

2009 SENATE HUMAN SERVICES

SB 2099

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2099

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-13-09

Recorder Job Number: 6899

Committee Clerk Signature *Mary K Monson*

Minutes:

Senator J. Lee opened the hearing on SB 2099 relating to regulating the practice of massage.

Gail Hovden, ND State Board of Massage, spoke in favor of SB 2099. This bill is mostly a verbiage cleanup.

Senator J. Lee asked Ms. Hovden to explain some of the changes.

Ms. Hovden explained that the massage business has grown rapidly and there are many types of massage. Some people think they can get excused and practice certain modalities without a license that is required by the state.

Senator J. Lee asked if this was including those newer areas now being practiced so it would be clear the NDSBM would cover the licensing of all those people looking to practice those areas of massage.

Ms. Hovden I believe so.

Lines 14-15 on page 2 were discussed as well as section 4, lines 24-27, dealing with exemptions.

Senator J. Lee asked about the usage of "may" in several different areas of the bill. "May" is permissive where "shall" is mandatory. She also wanted to know if the continuing education language was new.

Ms. Hovden replied that they have been at 18 continuing education hours/year. Most massage therapists now are getting more like 25-30 hrs/year. They would like to submit every other year thus making the best of their hours. It would be more convenient and less expensive.

Continuing education is done through programs that are offered by the board but there are many outside sources that the board can recognize and certify as being appropriate. The license fee is \$50.

Vitamins were discussed. They are not allowed to diagnose or prescribe so this is just cleanup. The wording was from a long time ago.

Senator Erbele asked about remote education and if it was just for continuing education hours.

Ms. Hovden thought about 6 continuing education hours/year could be taken by remote but the rest has to be in classroom or instructed.

Nancy Kopp, Volunteer on State Board of Massage, spoke in favor of SB 2099.

Edward Erickson, Attorney General's Office, was present in a neutral position to answer any questions. He was involved with helping to draft the bill appropriately.

Senator Pomeroy asked about the usage of "may".

Mr. Erickson replied that there were places where they felt there should be room for some discretion and he went on to explain some.

Inspections were discussed. They still want to have inspections but, they just want more flexibility. There was some discomfort from the committee with the usage of "may" periodically inspect.

Senator Dever asked if there was a problem with people operating without a license.

Mr. Erickson said that has been an issue.

There was nobody present that testified in opposition to SB 2099. Attachment #1 was e-mailed to the committee in opposition.

The hearing on SB 2099 was closed.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2099

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-14-09

Recorder Job Number: 7025

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee opened SB 2009 for discussion and recognized Nancy Kopp representing the State Board of Massage.

Nancy Kopp reported that they conducted a conference call with all members present along with Attorney Edward Erickson and they would honor the committee's request to keep "shall".

Senator J. Lee explained that may is permissive and shall means you have to do it. It is not her impression that periodic means it has to be done every year or even every two years. But there should be a regular kind of schedule required.

Ms. Kopp said they had discussed it and the reason they suggested the change is they only have five state board members and two couldn't do an inspection. There are too many for them to handle but they came up with a solution.

Senator Dever wanted to know what kind of infractions they deal with.

Ms. Kopp replied that most of them are practicing without a license.

She went on to discuss the second concern of the committee on page 4, line 1. The word "may" is currently in statute. That entire sentence was just moved. They are not changing it. They are not audited by the state but they are required to perform an audit.

Senator J. Lee asked Ms. Kopp if this permits them to hire an outside auditor. She wondered if the language should be changed to recognize the fact that they are appropriately having an outside auditor conduct that for them.

Ms. Kopp said she would like an opportunity to check with some of the other state boards to see how theirs is worded.

Senator J. Lee said that would be fine and closed the discussion on SB 2099.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2099

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-20-09

Recorder Job Number: 7352 (Meter 01:20)

Committee Clerk Signature

Mary K. Manson

Minutes:

Senator J. Lee opened SB 2099 for review of the additional information provided by Nancy Kopp concerning the history of providing reports (attachment 2), and the information provided by the intern on what other states are doing with inspections (attachment 3).

There are annual outside audits which are made permanent records for the state board.

Terminology regarding "periodic" investigation was addressed.

Attachment 4 is additional testimony received after the hearing.

Senator Erbele moved a **Do Pass**.

Seconded by **Senator Dever**.

Roll call vote 5-0 was left open for **Senator Heckaman**. Final vote 6-0-0. **Motion passed**.

Carrier is Senator Pomeroy.

Date: 1-20-09

Roll Call Vote #: _____

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2099

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Pomeroy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2099: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2099 was placed on the
Eleventh order on the calendar.

