

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 2499

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House Professional Licensure Committee

Matthew Ryan Office Building
Room 205
Harrisburg, Pennsylvania

Monday, June 2, 2008 - 11:00 a.m.

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BEFORE:

Honorable Michael Sturla, Majority Chairman
Honorable Harry Readshaw
Honorable Vince Biancucci
Honorable Timothy Solobay
Honorable Ronald G. Waters
Honorable John T. Yudichak
Honorable William Adolph, Minority Chairman
Honorable Keith Gillespie
Honorable Susan C. Helm
Honorable Thomas H. Killion
Honorable Mark T. Mustio
Honorable Bernie O'Neill
Honorable Stan Saylor
Honorable Richard R. Stevenson

IN ATTENDANCE:

Honorable Sean M. Ramaley

1 ALSO PRESENT:

2 Marlene Tremmel
Majority Executive Director

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4 Jim Dawes
Majority Communications Director

5 Wayne Crawford
Minority Executive Director

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9 Associated Bodywork and Massage Professionals

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1 ACTING CHAIRMAN ADOLPH: Good morning, everyone.
2 The hour of 11:00 having arrived, I'd like to call to order
3 the public hearing on House Bill 2499, the House
4 Professional Licensure Committee.

5 My name is Bill Adolph. I'm the Republican
6 chair of the committee. And before we get started, Chairman
7 Sturla should be here momentarily. He's about 10 minutes
8 outside of Harrisburg.

9 I'd like the members of the committee, if they
10 would, starting with Representative Helm to identify
11 themselves and the district that they represent.

12 REPRESENTATIVE HELM: Sue Helm, 104th District
13 of Dauphin County.

14 REPRESENTATIVE MUSTIO: Mark Mustio, 44th
15 District, Allegheny County.

16 ACTING CHAIRMAN ADOLPH: Okay. I'm Bill Adolph
17 from Delaware County.

18 REPRESENTATIVE YUDICHAK: John Yudichak, Luzerne
19 County.

20 REPRESENTATIVE READSHAW: Harry Readshaw,
21 Allegheny County.

22 REPRESENTATIVE BIANCUCCI: Vince Biancucci,
23 Beaver County.

24 ACTING CHAIRMAN ADOLPH: Thank you again. And I
25 would like to submit for the record remarks by the prime

1 sponsor of the bill, State Representative Keith McCall, as
2 well as remarks from Pedro Cortes, the Office of Legislative
3 Affairs for the Department of State. Thank you.

4 With that being said, I would like to welcome
5 everybody. And if we could start with our first testifiers,
6 this is a panel from the American Massage Association, the
7 Pennsylvania Chapter. Nancy Porambo. Nancy is the
8 president. And Retta Flagg, immediate past president. Good
9 morning, ladies.

10 MS. PORAMBO: Good morning.

11 MS. FLAGG: Good morning.

12 ACTING CHAIRMAN ADOLPH: Welcome. And you may
13 start. You can identify yourselves and then you start with
14 whoever would like to go first, both of you testifying.
15 Thank you.

16 MS. PORAMBO: Good morning. Honorable members
17 of the committee, my name is Nancy Porambo. I'm current
18 president of the Pennsylvania Chapter, American Massage
19 Therapy Association. I have been in private practice for 18
20 years as a neuromuscular therapist/psychotherapist. I also
21 have a master's degree in clinical health psychology.

22 With me today is Retta Flagg, Immediate Past
23 President of the Pennsylvania Chapter, American Massage
24 Therapy Association. Retta is also a neuromuscular massage
25 therapist and has been in practice for 22 years.

1 Additionally, we have both been active in the
2 pursuit of licensure through the efforts of the Pennsylvania
3 Chapter of the American Massage Therapy Association (AMTA)
4 for the past 16 years.

