

Report of Final Findings and Recommendations

By the
Technical Committee for the Review of the
Application for Change in Scope of Practice by the
American Society of Massage Therapy

To the
Nebraska Board of Health
Director of Health
and the
Nebraska Legislature

August 21, 1987

The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Massage Therapy Technical Committee are as follows:

James W. Kenney, (Chairman) Administrator, Mary Lanning Memorial Hospital
(Hastings)

Stephen J. Abraham, M.S., Massage Therapist (Omaha)

Jack L. Anderson, D.V.M., (Columbus)

Steven L. Deal, D.C., (Lincoln)

Kent Dunovan, R.P.T., (Lincoln)

Mary E. Mitchell, Real Estate Broker (Ogallala)

Cathy Parker, R.N., Registered Nurse (Lincoln)

INTRODUCTION

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) is a review process advisory to the Legislature which is designed to assess the necessity of the state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the three criteria contained within Section 71-6221 Nebraska Revised Statutes; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

SUMMARY OF THE PROPOSAL

The Nebraska Chapter of the American Massage Therapy Association seeks to alter its practice act in sections 71-2701 and 71-2727 of the Revised Statutes of Nebraska. The proposal would retitle the statute "Massage Therapy," and the term therapy would be added to any reference to the profession in question. The profession of massage would also be redefined as a health care service which provides therapeutic and health-maintenance functions to the public by the manipulation of soft body tissue.

The proposal also seeks deletion or change of language in the statute that in the opinion of the applicant group is archaic, sexist, or erroneous. The proposal would replace such terms as masseur and masseuse with the more neutral term "massage therapist." The proposal would delete all erroneous references to the Nebraska Chapter of the American Massage Therapy Association.

The proposal seeks no change in the education or training of massage personnel. However, the applicant group proposed that continuing education be required annually, and that the Legislature mandate a minimum number of required continuing education units per year for the purposes of keeping practitioners abreast of current trends in massage therapy.

SUMMARY OF COMMITTEE RECOMMENDATIONS

The Committee recommended that those portions of the massage statute pertaining to unprofessional conduct be revised so as to clearly define the specific actions which constitute such conduct, as well as the specific penalties that would arise from such conduct.

The Committee recommended that the language concerning mechanical and electrical apparatuses in the massage statute be revised regarding the scope of practice of massage.

The Committee recommended that the name of the profession in question be changed from "massage" to "massage therapy" in accordance with the request of the applicant group.

The Committee recommended that continuing education be made mandatory for all massage professionals, and that there be an evaluation of apprentice course requirements so as to require that basic sciences and pathology courses be taken in person rather than by correspondence. The Committee also recommended that the apprentice program reflect the proposed changes in scope of practice.

CRITICAL ISSUES RAISED BY THE
MESSAGE THERAPY APPLICATION

The Nature of the Applicant's Proposal

There was considerable discussion among the committee members as to whether the proposal involved an actual change in scope of practice or was merely a change in terminology that leaves the existing scope of practice unaffected. The proponents of the proposal stated that the proposed changes involved nothing more than a change in terminology to reflect a practice situation that already exists. The proponents stated that massage practitioners already do therapy, and that consequently the proposed change in title for the profession in question from "massage" to "massage therapy" does not involve an actual change in scope of practice.

The opponents of the proposal stated that the terminology changes proposed by the applicant group have far-reaching implications for the actual scope of practice of massage practitioners. Opponents pointed out that the current statute prohibits massage practitioners from doing therapy as part of their scope of practice. They argue that the proposal would definitely change the scope of practice of massage as it is now defined by Nebraska statutes. The opponents also stated that the proposal would create in the public mind the expectation of a cure for various conditions and maladies, and would therefore, open up the field of massage to therapeutic practice far more than it is now.

