

Rose Jade, JD, MSW, LMT  
PO Box 2104  
Newport, OR 97365

Feb. 8, 2012

Senate Committee on Health Care,  
Human Services and Rural Health Policy

**Re: 2nd part of 2012 SB 1509 - Licensing of Massage Facilities & Advertising**

Dear Chair Monnes Anderson and Committee Members,

I am a Licensed Massage Therapist, and very familiar with the Oregon Board of Massage Therapists (OBMT). I oppose the portion of SB 1509 (pgs 13-17) that would so greatly expand the jurisdiction and powers of the OBMT and also limit free enterprise. This legislation is premature, will be too burdensome on the Board and stakeholders, and (in my lay opinion) is likely unconstitutional under state and federal law in the ways it restricts speech, the ways it denies equal privileges to non-LMTs, etc.

The bill would grant the massage Board new, broad jurisdiction over:

- o facility premises (real property) where massage is offered or practiced;
- o people and businesses who operate such facilities/premises;
- o persons who advertise the existence of such facilities/premises; and
- o the use of the word "massage" within any business name

To be clear, the Board already has full jurisdiction over any person who engages in the practice of massage in Oregon, whether licensed or unlicensed. The Board may also refer evidence and Board disciplinary decisions about a practitioner to a city or county attorney for criminal prosecution.

Under current Oregon law, every Licensed Massage Therapist is held fully accountable for what happens "on his or her table" during the practice of massage. The individual therapist is charged with abiding by licensing laws and regulations, including sanitation and ethics, regardless of whether the LMT is self-employed, works for *Salishan* or a like resort, works for a boutique salon, or as part of an integrated medical practice. Although this one-sided responsibility may put an LMT between a rock and hard place -- e.g., *Do I keep working at this unethical salon so I can pay my rent or do I quit to save my license??* -- the law is clear: you quit to save your license (and to protect the public).

I am well aware of the type of complaints that the Board gets about "facilities," including complaints filed by LMTs directed at unethical salon/spa owners, about unprogressive LMT employment contracts (for true employees as well as LMT-independent contractors), and concerns voiced by LMTs and customers alike about unlicensed LMTs, salon sanitation, and ethics (including allegations of prostitution). According to Kate Coffey, Exec. Dir. Of the Board, this legislation was spurred by a complaint over unlicensed practitioners (see attached relevant portion of an email from her). As an LMT, I am angered and saddened by people who disregard our current licensing and sanitation laws, by those who profit or are harmed from prostitution, and by those who have the means to easily escape civil and criminal accountability.

However, there also exists a small contingent of Oregon LMTs who get very upset over any competition and who attempt to use the legislative process to unlevel the playing field. The most recent example was when the old Board Exec. Director, Patty Glenn, an LMT, helped convince the Oregon legislature to pass a law (in 2007) to prohibit the Board from using massage exam test scores generated by a particular Exam Company (National Certification Board for Therapeutic Massage and Bodywork), again, under the guise of public safety and welfare. It is my recollection that in Ms. Glenn was the President of this Exam Company's chief competitor at the time. The very next session, you had to take up valuable time undoing that law (2009 HB 2059). It was about this time that Ms. Glenn was removed from her position as Exec. Dir. by the Governor.

Many portions of the bill before you are similarly anti-free market. The bill will give Oregon LMTs an unfair advantage in the commercial massage marketplace, it will reduce the number of jobs currently available to LMTs, it will reduce competition in the marketplace which will harm consumers, and it will require some law-abiding, successful businesses to close completely.

There is no evidence that LMTs make safer, smarter, or more responsible shareholders compared to non-LMTs shareholders.

It has long been the law in Oregon that a business may use the word "massage" in their business name as long as the person performing the massage was licensed (an LMT). There is no evidence that restricting the use of "massage" in business names to only licensed massage facilities, will eradicate the unlicensed practice of massage, or eradicate prostitution.

What it will do, is close down successful businesses like *MassageEnvy*, a franchised business that employs hundreds of LMTs in Oregon alone, and which successfully competes with those LMTs who practice out of small commercial storefronts or their homes. Creating irrational hardships on successful businesses is not the Oregon way.

This bill will not "fix" the age-old problems stemming from prostitution. It will impose hardships on legitimate businesses and on LMTs who do not want to run their own practice.

If passed, the public will be told that a state agency is regulating all facilities but the reality will be just the opposite. I submit it is and will be impossible for the Board to fairly and impartially carry out the expanded duties sets forth in this bill.

**Licensing of massage facilities (and facilitators) is a very complex issue affecting multiple classes of stakeholders. Oregon tried it before and rejected it.** In fact, it was a prior Massage Board that came to the Legislature and asked lawmakers to repeal the laws providing for licensing and inspection of facilities. The Board honestly and frankly admitted that there was no way for them to fairly enforce the law, given (a) their very limited budget, (b) their primary focus on licensing and disciplining thousands of massage therapists, and (c) the hundreds of massage facilities within their jurisdiction -- just in the Portland area alone. They simply could not handle the caseload and felt it better to repeal the law than continue to enforce it unfairly. As the Board will tell you (if you ask), both the current application process and the current disciplinary process -- are very time-consuming, labor-intensive, and expensive. Now the only thing that has changed since the old Board asked to be relieved of the responsibility of facility inspection and licensing, is that the population of Oregon has *grown*. This means there are more LMTs, more unlicensed practitioners to investigate, and lots more massage facilities, operators, and advertisers. Passage of this bill will amount to a tremendous increase in workload for a very small Board with a relatively

small budget. **Can the current Board explain why it feels it can overcome the hurdles and hardships that prompted a previous Board to successfully convince the Oregon Legislature to repeal laws requiring the inspection and licensing of massage facilities?**