5 As you may know, this is the third public
6 hearing for massage therapy legislation we have attended.
7 In this testimony we want to provide you with information
8 pertaining to the need for the regulation of massage. As
9 illustrated by the map I have provided, there are only 12
10 states that do not regulate massage therapy. That number is
11 expected to change to 11 with the addition of Colorado in
12 the coming weeks.

13 Please note that Pennsylvania is surrounded by
14 licensed states who regulate massage. For this reason
15 Pennsylvania has been the target for illicit and illegal
16 massage activity. The Pocono, Harrisburg, Philadelphia and
17 Pittsburgh areas have been inundated with businesses that
18 claim to provide massage therapy, but are, in fact, massage
19 parlors.

20 The goal of licensure was to create language
21 that establishes a reasonable scope of practice for massage
22 therapists and sets educational guidelines. The overriding
23 principles have been twofold; the first is to protect the
24 professional integrity that the overwhelming majority of
25 massage therapists have worked diligently to secure; and the

1 second is to protect the public from unqualified therapists
2 and errant practitioners that mask illicit activity under
3 the guise of massage therapy.

4 In the past two years there has been ongoing
5 dialogue with the physical therapists, as well as the need
6 for numerous legal consultations regarding the intentions
7 and scope of this legislation. We have come to an agreement
8 on language that will allow established massage therapists
9 and new graduates alike to practice massage therapy in
10 Pennsylvania.

11 The agreement was the result of lengthy
12 negotiations with many stakeholders. We felt it was
13 important to create a scope that did not infringe on other
14 professions and was designed to allow massage therapists to
15 utilize the skills, techniques and knowledge provided in
16 their massage therapy training.

17 It became evident that in these negotiations
18 further discussion was necessary regarding the term
19 mobilization. It is used by both the physical therapy and
20 chiropractic professions and has a legal definition. The
21 term mobilization as defined in Act 27 in 2002 is defined as
22 a group of techniques comprising a continuum of skilled
23 passive movement to the joints and/or related soft tissues
24 throughout the normal physiological range of motion that are
25 applied at varying speeds and amplitudes without limitation.

1 Joint mobilization as it is defined legally is
2 beyond our scope. It is for this reason that the word
3 movement was added to our scope of practice so massage
4 therapists would not be restricted from providing movement
5 as part of their massage technique.

6 Since many massage therapists work within the
7 health care community in Pennsylvania, there was
8 consideration and discussion centered on the term impairment
9 as it is listed in the restriction section of the bill. The
10 definition of massage therapy includes treatment of soft
11 tissue manifestations of the human body in which the primary
12 intent is to enhance health and well-being of the human body
13 without limitation. In the restriction portion the language
14 reads, the term does not include the diagnosis or treatment
15 of impairment, illness, disease or disability. Massage
16 therapists do not diagnose and we believe the definition of
17 massage allows us to treat soft tissue manifestations and
18 not to directly treat the impairment, illness, disease or
19 disability.

20 I would like to address several other areas that
21 have been brought to our attention regarding the language in
22 the bill. In the definition of massage therapy, the
23 word "the" had been omitted before the words health and
24 well-being. "The" has been reinstated to read "the health
25 and well-being of the client without limitation." The

1 addition of the word "the" was the initial agreed-upon
2 language with the physical therapists.

3 In Section 4, Subsection C, the current makeup
4 of the new massage therapy board of directors has been
5 structured to include individuals who have been in active,
6 continuous practice for five years or more. Since the AMTA
7 maintains a high level of standards, the new Pennsylvania
8 Massage Therapy Board of Directors deserves to have massage
9 therapists occupying seats on this board that have long-term
10 practices and have the experience necessary to make
11 decisions on behalf of the massage therapists in the state.
12 We are not in favor of making changes to allow for an
13 individual with less than five years of practice to occupy a
14 board seat.

15 We would like to suggest that an amendment to
16 this language be made to state, "has passed a massage
17 therapy competency assessment examination that meets
18 generally recognized psychometric principles and standards
19 and that has been approved by the board.