2009 HOUSE HUMAN SERVICES

SB 2099

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2099

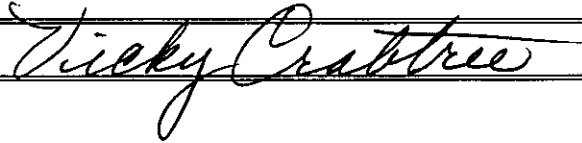
House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9691

Committee Clerk Signature



Minutes:

Chairman Weisz opened the hearing on SB 2099.

Gail Hovden, licensed massage therapist and serves on State Board of Massage testified in support of bill: See Testimony.

Chairman Weisz: Do you really need all the language couldn't the board do that by policy? Changing from 18 to 32 credits every 2 years you have an awful lot of language in the bill.

Gail Hovden: I need help with that.

Chairman Weisz: We'll save that part for later.

Stacey Ryan, instructor for Williston State College: Testified in support and stated she helped put the bill together. She hasn't received much negativity about the bill.

Rep. Porter: On page 5, new penalty language from association standpoint do feel that is an ok penalty to double to \$100 for someone who is one day late with license fee?

Stacey Ryan: Done because of economy. They have two months to get in their material into board for renewal.

Rep. Porter: You look at your licenses expire November 1 and give 2 months to get stuff done?

Stacey Ryan: No. We get a letter from State Board of Massage in November and a list of what needs to be in for license to be effective January 1. By December 31, everything has to be into the board along with fee.

Rep. Porter: How many lapses do you have?

Stacey Ryan: One chronic one, and depends on year. Biggest problem is that they are not getting their addresses into the state board. And there is confusion between our board and the State Board of Massage as they are two separate entities.

Rep. Porter: Do you have capabilities on-line to update your address or is it done manually?

Stacey Ryan: No on-line capabilities. They can e-mail us.

Rep. Frantsvog: I need help with definition on page 1. "Western and Eastern modalities", what does that mean?

Stacey Ryan: Western is like our North America. Eastern is like China and India. China uses acupuncture and they have different ideas how to do things. They are very literal. Indian culture not specified in law before.

Rep. Frantsvog: Does everyone use western?

Stacey Ryan: Not everyone uses just western. There is oriental medicine and western medicine and the modalities is kind of the same thing. There is a difference in massage therapy techniques between the two.

Chairman Weisz: Do you teach both?

Stacey Ryan: I teach western and my colleague teaches the other.

Rep. Holman: The licensing of therapists then covers multiple areas?

Stacey Ryan: Yes it does. The only thing it doesn't is energy work.

Nancy Kopp, member on Board of Massage: Voiced support of bill.

Yolanda Karas, from Rasmussen College: Voiced support of bill.

Rep. Frantsvog: How long does it take to become a massage therapist?

Yolanda Karas: It varies between schools. Williston is a 3 year associates degree or certificate option (inaudible).

Rep. Nathe: What is the number of massage therapists practicing in ND?

Yolanda Karas: 659.

Edward Erickson, from Attorney General's office: Answered technical questions.

Page 1, line 15, definition of massage, going to add a lot of specific physical actions in order to getting away from using words and labels. Board has seen people come up with any name other than massage and don't think they need a license. But, they are physically doing massage.

Chairman Weisz: Explain the rationale of language that says, it does not include anything that requires a license to practice or any other scope of practice because it sometimes appears there's an overlap.

Edward Erickson: The intent is to target on line 19 there is to only include the (inaudible) massage (inaudible) dealt within this chapter. So a massage therapist cannot (inaudible) his chiropractic, which is a more related field and often overlap. This is to make it clear that a massage therapist may not practice chiropractic or any other profession other than is defined in the massage practice act.

Chairman Weisz: Is there a potential issue of this chiropractor (inaudible) define something within their scope (inaudible) prohibited specifically, don't have an example, assuming they can do a lot of things you are already specifying here. Will there be an adversarial issue on that?

Edward Erickson: Look at last part of line 19 where it starts at, "Except as provided in this chapter, "massage" does not include...." If it is provided in this chapter, it is massage therapy.

Rep. Nathe: Section 2, line 3, remote education, are you talking about web bases education?

Edward Erickson: We want a definition we can start building on. Have classes we don't require hands on teaching, so (inaudible) for remote education.

Edward Erickson: On the late fee aspect, the board doesn't want to use that. We have a chronic person who won't pay fee on time. I send a letter and he ignores me. Have to call police department that someone is massaging without a license and they send an investigator over. The police and I are getting tired of that.

Chairman Weisz: There is no late fee currently?

