



Texas Association of Massage Therapists

Statement in regards to Rules Changes Related to the passing of HB2644 As of July 9, 2008

In response to the proposed rules and regulations written as of the March 5th, 2008 meeting, TAMT is in favor of the changes recommended, but would like to add a *change to the definition of Massage Therapy* in order to clarify the substantive change to the law.

Although we recognize that the rules change process has been controversial, TAMT believes that amending the definition in the rules or in the code would be a 'conforming' change at this point. The Massage Therapy profession was substantively changed with the wording in HB2644, which DSHS has chosen not to execute at this time. The implementation would be simple if clarification was made at this time, by including the exact wording passed in HB2644 in the definition. In *SECTION 2. Section 455.151* (d) below, it specifically gives authority to the department to adopt rules governing any license issued under this subsection. The law was passed and signed by the governor but DSHS arbitrarily is making decisions not to implement portions of it that we believe are significant. We believe that DSHS has the ability to broaden or delete statutory language and that the department has not demonstrated an effort to make the changes necessary to enforce the law as written.

SECTION 2. Section 455.151, Occupations Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate [a] license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

(1) holds an appropriate license issued under this chapter; or

(2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The department may adopt rules governing a license issued under this subsection.

TAMT proposes the following definition for Massage Therapy:

(15) Massage therapy - Any service with a purported health benefit that involves physical contact with a client for compensation by the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of therapeutic wellness or other purported benefit. ~~body massage.~~ The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, rubdown, bodywork, or any derivation of those terms. Massage therapy is a health care service. ~~when the massage is for therapeutic purposes.~~ The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

TAMT believes that this simple change of adding one sentence, taken directly from the law, will serve to clarify the intent of the law to license all "touch" therapies. Any type of hands-on therapy is "therapeutic" or it wouldn't be called therapy...the benefits can be physical, emotional, psychological, etc. This research paper explains our rationale: "A Meta-Analysis of Massage Therapy Research": http://prdupl02.ynet.co.il/ForumFiles_2/23070816.pdf

TAMT has been told that DSHS has chosen to not implement the provision for "one or more types of licenses" because there was some controversy over the "different licenses" as well as budgetary concerns. Comparative studies have been done of states that regulate massage therapy and the definitions of massage therapy. It is not unusual for some "bodywork" therapies to be excluded from regulation, but specific "hands-on" or "touch" therapies or any therapy that includes the manipulation of soft tissues to be included. During the last legislative session dialogues with members of the Federation of Therapeutic Massage, Bodywork and Somatic Practice Organizations concluded with the majority of the those individual organizations in agreement with licensure. Their only concerns were the type of testing involved. During negotiations those representatives agreed that if the certification process for each bodywork group was comparable or more than the current 500 hour curriculum, they would request that the state accept their testing or require a "state" test specific to their therapy. Since the department currently accepts the NCETMB, NCETM or MBLEx, they could also choose to include other standardized tests from groups such as Asian Bodyworkers, Rolfers, Trager Practitioners, Reflexologists, etc., or create a test specific to that bodywork if necessary.

TAMT also has questions regarding funding limitations and/or opportunities associated with enforcement of HB 2644 particularly related to massage establishment license requirement enforcement and creation and enforcement of other bodywork therapies.

HB1of 2007, The General Appropriations Act, establishes funding guidelines for DSHS and sets forth in the portion of that bill associated with DSHS on page II-62 the means by which DSHS may receive additional revenue:

***Appropriation: Contingent Revenue.** The Department of State Health Services (DSHS) is appropriated for the purposes identified below any additional revenue generated by DSHS above the amounts identified in fiscal year 2008 or fiscal year 2009 in the Comptroller of*

Public Account's Biennial Revenue Estimate (BRE) for each of the accounts or revenue objects identified below. An appropriation from an account or revenue object shall be made available to the department once the amount in the BRE for the account or revenue object for the given fiscal year has been exceeded. An appropriation is limited to revenue generated in fiscal year 2008 or fiscal year 2009 and does not include any balances that have accrued in the account or revenue object code.

e. Revenue Objects 3616, 3560, and 3562 in the General Revenue Fund for the purpose of regulating health professionals.

It is TAMT's understanding that Revenue Object 3562 refers to revenue collected for massage therapy licensing. If our interpretation of the above section of HB 1 is correct, we believe that any revenue collected from licensing fees above the amounts in Comptroller's revenue estimates is appropriated back to DSHS and further, that any money from new licensure (which is not in the revenue estimate) goes back to the agency to pay for the licensing.

With the former statements in mind we would ask of DSHS:

- 1) Has the Comptroller's 2008 BRE associated with Revenue Object 3562 been met as of end of the second quarter of calendar 2008 and if not what percentage of the Comptroller's 2008 BRE associated with Revenue Object 3562 were met as of that date?
- 2) If the Comptroller's 2008 BRE associated with Revenue Object 3562 has been met has DSHS set in motion the process necessary to appropriate available revenues?
- 3) Is it correct to assume that if and when such revenues become available that those funds will be used to enforce massage establishment license requirements and/or the creation and enforcement of adjunct or other bodywork therapy licensing?

We realize that this has been a difficult time for DSHS because of the lack of agreement between certain stakeholders, but we would like to avoid another lengthy and laborious legislative process if possible. If our recommended amendment to the definition of massage therapy were made, there would not be a need for a bill to amend Occupations Code 455 in the next legislative session.

Thank you for your consideration:

Signed by the Board of the Texas Association of Massage Therapists:

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