must be utilized by the state and parties to bring a practitioner into compliance with this section. The order may apply only to the alleged act or practice constituting a violation.

**(6) EXEMPTIONS**

(a) This act does not apply to, control, or prevent any health care professional licensed, certified, or registered by this state, from practicing lawfully and according to a professional practice act or under other state law.

(b) This act does not apply to, control, or prevent any acts under 37-3-103 (g).