Edward Erickson: Exactly. Regarding the length of language, on pages 5 and 6 on continuing education provision; the Supreme Court has made clear we would have to have law to do this either through statute or administrative rule making.

Chairman Weisz: If we change the law to give you 32 credits over 2 years, you shouldn't need law though to do that. Shouldn't it be up to the board's discretion and how they are going to make that work? My concern is a whole page of language which is useless once your transition is done.

Edward Erickson: We would have to put it into administrative rule if not in the statute.

Rep. Potter: Page 3, line 27, the "shall to may" change, does the board periodically expect massage establishments?

Edward Erickson: The number of licensed massage establishments has gone up dramatically and the board can't do everyone.

Rep. Potter: Any new massage operation is inspected prior to opening?

Edward Erickson: They try to schedule as soon as possible. Only have 5 board members and no outside staff.

Rep. Hofstad: What does inspection consist of?

Edward Erickson: Cleanliness, if it is in a home, it cannot be in a bedroom.

Gail Hovden: Need to show licensing is current and displayed on their wall. Cleanliness procedures. How the room is set up. Problem with mirrors' positions.

Rep. Uglem: On page 7, line 4 and 5, the ability to fine up to \$250 has been added. Does that only apply to licensees or is it for someone who is practicing without a license.

Edward Erickson: Only applies to licensees.

Rep. Uglem: Do see that being used very often?

Edward Erickson: We've had a few. An average of one or two a year.

Rep. Frantsvog: You talked about annual inspections. Does the Health Dept. do them too?

Edward Erickson: No one else does.

NO OPPOSITION.

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2099

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10108

Committee Clerk Signature

Dicky Crabtree

Minutes:

Chairman Weisz: Let's take up 2099. There was concerns about renewal.

Rep. Porter: Page 7 and line 5 also.

Chairman Weisz: What does committee want to do with it?

Rep. Potter: Motion a Do Pass.

Rep. Holman: Second.

Rep. Porter: The issue with Section 10. The board is able to set the fine of individuals. They can pick or choose what limit of fine they want to set. A lot of boards are like this one, small and have competitors sitting together on the board. Seems like a hefty dollar amount. If there is one person no one on the board likes and then they can charge them \$250. Next week they get someone in that does the same thing and then they only fine them \$10. It doesn't set any kind of precedence or process in doing that. I don't like the fact it's up that high. You go down to line 28 and not only specific things listed here, but any rule adopted by the board. You've given them the authority to have their own civil penalty of up to \$250 for anything that they adopt by rule too. I have a problem with that.

Chairman Weisz: I have a problem with the language even if you are comfortable with the fine. All the subsections are the licensee, but we are fining their license. I don't know how you

fine the license. The license you can have revoked, suspended, or fined up \$250. There is an issue with the wording there. Here they are talking about the license and in reality they are talking about the licensee. On page 7, line 4 and 5.

Rep. Holman: Didn't they comment on they were having trouble with one person and that's why they made it so high?

(Everyone talking at once.)

Chairman Weisz: The person didn't pay his license fee and they had to call the sheriff to go over there and then they paid the fee. Even in the current law you don't put license on probation.

(Much discussion back and forth talking at once about license being on probation, suspension etc.)

Rep. Potter: I will take my motion back.

Rep. Holman: Second.

Chairman Weisz: Do you want to take out the \$250 or fix the language?

Rep. Potter: What if you removed "fined up to two hundred fifty dollars" and say, "a license of a massage therapist my denied or revoked or suspended or placed on probation and the licensee may be fined up to two hundred fifty dollars".

Rep. Porter: We should modify Sub G on line 28.

Chairman Weisz: The licensee may be fined up to whatever amount that has violated this chapter (inaudible).

Rep. Porter: That would be the place to put it.

Chairman Weisz: I agree. Well, committee what do think?

Rep. Kilichowski: I have no problem with the fine. Once they set precedence for a massage therapist, I don't see where they can deviate from that and do more lenient or more restrictive to another. I don't think the fine is out of line myself.

Rep. Frantsvog: I'm not excited about the fines. I think they are asking us to be there policeman and don't think we should get involved with it personally. I think that's something they ought to do within their own organization.

Rep. Porter: This one we have to do (inaudible) board.

Rep. Porter: Motion to amend line page 7, line 4, remove the word "fined up" on page 7, line 5, remove "two hundred fifty dollars" and on page 7, line 28, after the word "licensee" insert "maybe fined up to one hundred dollars who has violated this chapter or any rule adopted by the board."

Rep. Potter: Second.