Harm to the Public Posed by the Current Practice Situation of Massage

The proponents stated that the current situation makes it difficult for the public to differentiate legitimate practitioners from those who are engaging in activities that are either illegal or immoral. The current situation perpetuates the stigma of prostitution on the entire profession of

massage by use of the suggestive terms "masseur" and "masseuse." Consequently, many people who could be helped by a legitimate massage therapist choose instead to avoid the profession entirely for fear of losing their good name. This prevents these people from getting the care that they need.

Current statutes prevent legitimate practitioners from advertising themselves to the public in a manner that would clearly differentiate them from illegitimate practitioners. The proponents argue that the statutes must be changed so as to allow legitimate massage professionals to advertise themselves as "therapists." The proponents state that this is the only way to alleviate this harm to the public.

The opponents stated that the harm associated with the current situation is minimal. Those who desire the services of legitimate massage professionals should be able to identify the practitioners of their choice. The opponents also argued that the remedy offered by the proposal to alleviate the harm would be ineffective. Disreputable elements could just as easily advertise themselves as "therapists" too. The proponents responded to this by stating that the illegitimate practitioner would have no reason to advertise himself this way, simply because his clientele is not interested in any kind of therapeutic service.

Opponents stated that if the profession was in need of purgery of certain types of practitioners, the way to do this was through implementing stricter standards of discipline, not through a cosmetic name change.

The Education and Training of Massage Personnel

This issue directly impinges on the question of whether or not there is potential harm to the public inherent in the proposal. The proponents state that massage professionals are already sufficiently trained to provide therapeutic services to their clients. As designated in statute 71-2708, an

applicant for a license must graduate from an approved school that, among other attributes, has a minimum requirement of a continuous course of study and training of not less than six months, consisting of one hundred hours of physiology, one hundred hours of anatomy, one hundred hours of massage, one hundred hours of hydrotherapy, one hundred hours of hygiene and practice demonstration, and one hundred hours of health service management." (See appendix F for Curriculum Approved Schools - flow chart. School brochures available upon request.)

An apprenticeship program has been authorized in the State by statute 71-2709, which requires the applicant to serve a one-year term with a licensed practitioner who is a graduate from an approved school of massage, plus one extension course leading to the issuance of a diploma from an approved school of massage. This extension course must be the equivalent of the six hundred hour student residence program as prescribed in the above paragraph (section 71-2108, subdivision 4).

However, the proponents stated that there is a need for mandatory continuing education for all massage practitioners in order to keep them abreast of the latest techniques in their field.

The opponents of the proposal stated that in their judgment the education and training of massage professionals does not adequately prepare them to do what the proposal would allow them to do, namely, provide therapeutic services to the public. The opponents stated that most schools of massage do not offer course work in such subjects as clinical pathology. In their judgment, courses such as these are absolutely necessary before one can provide therapy to the public in a manner consistent with the protection of public health and welfare.

The opponents stated that without adequate preparation in the clinical area, massage practitioners are not going to be able to detect critical health problems of their clients, and as a result there would be delays in making a referral to a physician. Such delays could result in serious health problems for the client. This danger would be significantly increased if the public saw massage as a therapeutic service and expected to receive some form of health care.

The proponents stated that massage personnel are trained to take detailed life histories of their clients in order to ascertain whether or not they have serious health problems. If such problems emerge in the life history of a client, the massage practitioner is taught to make an appropriate referral, rather than perform massage on this client. However, the opponents argued that such precautions would be inadequate in a situation where the client was unaware of his or her problem, did not understand the meaning of his or her symptoms, or simply neglected to inform the masseur of a condition. The opponents added that massage practitioners are not sufficiently trained to understand the meaning of their clients' symptoms, and thus are not capable of making appropriate referrals. In addition, they felt that a history without a physical exam was not a sound enough base upon which to make a decision to treat or to refer, especially for persons not trained in diagnosis.

Proponents feel the word therapy is defined by the word massage, just as therapy is defined by the words occupational (therapy), dance (therapy), or physical (therapy). Therefore, massage confines the word "therapy" to superficial external manipulation of soft tissue. The proponents believe that they are not performing drug therapy, nor do they perform invasive therapies or spinal manipulations.

