

Stuart J. Little, Ph.D.
Little Government Relations, LLC

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House Health and Human Services Committee.

Testimony in Support of House Bill 2123

Chairman Hawkins and Members of the Committee,

My name is Stuart Little and I appear today on behalf of the Kansas Chapter of the American Massage Therapy Association. We requested the introduction of House Bill 2123 to provide a state license for individuals to practice massage therapy.

Policy Choice

I am happy to discuss the technical details of House Bill 2123 but my testimony will focus on the public policy choice you are faced with today: should the State of Kansas license individuals who perform massages. The choice is not easy because we are asking you to require government regulation of individuals who right now practice without fees, state standards, or state oversight.

We believe House Bill 2123 will not damage the massage therapy. It will provide minimal professional standards, create oversight, and a means of recourse when someone's experience turns bad. The most fundamental issue is that the public does not know when the individual in the closed room with their unclothed family member has hurt someone in the past, has a criminal history, has perverse and undetected proclivity. Current state law allows anyone to say he or she a trained massage therapist and no one will ever know.

You will hear from two extremes that believe the state has no interest and at least one group at the other end that wants total and excessive control. House Bill 2123 provides an option in the middle.

History

- Credentialing. In 2011 the Kansas Department of Health and Environment Credentialing Review Committee and Secretary Moser concurred that there is a compelling public safety interest warranting licensure. (Attached)
- House Bills from 2014 Session—House Bill 2187
 - Addressed many concerns, incorporated agreements into this bill with most critics.
 - Chiropractors
 - Physical therapists
 - Local government: the license is for the individual person to practice, all other issues related to the business are local control

- Added Attorney General representation to address the issue of human trafficking and the sex industry

House Bill 2123 comes to you with many of the usual turf and territory issues resolved.

Basics of House Bill 2123

Establishes the title massage therapist and the ability to practice placed under authority of the State Board of Nursing—currently there are no state requirements

- Bring professional licensure status to massage therapists to protect the public and ensure standards of practice in the field are protected and preserved.
- The bill would set minimum training requirements, define a scope of practice while specifically protecting all other professions, provide an avenue for consumer complaints, and pre-empt granting a local license to practice but not other local control issues.
- Massage therapists will be licensed by the state under the Kansas State Board of Nursing, with a Massage Therapy Advisory Committee to represent massage therapist and to advise the Board. The Attorney General is represented on the Committee.

Grandfathering

- Generous Grandfathering Rules for Current Massage Therapists: For a period of two years, existing practitioners would be able to qualify for a state license by meeting one of the following criteria:
 - Has completed a massage program consisting of a minimum 500 hours; *or*
 - Has completed a massage program of at least 300 hours and has practiced massage for a period of 3 years; *or*
 - Has practiced massage for at least 3 years prior to the date of application; *or*
 - Has been an active member of a massage therapist professional association which provides professional liability insurance for at least a year; *or*
 - Has passed a nationally recognized examination approved by the board.

New Applicants after bill takes effect:

- All NEW applicants only will have to demonstrate they have completed a massage program consisting of at least 500 hours *and* passed an examination approved by the board.

Additional Provisions

- The licensing fee would be no more than \$80 every two years.
- Continuing education requirements would be limited to no more than 6 hours per year.
- Massage therapists would be required to carry professional liability insurance.

Why massage therapy support House Bill 2123

- Forty-five states have some form of massage licensure

- Nationwide, in 2009 over 280,000 individuals practice massage therapy in an estimated \$10 billion business.
- The practice of massage therapy has doubled in size since 1998 prompting many states to initiate regulation.
- In Kansas, an estimated 2,500 individuals perform massage therapy, the vast majority in well-run and safe solo practices or businesses, many part-time providing a desired health-related service to Kansas
 - Sets minimal regulations at no cost to the state and low cost to therapists:
 - Professional standing and growing consumer demand for a clear scope of practice, uniform standards, competency, quality, and safety.
 - Provides a means to evaluate and close down unscrupulous, transient “massage businesses” when they appear.
 - The right to control their profession, not place it in the control of others
 - A few Kansas cities have some limited local regulations but lack of uniformity making the massage business more burdensome
 - Provides a means for protecting therapists from consumers seeking illicit activities when massage practitioners are state licensed professionals who must meet minimal standards.
 - House Bill 2123 does not license massage facilities and we do not support a facility license due to the part-time and transient nature of those who travel to provide massage.

The Public Interest

Many in the public are unaware that massage therapists are not licensed.

- Clients can receive assurance that a licensed massage therapist has:
 - A clear scope of practice—what massage therapy can and cannot do
 - A minimal education and training level
 - Continuing education
 - A means of filing a complaint or grievance—none currently exists
 - A state regulatory body empowered to enforce sanctions against those who violate the public trust

House Bill 2123 provides a means to deal with bad massage and the sex business, which now can only come through criminal or civil action.

- Provides a method for filing formal complaints to protect the public from physical harm, sexual abuse, and unwanted and unwarranted sexual impropriety. Massage therapist status can be checked on the Board of Nursing website.
- Protect the integrity of the profession and thus ensuring public confidence through businesses with licensed massage therapists.