20 In Section 4 language needs to be inserted that
21 limits the number of school owners sitting on the board to
22 no more than one and shall represent one of the required
23 five professional members to occupy the board seats.

24 Honorable Representative Sturla and Honorable
25 Members of the Committee, our members have been waiting a

1 long, long time for licensure, 16 years in fact. We believe
2 that it's time for Pennsylvania to join the ranks of other
3 licensed states and protect the public from unlicensed and
4 unscrupulous individuals, set educational guidelines and be
5 legitimately recognized by the general public.

6 We sincerely thank you for allowing us to
7 present our testimony to you today and greatly appreciate
8 your consideration. Thank you.

9 ACTING CHAIRMAN ADOLPH: Thank you very much,
10 Nancy. Are you going to testify?

11 MS. FLAGG: I'm here to help answer any
12 questions you might have.

13 ACTING CHAIRMAN ADOLPH: Okay. Thank you. I'd
14 like to acknowledge the presence of Representatives
15 Stevenson, Saylor, Solobay, Ramaley and Representative
16 O'Neill.

17 Are there any questions members of the committee
18 have of the testifiers? Seeing none, hearing none, I guess
19 you explained everything to everybody. Thank you very much.

20 The next testifier before the committee is Les
21 Sweeney. Les is President, Associated Bodywork and Massage
22 Professionals. Good morning, Mr. Sweeney.

23 MR. SWEENEY: Good morning.

24 ACTING CHAIRMAN ADOLPH: You may begin whenever
25 you're ready.

1 MR. SWEENEY: Good morning, ladies and
2 gentlemen. My name is Les Sweeney. I'm the president of
3 Associated Bodywork and Massage Professionals. We're a
4 national association that represents the massage and
5 bodywork profession, along with my colleagues from the
6 American Massage Therapy Association. I'm here to talk
7 about House Bill 2499.

8 A little background. Our membership numbers are
9 more than 64,000 throughout the United States, including
10 more than 3,600 members in Pennsylvania. We
11 publish "Massage and Bodywork Magazine" which is one of the
12 three major publications in the field, we provide
13 professional liability insurance for our members and help
14 members become successful in building and sustaining a
15 practice.

16 We also as part of our outreach visit massage
17 training programs and have visited more than 1,000 massage
18 and bodywork training schools in the past 12 years. We work
19 with them to help establish greater standards in their
20 curriculum to help develop more successful practitioners.

21 We also work to ensure an equitable regulatory
22 playing field for massage and bodywork professionals. We
23 have been involved in shaping legislation in most of the
24 states that have adopted or revised massage laws during the
25 past dozen years, and I have personally provided input on

1 Pennsylvania's massage legislation efforts since 1994.

2 I am concerned that at some point that if
3 Pennsylvania does not have a legislative issue that might
4 mean my tenure with my organization is going to be over, but
5 I'd rather see a successful result here and take that
6 chance.

7 In the area of regulation our mission is to work
8 to ensure the most favorable possible climate for our
9 members, the profession as a whole and the general public.
10 ABMP is here to be a willing supporter of the effort toward
11 licensure represented in House Bill 2499.

12 We do have some specific concerns about language
13 in several key areas, specifically the definition of massage
14 therapy, examination language, grandfathering, board member
15 composition and qualifications, preemption of local
16 regulations and continuing education.

17 I detailed written comments about these, but for
18 everyone's benefit I will not read them. But I would like
19 to take a minute to briefly comment about a couple of them.
20 The remainder of them are in your written testimony that you
21 received.

22 We do have a concern with the definition of
23 massage therapy as currently written. We certainly
24 understand that there has been some degree of compromise
25 reached with the physical therapists in the state regarding

1 that. We do think it is important to identify that there
2 are some needs of the massage therapy community that we're
3 not willing to see sacrificed in the field to have a bill
4 passed. Some of these have been referenced in my testimony.