The Degree of Autonomy Appropriate for Massage Personnel

Some committee persons stated that the redefinition of the profession of massage to allow the provision of therapeutic services to the public could necessitate greater supervision of massage by medical practitioners in order to protect the public from harm. However, the proponents stated that closer supervision of massage personnel is not necessary because their training is sufficient to perform the very limited types of therapy that massage practitioners do. Since in their estimation, the services provided by masseurs would not change, and since masseurs are not supervised at present, it follows that no new supervision is needed. Proponents cited the lack of complaints filed with the Bureau of Examining Boards for violations of the scope of practice by masseurs as evidence of this.

Does Therapy Imply Diagnosis and Treatment of Disease?

The opponents feared that some practitioners might interpret the revised statutory language as permitting them to diagnose and treat disease, and that this impression could be conveyed to the public. They stated that massage personnel lack the clinical training to do any kind of diagnosis. The proponents of the application denied any intention to diagnose or treat diseases. They affirmed that their therapy was designed to maintain a well and healthy state, and that they were holistic in nature rather than disease- or condition-specific.

The Role of Third-Party Payers

Some committee members wanted to know under what circumstances private insurers would reimburse for the services of massage practitioners. The committee requested that the applicant group provide a list of insurers who have provided such reimbursement in the past. After discussion it seemed that few third-party payers reimburse for massage services unless they are

prescribed by a health care professional. Such prescription services account for only a small proportion of an average massage practice.

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

There was a consensus among the committee members that there is harm to the public inherent in the current practice situation of massage. The majority agreed that harm stems from the fact that current massage statutes do not sufficiently define or punish unprofessional conduct on the part of certain massage institutions and their employees. This situation tarnishes the image of all massage practitioners, and makes those who need their services reluctant to use these services.

There was a consensus among committee members that the language pertaining to unprofessional conduct in the massage licensing act needs to be strengthened by the inclusion of provisions which more specifically define unprofessional conduct, and expand on the list of specific penalties for such conduct. In particular, the committee recommended that any proposed statutory change include mention of the body parts that are off limits to massage personnel, as well as a discussion of the specific acts which constitute unprofessional conduct, including conviction of any offense - felony or misdemeanor - involving prostitution or indecent acts. The committee also recommended that the license of a person found guilty of such conduct and of establishments contributing to such conduct be revoked for a period of at least five years.

A majority of the committee members agreed that the applicant group should agree to include the changes identified above in their proposal as a precondition for committee action on the three criteria of LB 407. After a brief discussion, all committee members, including the representative of the applicant group, agreed that such a precondition was appropriate.

The committee then discussed issues pertaining to the use of electrical

and mechanical stimulation devices by massage personnel. The committee unanimously agreed that there is a need to review the current statutory language on the use of such modalities by massage practitioners. Some committee members were concerned that the current language in the massage statutes regarding these modalities was too vague. These committee members stated that the current wording could be misconstrued by some massage practitioners as allowing them to invade the scope of practice of other health care professions who use similar modalities.

The committee then formally discussed the three criteria of LB 407 in order to formulate its recommendation regarding the specific proposal submitted to the committee by the applicant group. The committee determined that the modified application satisfied the three criteria, and in so doing, decided to recommend approval of the applicant's proposal, subject to the inclusion of the recommended changes in enforcement. It was the committee's judgment that the proposal in question, while not being sufficient in and of itself to solve the problems identified during the review process, would nevertheless help to solve these problems if it were passed in conjunction with the previous discussed statutory changes recommended by the committee.

The committee members approved the proposal of the applicant group because they perceived that it could be of assistance in the effort to upgrade the profession of massage. The change in professional title from "massage" to "massage therapy" would serve to give greater identity and dignity to legitimate massage practitioners. The adoption of this proposal in conjunction with the committee recommendations on discipline would serve to facilitate the process by which the entire profession of massage is integrated into the health care system of Nebraska.