Whether and how to license and regulate facilities is a subject that deserves adequate notice, time, and input from all of the stakeholders: LMTs, customers, spa/salon owners, property management companies, medical providers, small business owners, professional liability companies, and perhaps most importantly, from law enforcement. As the Board well knows, criminals pay little heed to civil subpoenas and fines. Prostitution rings are highly mobile. The Board will need strong law enforcement backing (e.g., a commitment to criminally investigate and prosecute cases referred by the Board) in order to make this facility licensing work, and to successfully impose these broad restrictions on advertising and business names. Especially given the internet (e.g., Craigslist) and texting. Meanwhile, in these poor economic times, requiring law abiding citizens and businesses to pay yet another license application and issuance fee, and to become regulated by yet another state agency, would be a real hardship. Very little has been done to publicize the proposed bill to those who would be affected by it despite no wrong-doing.

I say this bill is premature because there has been insufficient notice and process. This Board has never publicized the existence of this problem (or its purported fix) on its website or to its LMTs. The Board has not set up a committee or workgroup to gather input from all stakeholders, and the Board has not drafted or shared any proposed rules and regulations with stakeholders.

Additionally, the bill as written is likely vulnerable to constitutional attack, because the proposed law would broadly restrict or prohibit certain speech (advertisements & business names); it creates irrational exemptions based on LMT status; irrationally restricts eligibility for ownership and licensing of certain massage facilities based on LMT shareholder status; greatly impairs existing contracts; and delegates way too much power to the executive branch.

For all of these reasons, this entire section of SB 1509 should be deleted. A better bill could likely be drafted and introduced in a future session after the Board has fairly given stakeholders a chance to draft a bill that might actually solve some problems without creating so many new ones.

Sincerely,

Rose Jade

Licensed Massage Therapist (LMT)  
Medical Social Worker (MSW, CSWA)  
Licensed Attorney (not currently practicing law)

Kate Coffey <Kate.Coffey@state.or.us>

Mon, Jan 30, 2012 at 8:05 AM

To: R Jade <rjalate@gmail.com>

Cc: "Christine A. West" <Christine.West@state.or.us>, "davidfredricksonlmt@gmail.com" <davidfredricksonlmt@gmail.com>

Rose -

XXXX - snip - XXX

I would like to explain the background of this proposed bill and what the intent is of the bill. The board has requested that Senator Bates modify this bill to include the attached language, as it is not the boards intent to add another license to LMT's. The board already has statutory authority over Licensed Massage Therapists. We are attempting to get statutory authority for those businesses that are hiring unlicensed massage practitioners. We believe the proposed amendment will provide that clarity.

In June 2011 the board received a complaint of a business that was offering massage for \$26. The board investigated the complaint and cited the person for unlicensed practice and the business owner for advertising. In July a citizen went to the same establishment and received a massage from an unlicensed person and was sexually accosted at the facility. She filed a police report and a complaint with us. We once again cited the owner for advertising and the practitioner fled to California. In September we investigated the facility again, as they are still in operation, and cited a practitioner for unlicensed practice. In December we investigated the facility again, as they are still in operation, and cited a practitioner for unlicensed practice. The board has no statutory authority of facilities and we keep citing these young women, who speak minimal English, have no idea that they are supposed to be licensed because they come from California. The board needs authority to cite the owner of the establishment. The intent of the bill is to provide the board with the authority to cite facility owner. The board has been working with Senator Bates because his constituent, the lady who was sexually accosted, wrote both the Senator and the board.

XXXX - snip - XXX

Please call me as I would greatly appreciate discussing this bill with you and receiving your input.

Respectfully,

Kate Coffey

Executive Director

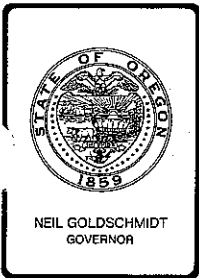
Oregon Board of Massage Therapists

748 Hawthorne Ave. NE

Salem, OR 97301-4465

503-365-8657 ext. 304

Attachment (pg 1 of 1) to Jade's letter 2/6/12 re SB 1509



# Oregon Board of Massage Technicians

908 STATE OFFICE BUILDING, PORTLAND, OREGON 97201 PHONE (503) 229-5160

April 7, 1989

Honorable Representative Bill Dwyer  
Chairman, Sunset Review Committee  
H473 State Capitol  
Salem, Oregon 97310

SUNSET REVIEW COMMITTEE  
PRESENTED BY Vicky Williams  
EXHIBIT 6 PAGES 5  
BILL HB 2325 DATE 4-10-89

Dear Representative Dwyer:

The Board of Massage Technicians would like to bring Senate Bill 108 to your attention. Senate Bill 108 deletes the massage business license.

House Bill 2325, which is in your committee, contains language that would require a license for "fixed sites or locations" only.

It is the board's position, as well as the Portland Police department's, that the business license is not useful for dealing with illegal businesses. It does not protect the public. Criminal convictions must be obtained before a license can be suspended or revoked.


Only 40% of the practicing massage technicians who have a business have a required business license. The board does not have the funds nor the authority to investigate for noncompliance. The results are a large percentage of licensees operating without a required business license. It is unfair to those who are complying.

Massage is the only health-related profession to require a state business license and an accompanying sanitary inspection.

A summary of SB 108 includes the following: deletion of the massage business license; creation of an inactive license; and licensing by indorsement only after a practical examination. A copy of SB 108 is enclosed for your convenience.

Senate Bill 108 is supported by the associations and the massage community.

Sincerely,

  
Vicky A. Williams  
Executive Secretary

Enclosure

CC: Committee Members