- Local Government Issue: The state will grant a license to an individual to practice massage. The bill does not affect local units of government ability to manage local regulations (zoning, general business licenses, etc.) as they do currently.
- Places the Attorney General representative on the Advisory Committee and requires mutual notification of issues between the Board of Nursing and local law enforcement

Brief Comments About Sex

You are aware of the issue of illicit massage businesses and some have asked if licensure will stop that from happening. In Wichita, out of state operators in 2013 recruited women to work in Kansas in an illicit massage business. As the defended in this Wichita case stated: “According to the July 2013 complaint, suspect Gary Kidgell told an investigator he and his wife moved to Wichita from California after learning about the massage business and the city’s ‘lack of massage parlor regulations.’” The absence of a professional license certainly made that easier and appealing to illicit businesses.

A massage therapy license will not end the sex business but an individual license has two benefits:

- One benefit is preventive. Kansas will not be a haven for illicit operations because illegal operators will be aware that they cannot open a business without a licensed employee.
- Two, the State Board of Nursing will maintain a searchable on-line database for licensed massage therapists as they currently maintain for nurses. Law enforcement or citizens will be able to search to determine if a massage therapist has a license. If they don’t, they can be closed down. Rather than focusing law enforcement resources on sting operations, licensure will provide an immediate tool for verification. If further investigation is warranted, the Board of Nursing or law enforcement may investigate but setting the standards to practice provides a first level of defense.
- The bill requires dual and reciprocal notification of complaints, investigations, or arrests of licensed massage therapists between the Board of Nursing and local law enforcement.

Conclusion

A few in the practice of massage therapy do not want licensure and you will hear from them. They have worked successfully in the field for years without licensure or any regulation and oversight. However, the field of massage therapy has expanded, as public use of massage has increased, and as massage has gained a greater role in the system of health, the times have changes. We believe a point has been crossed where protection of the public and the profession of massage therapy now require a regulated professional status.

I would be happy to stand for questions at the appropriate time.

**FINAL REPORT TO THE LEGISLATURE
FROM THE SECRETARY ON THE APPLICATION
FROM THE AMERICAN MASSAGE THERAPY ASSOCIATION OF KANSAS
May 5, 2011**

The American Massage Therapy Association of Kansas submitted an application requesting credentialing at the level of licensure. The application has been reviewed in accordance with the Kansas Act on Credentialing by a technical review committee and the Secretary of Health and Environment. The technical committee conducted four fact-finding meetings, including a public hearing, to investigate the issues. According to K.S.A. 65-5005, within 120 days of receiving the technical committee's report the Secretary is to issue a final report to the Legislature. The technical committee's report was submitted to the Secretary on May 5, 2011. (Attached is the technical committee's report.) This is the final report of the Secretary to the Legislature.

The statutes state that the Secretary is not bound by the recommendations of the technical committee, nor is the Legislature bound by the Secretary's recommendations.

K.S.A. 65-5005 requires that all of the criteria are to be found met and a need for credentialing established prior to the technical committee or Secretary making a recommendation that the application be approved. The technical committee concluded that all criteria were met. The technical committee determined that there was sufficient need shown for licensing of massage therapists in order to protect the public from the documented harm, therefore, the technical committee recommends that the application be approved.

In summary, the technical committee findings and conclusions are:

- The unlicensed practice of the occupation can harm the public and the potential for harm is recognizable and not remote. Criterion I is met.
- The practice of the occupation requires an identifiable body of knowledge acquired through a formal period of advanced study; and the public needs, and does benefit, from assurances of initial and continued education. Criterion II is met.
- Information provided indicates that services provided by massage therapists are, for the most part, not under the direction of other health care personnel but are performed independently. Evidence was provided which indicates that this arrangement is not adequate to protect the public from harm. Therefore, Criterion III is met.
- Criterion IV is recognized as asking for documentation on why registration and certification or other, less regulatory means, are not effective in protecting the public from harm. Evidence

was provided which indicates that the level of credentialing of registration or certification is not adequate to protect the public from harm. Thus, Criterion IV is found to be met.

- Licensing the occupation appears to have minimal impact on the cost of health care. Criterion V is met.
- Licensing the occupation appears to have minimal impact on the availability of health care personnel providing services. Thus, Criterion VI is met.
- The scope of practice of the occupation is identifiable. Criterion VII is met.
- From the information provided, it appears that the licensure of massage therapists would have minimal effect on the scope of practice of other health care personnel. Therefore, Criterion VIII is met.
- Nationally recognized standards of education for massage therapists exist and are identifiable. Criterion IX is met.
- With the first nine criteria having been found to be met, credentialing of the profession to protect the public from the documented harm is appropriate. Licensure was determined to be the least regulatory means of ensuring that the public is protected from the documented harm.

The Secretary of Health and Environment's Findings, Conclusions and Recommendations Are:

- After consideration of the technical committee's report and the evidence and testimony presented to the committee, I concur with the technical committee's findings and conclusions. I find that the first nine criteria have been met.
- I concur that sufficient evidence was presented to warrant credentialing of massage therapists in order to protect the public, and that licensure is the appropriate level of credentialing to ensure protection from the documented harm.
- I recommend that legislative action be taken on the credentialing application.


Robert Moser, MD, Secretary

5/11/2011
Date