The committee made several recommendations about the education and training of massage practitioners. The committee unanimously approved a motion calling for mandatory continuing education for all practitioners. The committee then unanimously approved a motion to review the apprenticeship program, particularly the correspondence sections of the program. The committee unanimously agreed that anatomy and physiology classes should not be done through correspondence but at a local school as a "hands on" experience under direct supervision. The committee also recommended that clinical pathology be added to the mandated curriculum and that all of the courses required reflect the proposed change in scope of practice.

OVERVIEW OF COMMITTEE PROCEEDINGS

The Massage Therapy Credentialing Review Technical Committee first convened on June 9, 1987, in Lincoln at the Nebraska State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas touched upon were the charge to the committee, the three criteria for credentialing contained within Section 21 of LB 407, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on June 30, 1987, in Lincoln at the Nebraska State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, the committee formulated a set of questions and issues if felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions could be made.

The committee reconvened on July 14, 1987, in Lincoln at the Nebraska State Office for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their reviews on the proposal and the questions and issues raised by the committee at their second meeting. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth time on July 28, 1987, in Lincoln at the Nebraska State Office Building. After studying all of the relevant information concerning the proposal, the committee then formulated its recommendations.

The committee formulated recommendations on a variety of issues raised by the application. Among these were recommendations which would, if implemented, strengthen current statutory language pertaining to unprofessional conduct. Committee person, Dr. Jack Anderson, moved that the sections of the licensing act of massage pertaining to unprofessional conduct be revised so that it clearly defines the specific actions which constitute such conduct, as well as the specific penalties that would arise from such conduct. Committee person Stephen Abraham seconded the motion. Voting aye were: Abraham, Anderson, Deal, Dunovan, Mitchell, Parker, and Kenney. There were no nay votes.

Committee person, Kent Dunovan, then moved that the language concerning mechanical and electrical apparatuses be reviewed regarding the scope of practice of massage. Committee person Mary Mitchell seconded the motion. Voting aye were: Abraham, Anderson, Deal, Dunovan, Mitchell, Parker, and Kenney. There were no nay votes.

The committee then voted on the three criteria of LB 407. Concerning Criterion 1: Committee person Mary Mitchell moved that there is harm to the health, safety, and welfare of the public inherent in the current practice situation of massage. Committee person Stephen Abraham seconded the motion. Voting aye were: Abraham, Anderson, Deal, Mitchell, Parker, and Kenney. Voting nay was Dunovan.

Concerning Criterion 2: Committee person Dr. Anderson moved that the public needs and can reasonably expect to benefit from the appropriate changes in professional ability commensurate with the requirement imposed by the change in scope of practice. Committee person Stephen Abraham seconded the motion. Voting aye were: Abraham, Anderson, Deal, Mitchell, Parker, and Kenney. Voting nay was Dunovan.

Concerning Criterion 3: Committee person Stephen Abraham moved that the public cannot be effectively protected by other means in a more cost-effective manner. Committee person Dr. Jack Anderson seconded the motion. Voting aye were: Abraham, Anderson, Deal, Mitchell, Parker, and Kenney. Voting nay was Dunovan. By virtue of these votes on the three criteria, the committee decided to recommend the approval of the applicant's proposal to subsequent review bodies.

The committee then made several recommendations concerning the education and training of massage professionals. Dr. Deal moved that continuing education be made a mandatory requirement for all massage professionals. Voting aye were: Abraham, Anderson, Deal, Dunovan, Mitchell, Parker, and Kenney. There were no nay votes. Dr. Deal then moved that there be an evaluation of apprentice course requirements to require that basic sciences and pathology courses be taken in person, and that the apprentice program appropriately reflect proposed changes in scope of practice. Voting aye were: Abraham, Anderson, Deal, Dunovan, Mitchell, Parker, and Kenney. There were no nay votes.