Chairman Weisz: The board has the ability to suspend, revoke the license and that is a penalty in itself. It's not like they don't have a penalty mechanism in place.

Rep. Conrad: (Inaudible).

Chairman Weisz: I would have to assume it could end up in conference.

Rep. Holman: (Inaudible).

Rep. Damschen: I was thinking the same thing.

Rep. Pietsch: It could be.

Chairman Weisz: The licensee has violated (dropped sentence).

Rep. Pietsch: (Inaudible) correct either way.

Chairman Weisz: Don't know why they added that language. Basically with the language it is a \$100 fine.

Rep. Uglem: I'm not concerned about fine. They can always come back in two years and we hear about it.

Voice Vote: 13 yeas, 0 nays, 0 absent.

MOTION CARRIED DO PASS.

Rep. Frantsvog: Move we remove the underlined language on page 5 lines, 19 through 22.

Rep. Porter: Second.

Rep. Frantsvog: My concern is that this is in there because they had one individual who is consistently late in paying their fee and we ought not to be that solution. They should do that internally.

Rep. Porter: They certainly can write the rule that says that they can do this or they can bring it here and have us do it, but either way it has to go through a process of a public hearing. It is either us or administrative rules.

Rep. Damschen: The amendment we made previously, that could be one of the rules they could fine a \$100 or deny or revoke or suspend this license couldn't they?

Chairman Weisz: That's the way I would read that.

Rep. Potter: A number of legislators do not like these going through administrative rules.

Voice Vote: 12 yeas, 1 nay 0 absent.

MOTION CARRIED.

Rep. Potter: Motion a Do Pass on 2099 as amended.

Rep. Frantsvog: Second.

Roll Call Vote: 12 yes, 1 no, 0 absent.

MOTION CARRIED DO PASS AS AMENDED>

BILL CARRIER: Rep. Frantsvog.

VR
3/4/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2099

Page 1, line 2, after the semicolon insert "and"

Page 5, line 19, remove "After"

Page 5, remove lines 20 through 22

Page 7, line 3, overstrike "**Revocation of license**" and insert immediately thereafter
"Disciplinary actions"

Page 7, line 4, remove "fined up"

Page 7, line 5, remove "to two hundred fifty dollars."

Page 7, line 29, after "2." insert "A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to one hundred dollars."

3."

Page 8, line 1, overstrike "3." and insert immediately thereafter:

"4."

Renumber accordingly

3-3-09

2099

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

☒ Do Pass☐

☐ **Do Not Pass**

1

☐ Amended

Rep. POTTER

Rep. HOLMAN

Vocal Note

(Yes) 13

No 2

_____ 6

[illegible]

If the vote is on an amendment, briefly indicate intent:

Motion
carried

MOTION FOR
AMENDMENT
CLEANS UP LANGUAGE
\$100 FINE

Date: 3-3-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2099

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. FRANTSVOG Seconded By Rep. PORTER

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					

Total (Yes) 12 No 1

Absent _____

Bill Carrier _____

If the vote is on an amendment, briefly indicate intent:

Motion Passed

Remove underlined

Pg 5

lines 19, 20, 21 & 22

Date: 3-3-04
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2099

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep Potter

Seconded By Rep. Frantsvog

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 12 No 1

Absent 0

Bill Carrier Rep FRANTSVOG

If the vote is on an amendment, briefly indicate intent:

DO PASS AS Amended

REPORT OF STANDING COMMITTEE

SB 2099: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2099 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "and"

Page 5, line 19, remove "After"

Page 5, remove lines 20 through 22

Page 7, line 3, overstrike "**Revocation of license**" and insert immediately thereafter "**Disciplinary actions**"

Page 7, line 4, remove "fined up"

Page 7, line 5, remove "to two hundred fifty dollars."

Page 7, line 29, after "2." insert "A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to one hundred dollars."

3."

Page 8, line 1, overstrike "3." and insert immediately thereafter:

"4."

Renumber accordingly

2009 TESTIMONY

SB 2099

1

January 11, 2009

To: ND Senate Human Services Committee:
The Honorable Judy Lee, Chairperson
The Honorable Robert Erbele, Vice Chair
The Honorable Joan Heckaman, Richard Marcellais, Jim Pomeroy

Fr: Steve Olson, Massage Therapist
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Re: Senate Bill No. 2099

Dear Ms Lee and members of the Committee,

I wish to make comments that are primarily in opposition to SB 2099. My comments will mainly focus on how the proposed changes contribute to the safe delivery of massage therapy to the public.