5 Regarding treatment of impairment or injury,
6 massage therapists certainly do not diagnose, nor should
7 they have the right to do so and nor do they in most
8 statutes. They certainly do, however, treat injuries or
9 impairments. We think that referencing that language in
10 specificity is too restrictive for massage therapists.

11 As mentioned by Miss Porambo, there is a law
12 that is actually either has been signed or will be signed by
13 the governor of Colorado this past weekend -- Colorado is
14 actually where I make my home. We have worked hard to
15 develop some compromise language for definition of massage
16 therapy that we feel would be an appropriate resolution to
17 utilize in Pennsylvania as well, and I have included that
18 written description in my written testimony.

19 I do have one comment in relation to local
20 regulations. I did not see specific language in the statute
21 or the bill that there is language that would preempt local
22 regulations. Preempting local regulations is an integral
23 element of any licensure law. Many local municipalities
24 have adopted regulations of regulation of massage therapists
25 in lieu of a state license. This may be inferred by other

1 codes, but I did not see it referenced in the proposal.

2 As in Pennsylvania's case and other states that
3 do not regulate on a statewide basis, they currently have to
4 obtain local licenses to practice in many municipalities.
5 It's important that if this bill were to be enacted that it
6 did not just add a second layer of regulation for
7 individuals but actually superceded any local ordinance.

8 Regarding grandfathering existing practitioners,
9 as mentioned, the ABMP represents more than 3,600 members in
10 the State of Pennsylvania. ABMP now has a quite large
11 population as well. It's important that when we adopt
12 regulations that we accommodate for existing practitioners.
13 There is a grandfathering period which states that
14 practitioners can obtain a license. It does not state when
15 that grandfathering period will end. Certainly if there is
16 a regulatory body that was responsible for implementing this
17 law they would probably like to see attention to the
18 grandfathering period just from a statement of being able to
19 accommodate that.

20 In addition, Section 6, Subsection B, Article 3,
21 lists three subparagraphs that are options for existing
22 practitioners to complete in order to obtain a license.
23 ABMP would like to suggest an amendment to Subparagraph 2.
24 The subparagraph refers to allowing a candidate to obtain a
25 licensure by passing an examination. We feel the language

1 utilized can be improved upon. We have included language
2 that would allow candidates for licensure to obtain their
3 license by having passed an exam offered by either the
4 National Certification Board for Therapeutic Massage and
5 Bodywork or the massage and bodywork licensure examinations
6 offered through the Federation of State Massage Therapy
7 Boards. I have included suggestive language for that.

8 For the sake of keeping my comments brief, I
9 will leave the rest of my comments, my written comments, for
10 your digestion and I will spare you the verbal of that. If
11 anyone has any questions, I'd be more than happy to answer
12 them.

13 ACTING CHAIRMAN ADOLPH: Okay. Thank you, Mr.
14 Sweeney. I'd like to acknowledge the presence of
15 Representative Tom Killion of Delaware County and also the
16 presence of the Chairman, Mike Sturla.

17 Do any members have questions of Mr. Sweeney?
18 Representative Saylor.

19 REPRESENTATIVE SAYLOR: I don't know if you can
20 answer this or I should have asked it maybe to the last
21 person. I'm curious as to as we're going through this
22 licensing process, which I kind of have a problem with, is
23 that I have not heard of in Pennsylvania or elsewhere any
24 major problems with licensed massage individuals being
25 unlicensed. I haven't heard of any physical harm, lawsuits,

1 abuse or anything like that. And I'm curious as to what you
2 can tell me on that.

3 MR. SWEENEY: I'd be happy to discuss that, but
4 I'd also be happy to have Nancy come sit up here since she's
5 also a good person to provide some info on that.