By way of introduction, I have been licensed in North Dakota since 1985. My professional background includes volunteer service with the North Dakota Chapter of the American Massage Therapy Association (AMTA) and over 15 years of service on the national leadership level of AMTA. My national service included serving on many committees, election to the AMTA Board and Executive Committee and election as AMTA's President (2000-2001).

I hope that the format of my comments is easily understandable. I am available should you have questions. Thank you for the opportunity to comment.

Respectfully,
Steve Olson

COMMENTS

Section 1. Amendment

Suggestion Paragraph 2:

Massage Therapy does not include the sale of vitamins, supplements, herbs, or topical pain reducers.

Rationale: I do not want to see the concept of prohibiting the prescribing of vitamins to disappear; it has been removed in this section and in section 10.1.e. An increasing number of massage therapists are selling supplements (of all kinds), herbs and pain

reducing lotions and now it is proposed that vitamins join the mix of goods for sale. Competency to recommend these items is not commonly part of the training or scope of practice for massage therapists. The profession's better ethical codes prohibit massage therapists from using our influence to sell products to our clients and also prohibit massage therapists from intruding on the scope of other licensed professionals. Do we tread on the regulated practices of Pharmacists and Dietitians? If the Board's job is to protect the consumer and uphold aspects of good professional ethical codes I suggest that this area be strengthened rather than diminished.

Section 1. Amendment

Suggestion Paragraph 2:

No Massage Therapist may claim to practice medicine or to treat medically diagnosed conditions.

Rationale: The language that prohibited "treating diseases" has been removed in this bill and basically been replaced by a very broad scope of practice statement: "... for the purpose of promoting, maintaining, and restoring the health and well-being of the client." I am not opposed to permitting massage therapists to treat since that is a natural extension of the word "therapist". However, without some qualifier, the statement seems to tread on the definition of the practice of medicine. North Dakota already has a specialty of medicine that is authorized to treat utilizing therapeutic massage – Physical Therapy. Will the consumer be confused when "treated" by a massage professional thinking that it is the same as being treated by a medical professional?

While I have great respect for the massage profession, we do not have standards that match those of the medical professions. We are not medical providers and yet the service we provide can be valuable. I think that we are a separate and distinct healthcare profession from the medical field. We can do our work without depending upon a medical diagnosis. We have no universal standards of practice, standards of care or code of ethics. We do not have a universally accredited and accepted set of educational standards. Most of our training programs are run by for-profit entities. We accept tips. We discount our services. There are no standards for specialty certifications. We are not mandated to carry professional liability coverage. We are not regulated equally in all jurisdictions. We commonly utilize traditional approaches that based on our collective observations are valuable but are not based in "science" or proven by outcome studies. We regularly treat our family and friends.

Section 1. Amendment

Suggestion Paragraph 2:

(Add new definition) Assessment means to determine whether massage therapy can be safely provided to the client, when it should be discontinued or when the client should be referred to another provider.

Rationale: A new term is introduced in this bill - assessment. Without a limiting definition, the usage of the word assessment comes dangerously close to the "diagnosing" provided by physicians or the "evaluation" done by Physical Therapists. The suggested

definition moves the assessment process one step away from appearing to be a medical diagnosis/evaluation and instead focuses on client safety.

Section 8. Amendment

Suggestion Paragraph 1:

b. Passes an examination conducted or approved by the board **including a section covering North Dakota laws and regulations pertaining to the practice of massage.**

Rationale: Currently a nationally produced examination is utilized for the purpose of licensing but this test does not address the practice of massage as specified in North Dakota law and regulation. While 40 plus jurisdictions (states and District of Columbia) and numerous counties and municipalities regulate massage therapy, there is no unity in regard to either the type of regulation (licensing, registration, certification) or the scope of practice. Its important to the safety of North Dakota residents that licensed massage therapists know and understand the state laws and regulations established by the legislature and board.

Section 9. Amendment

Suggestion Paragraph 3:

Reduce the number of required continuing education hours to 24 biannually and if there have been no complaints registered regarding a licensed practitioner after 10 years, move the requirement to zero.

Return the word "Attendance" that was deleted in paragraph 2.

Rationale: In paragraph 3, the board is suggesting that the number of required continuing education units (ceu's) be reduced from the current level of 18/year to a new level of 32 per two year period (16/year). I wonder what the board's rationale is for reducing the number of hours. In my opinion the number of hours has always been high for a profession that is clearly not medical in nature.

The largest massage organization in the country (Associated Bodywork and Massage Practitioners – ABMP) requires 16 hours biannually for its highest membership level. Florida, considered to have one of the most advanced practice acts, requires 24 hours biannually. Pennsylvania, the most recent state to license the profession, requires 24 biannually. South Dakota, the only adjacent state that licenses massage, requires 8 hours biannually. What is the purpose of continuing education? If the legislature's task is to protect the safety of the public, what role does continuing education play? Can the Human Services Committee be assured that a high number of continuing education hours increases safety for the public? Having attended hundreds of hours of ceu's, I can assure you that the opposite is true. Ceu programs regularly teach techniques and approaches that exceed the current legal practice of massage in North Dakota. This puts the consumer at risk because license holders assume that the treatment approaches demonstrated at the most recent educational event they attended are "legal" in North Dakota because they are board approved.

If ceu's are tied to public protection, is there a point where a professional has demonstrated that he/she practices safely and where such courses are no longer required? In other licensed professions rules are established that remove ceu mandates for individuals whose combined age and number of years licensed reach a certain number. In the insurance industry they have the "rule of 85". Could we please have something like this? If a licensed massage therapist has not had any complaints made against them over a sustained number of years in practice, I believe that the ceu requirement can safely be removed. Research has shown that Massage Therapy, when practiced within a legal scope of practice, is far safer for the consumer than the professions of medicine and chiropractic. The Board could retain the right to mandate remedial education.

Continuing education is not equivalent to the training we receive in our massage school programs. There is no testing, grading or passing. In my opinion continuing education is to "refresh" and stimulate. I ask that you restore the word "attendance" in this section because ceu's are not formal training. By seeking to remove the word "attendance", it appears that the board is attempting to make continuing education a formal, mandatory educational event. In reviewing 35 ceu certificates, 31 certify attendance. If the board believes that additional formal training benefits the practice of massage in North Dakota, they should seek to increase the hours of required training for licensure.

Section 10. Amendment

Suggestion Paragraph 1.d:

Remove the language "...or is under the influence while assessing, treating, or seeing a client" **and replace with: "... or is under the influence while in a therapeutic setting."**

Rationale: It seems odd to use the words "assessing, treating, or seeing a client". For one thing this is the first instance where the word "treating" appears. It would be simpler and perhaps more accurate to say while in a "therapeutic setting".

MEMORANDUM

To: Nancy Kopp, State Board of Massage
From: Edward Erickson, Assistant Attorney General
Re: Law on Reports to the Governor
Date: January 16, 2009

You asked me to examine the origin and history of the law providing for reports from the State Board of Massage to the Governor. N.D.C.C. § 43-25-13 states, in part; "The secretary-treasurer may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed." Senate Bill No. 2099 moves this provision to a different section but retains it as a voluntary report as presently found in state law.

This law originated as a mandate—through use of the word "shall"—when the State Board of Massage was created in 1959.¹ It was amended in 2003 to make the report to the Governor voluntary by replacing "shall" with "may."² The 2003 act also removed or made voluntary five other previously mandatory reports from other state agencies. Therefore, the Legislature specifically chose to make this report voluntary just six years ago.

You also asked me to examine whether a similar provision applied to other state professional or occupational licensing boards. I performed a computer word search of Title 43, which governs most state occupational and professional licensing laws, and discovered that only three licensing boards were required to prepare and submit reports to the Governor. Those are the Professional Engineers and Land Surveyors,³ the Professional Soil Classifiers,⁴ and the Reflexologists.⁵ Nine other boards may prepare and submit reports to the Governor in addition to the State Board of Massage,⁶ and the remaining 35 boards in Title 43 have no mention of a report to the Governor in their practice

¹ 1959 N.D. Sess. Laws, ch. 315, § 13. At this time, the law required a copy of the report to be provided both to the Governor and to the North Dakota Massage Therapy Association. This latter requirement was removed by the Legislature in 1997, see 1997 N.D. Sess. Laws ch. 375, §9.

² 2003 N.D. Sess. Laws, ch. 459, §3.

³ N.D.C.C. § 43-19.1-10.

⁴ N.D.C.C. § 43-36-09.

⁵ N.D.C.C. § 43-49-04.

⁶ They are the Abstractors, Barbers, Electricians, Funeral Services, Optometrists, Pharmacists, Physicians, Dentists, and Psychologists. (Citations omitted.)

acts.⁷ Therefore, the majority of the 48 occupational and professional licensing boards found in Title 43 do not have a provision that requires, or even addresses, a report to the Governor.

As it is a matter of potential concern, I should point out that these reports are separate and distinct from financial audits. The State Board of Massage is required to be audited and to submit its audits for review by the Legislative Audit and Fiscal Review Committee. It is my understanding that the Board of Massage is presently working with its auditor to prepare this report. Removal of the language concerning the report to the Governor will not affect the Board's duties concerning fiscal audits.