6 I think certainly the nature of any regulatory
7 action is for consumer protection, protecting the public.
8 We certainly recognize that there is some degree of
9 confusion that exists when there isn't a state regulation
10 because unfortunately the reality has been that the term
11 massage has been hijacked by entities that are not in the
12 interest of therapeutic massage. They are using the word
13 massage as a euphemism for adult entertainment.

14 Establishing a state regulation allows the state
15 to draw a line to differentiate between someone who is
16 performing massage therapy or therapeutic massage and
17 someone who is masquerading behind the term massage as a
18 front for prostitution or adult entertainment.

19 REPRESENTATIVE SAYLOR: Well, we already have
20 laws that deal with that kind of massage type stuff here in
21 Pennsylvania. You can be arrested. If this is a law just
22 to fix that, I think you're going about it the wrong way,
23 first of all. I want to know where physical harm has taken
24 place in people in Pennsylvania.

25 I have been -- I've had massages a number of

1 times, whether it's on a cruise ship or it's at the YMCA or
2 it's somewhere else, or someone that has a massage business
3 as such, and I'm curious -- I have never heard as a lawmaker
4 in my 16 years here of any cases of physical harm by a
5 massage person. And to me, my real question is whether is
6 it about raising fees on constituents and consumers or if it
7 truly is about protecting health. Because I have not heard
8 of any health problems being expressed in the past as far as
9 this profession is concerned.

10 MS. PORAMBO: I think that what we need to -- I
11 would first like to state is that we have tried on many
12 occasions to take information from our insurance -- some of
13 our insurance companies that do actually insure our people
14 in our profession. And the cases of things that you're
15 talking about are confidential. They can't release it to
16 us. They can't even give us statistics on how many people
17 have been injured by inappropriate touching.

18 I think that we need to recognize there are
19 contraindications to massage therapy, and if therapy is done
20 inappropriately it can actually cause harm to someone.
21 For instance, blood thinning medications. Someone coming
22 in, taking an inappropriate case history, there could be
23 blood thinning medications that they're on and it would
24 cause bruising or possibly --

25 REPRESENTATIVE SAYLOR: Nancy, I appreciate what

1 you're saying, but you're still missing the point. I have
2 no insurance company, nobody has come forward to provide
3 evidence as to number of people injured. And I think that
4 is something that this committee should have before it
5 passes and licenses something to just license another
6 profession, which means in most cases consumers are going to
7 spend more money and a higher price for a massage.

8 And I go to a chiropractor as well, I have had
9 massages at different times from working out at the Y or
10 whatever, I want to know about injuries. I don't want to
11 know about what could happen. Has it happened and how many
12 cases of it have happened, particularly in this state. Not
13 what could. Because I have heard no cases and I want
14 to -- if I'm going back to my district and I'm going to tell
15 the people who now do massage, legitimate massages -- and we
16 have laws to take care of those doing it in a sexual type
17 situation, that's different. There's already a law against
18 that. What I want to know about is how is this bill really
19 truly going to protect my consumers more than they already
20 are protected.

21 Because I don't know of anybody. I've never
22 received a complaint in 16 years from anybody who's had a
23 massage. And I go to the Y a couple times a week. I've
24 never heard complaints from anybody in my 16 years. So I'm
25 looking for real, actual numbers before I say to my

1 consumers, I'm going to pass a law to protect you from
2 something that there hasn't been a problem with. We do that
3 too often around here.

4 MS. PORAMBO: And, Representative, I did state
5 earlier that we have tried to gain the information from the
6 insurance companies and we're unable to get that because of
7 the confidential nature.

8 REPRESENTATIVE SAYLOR: But wouldn't the
9 insurance companies want to also see that they're licensed
10 if these things are really happening. My question is maybe
11 there is no such things happening. Because I would think
12 the insurance companies would be the first to come to the
13 State Legislature if they were seeing claims being filed due
14 to injuries due to your profession.