⁷ They are the Accountants, Architects and Landscape Architects, Podiatrists, Chiropractors, Contractors, Cosmetologists, Nurses, Wholesale Drug Distributors, Plumbers, Water Conditioning Contractors and Installers, Sewer and Water Installers, Dental Hygienists, State Real Estate Commission, Real Estate Appraisers, Physical Therapists, Veterinarians, Investigative and Security Services, Detection of Deception Examiners, Hearing Aid Dealers, Nursing Home Administrators, Water Well Contractors, Audiologists and Speech-Language Pathologists, Electrologists and Electronic Hair Removal Technicians, Athletic Trainers, Occupational Therapists, Social Workers, Respiratory Care Practitioners, Environmental Health Practitioners, Dietitians and Nutritionists, Addiction Counselors, Counselors, Clinical Laboratory Personnel, Interpreters, Marriage and Family Therapists, and Home Inspectors. (Citations omitted.)

TO: Senator Lee

FROM: Dane Connor, Legislative Intern

RE: SB 2099, research on other state massage inspection regulations

SOUTH DAKOTA:

- South Dakota Codified Laws: 36-35-20. Inspection of Business.
 - The board may inspect the place of business of any person with a license issued pursuant to this chapter during normal business hours or upon written notice.

MISSOURI:

- Missouri Revised Statutes: 324.255. Survey inspections, when.
 - In addition to the survey inspection required for licensing or license renewal, the board may make other survey inspections during normal business hours. Each massage business shall allow the board or its authorized representatives to enter upon its premises during normal business hours for the purpose of conducting any survey inspection.

NEBRASKA:

- 82-007 Massage Therapy Establishment Inspections.
 - All massage therapy establishments will receive an initial and thereafter, a routine inspection.

MINNESOTA:

No current state regulation

MICHIGAN:

No current state regulation

MONTANA:

No current state regulation

WYOMING:

No current state regulation

#4

Dear Human Services Committee Members,

I am writing this letter in response to Senate Bill 2099. Currently, I preside as the President of the North Dakota Chapter of the American Massage Therapy Association (AMTA). Currently, the AMTA ND Chapter is the largest member driven organization in the state of North Dakota for Licensed Massage Therapists. The changes and improvements that are in Senate Bill 2099 are changes that the AMTA ND Chapter Board both agree with and feel will improve the massage therapy profession. We ask that you vote in favor of Senate Bill 2099.

Sincerely,

Stacey L. Ryan, LMT
President, ND AMTA Chapter

NDLA, S HMS

From: Lee, Judy E.
Sent: Monday, January 19, 2009 6:30 PM
To: NDLA, S HMS
Subject: FW: Senate Bill # 2099

Copies, please.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
cell phone: 701-238-1531
e-mail: jlee@nd.gov

From: Karen Wojahn [mailto:k_wojahn@yahoo.com]
Sent: Monday, January 19, 2009 3:54 PM
To: Lee, Judy E.; rerbee@nd.gov; Dever, Dick D.; Heckaman, Joan M.; marcellais@nd.gov; Pomeroy, Jim R.; Robert John Benson; Erickson, Edward E.; Gail Hovden; Nancy Kopp; Sharon Klusmann
Subject: Senate Bill # 2099

Hi - my name is Karen Wojahn. I am writing in favor of SB 2099. I am one of the committee members that went over our law.

I have been a licensed therapist since 1989. I have served on many committees in the massage profession in the state on North Dakota. I have been 2nd Vice Pres., 1st Vice Pres., and President of the AMTA ND Chapter. I have served on the ND State Board of Massage as a member, President and now Secretary.

We have been going over the law since May 2008, and have had all meetings open to the public, and have worked closely with the local AMTA ND Chapter. We sent out the proposed changes to all Licensed Massage Therapist in the state and allowed everyone to give us feed back. The comments were good, some written, some email, and some phone calls. The major concerns were the CEU hours, the majority wanted to be able to carry hours from one year to another. So they were happy about that. Other wise they were happy that we were rewording the law so they can understand it better.

I am in favor of the changes and due to weather I couldn't be there last week. Thank you all for considering the changes.

Karen Wojahn - 701-872-4895

NDLA, S HMS

From: Lee, Judy E.
Sent: Tuesday, January 20, 2009 1:49 PM
To: NDLA, S HMS
Subject: FW: SB 2099 Massage Therapy Practice Act

Copies, please.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
cell phone: 701-238-1531
e-mail: jlee@nd.gov

-----Original Message-----

From: Robert Benson, PT, LMT, MA.Ed., NCTMB [mailto:robert.benson@wsc.nodak.edu]
Sent: Tuesday, January 20, 2009 8:49 AM
To: Lee, Judy E.; rebee@nd.gov; Dever, Dick D.; Heckaman, Joan M.; marcellais@nd.gov; Pomeroy, Jim R.
Subject: SB 2099 Massage Therapy Practice Act

Dear Health and Huamn Services Committee Members:

I am writting to urge your support of SB 2099 with its recent amendments. I am a member of the North Dakota Board of Massage and have also been active with the North Dakota Chapter of the American Massage Therapy Association, having served as third vice president. I have over 30 years of experience in the health field, four as an EMT, 25 as a physical therapist and 8 as a massage therapist. I currently chair the massage and physical therapist assistant programs offered through Williston State College.

The ND Massage Board has worked hard along with representatives from the ND Chapter of the American Massage Therapy Association and state schools of massage to update the wording and scope of practice of massage. We have also, requested input from all licensed masage therapists in North Dakota and considered their input for this bill. I feel the Board developed a good bill and urge your support.

I understand you have had some communications from others who would like to see changes made to the bill. Here is my response to some of their requests. Regarding the word assessment and relating that to diagnosis, these words have completely different meanings. All individuals perform assessment and I feel using this terminology helps the massage therapist remember that each client is different and we need to adapt our procedures to what we see, hear and feel as part of our assessment process. We are in no way diagnosing what the clients condition is.

As to phasing out continuing education requirements for individuals based on years of expereince, I do not agree. The field of massage therapy is ever changing and individuals need to attend continuing education to learn about new techniques and research in the field. Certainly, you learn much just from working with clients, but there is much more to learn. Even though continuing education courses don't generally have tests and grades it is still important.

As for the number of required continuing education hours, yes North Dakota is on the high end, but as a state we have always been proud of that.

Other states look up to our state as a leader. As for the request for decreasing the hours slightly and changing the reporting cycle over two years, this was placed in the bill as a way to help the professional.

Many times therapists will go to an expensive conference that is 4-5 days long and yet only be able to report 18 hours. In another year, they may have difficulties being able to attend a conference because of illness, weather, family commitments ect.. By having a two year cycle, it provides some choices for the therapist.

Finally, I wish to address the concept that massage therapy is not a medical profession. I know many massage therapists who do not agree with this, myself included. It is true, we are not required to have a medical referral to see clients, but I don't think this defines a medical profession. Massage therapists are employed in hospitals, medical clinics, long term care facilities as well as running their own clinics.

We are often times working on clients because of injury or disease to enhance that persons well being and functioning. This is exactly what physical and occupational therapists do, only using different approaches and they are considered medical.

In conclusion, I am open to discuss this bill or questions you may have at anytime. Please do not hesitate to call or email me.

Sincerely,

Robert Benson, PT, LMT, MA.Ed., NCTMB
Williston State College
Chair/Assistant Professor
PTA/Massage Therapy Programs
1410 University Avenue
Williston, ND 58801
Fax: 701-774-4265
Office: 701-774-4291
Home: 701-572-7032

Mr. Chairman and members of the committee, My name is Gail Hovden, I have been a licensed massage therapist in Bismarck for 18 1/2 years, and currently serve on the State Board of Massage. I am in favor of this bill. The Board of Massage along with members of the N.D. Chapter of the American Massage Therapy Association, and massage school personnel worked together to revise this law. We started meeting every 2-3 weeks, this past spring and worked through the fall. Our goal was to bring our law up to date and more reflective of the massage practice today. The Board of Massage also did a mass mailing to ALL N.D. licensed massage therapists (L.M.T.) asking for feed back on the proposed changes or any other suggestions. Of the few responses received, there were no negative remarks and many that thanked us for the good job we were doing. We have reworded many sections that were ambiguous, along with proposing a new definition of massage. The new definition better reflects how massage is practiced today. It also prevents non-licensed individuals from giving massage a different name so that they can perform massage without having a license. Changing the continuing education hours to a 2 year reporting cycle instead of yearly, helps make it easier for Massage therapists to get and afford the required continuing education hours. Massage Therapist have much higher continuing education requirements compared to most professions. In section 43.25.10. We added the authority to fine individuals who violate our laws, and by doing so, this expands the Boards options for punishment and can also help offset costs incurred by the Board. Our intent is not to make money, but to convey to them that there are consequences to their actions (similar to a speeding ticket). If there are any questions, I will gladly explain the proposed changes further. Thank you for your time.

Gail Hovden
1310 E Blvd. #5
Bismarck N.D. 58501
701-250-0717