15 And I don't mean you specifically, but people
16 who are misusing your profession. I would think the
17 insurance companies should be here testifying today that
18 you're exactly right that there are cases of injuries being
19 done and I don't see them. I see no list of testifiers here
20 today to justify that.

21 MR. SWEENEY: We have done some analysis to this
22 extent for the current legislative proposal in Colorado.
23 They have the Department of Regulatory Agencies and do the
24 sunrise process that has some degree of evaluation so we'd
25 be happy to share that information with the committee if

1 that would be helpful.

2 REPRESENTATIVE SAYLOR: Any information you
3 could provide, but I would like to see here in Pennsylvania
4 because, again, we're talking about Pennsylvania, we're
5 talking about the sixth largest state in the nation. I'm
6 sure there are many, many massages being performed here
7 compared to Colorado. I'm not discounting it can happen
8 anywhere. But the bottom line is I need to justify voting
9 for a new licensing law that in most cases everybody-- as
10 soon as we license somebody the fees are going to go up for
11 having a massage done because it's now an additional
12 expense, while maybe not a tremendous increase in the fees
13 and registration and everything, still it's going to limit
14 the people who are doing it which usually means there's a
15 greater demand and a higher fee for performing it on an
16 individual.

17 And in today's world with prices going up, gas
18 prices and everything else -- I just had a state meeting
19 down there talking about infrastructure and how we need to
20 improve water in my district the other week with Secretary
21 McGinty, and my consumers are saying, here we go, another
22 fee increase on something else state government is going to
23 do to us.

24 And that's the same thing I'm saying to you. If
25 we're going to have an increase to consumers, prove to me

1 that there is a legitimate -- not just a theory, but
2 legitimate cases in the past of injuries here in
3 Pennsylvania.

4 MS. PORAMBO: I'll check with the national
5 association to see if I can find that information for you,
6 Representative Saylor. Thank you.

7 CHAIRMAN STURLA: Representative Solobay.

8 REPRESENTATIVE SOLOBAY: Thank you, Mr.
9 Chairman. And this kind of falls in line with what
10 Representative Saylor was asking, although it may be a help
11 and a clarification of even his concern.

12 During -- and it's probably been three or four
13 years ago there was quite a few facilities back in my area
14 in Western Pennsylvania that might do a lot of displaced
15 worker issues and there's a lot of new opportunities for
16 folks to get into. Massage therapy was a few of the choices
17 that some of these folks decided to go into and to look as a
18 new profession, a new career for them. We had trouble with
19 the Department of Labor and Industry trying to identify and
20 recognize massage therapy as a true profession or a work
21 direction for these individuals to go and had to work
22 through the process of getting them convinced to allow them
23 to be able to be used as a new education process for them.

24 So in the line of licensure and/or
25 recognition -- and I think we got some of the information

1 from other states that have been provided for this
2 event -- licensure information enabled the Department of
3 Labor and Industry to understand that even on the federal
4 side to let this be a qualifying profession or qualifying
5 career choice for these folks that were displaced to be able
6 to use state and federal funds for education purposes.

7 So is there any correlation between that and
8 license that may make that easier for folks as they try to
9 move forward on this if there is a license requirement? And
10 I'm just tossing it out knowing the problems we had trying
11 to get their courses and materials and equipment qualified
12 as an allowable use of this retraining, reeducation.

13 MS. PORAMBO: I think it would be advantageous
14 that we do have a defined scope of practice finally for
15 massage therapy in Pennsylvania. And I think it would be
16 helpful to establish that guideline so that you can take
17 displaced workers and have them go into programs for a
18 legitimate career choice of massage therapy. It would be
19 advantageous.

20 CHAIRMAN STURLA: I'll note we've been joined by
21 Representative Gillespie. And next the questions is from
22 Representative Mustio.

23 REPRESENTATIVE MUSTIO: Thank you, Mr. Chairman.
24 Nancy and Les, get back to Representative Saylor's question.
25 Does your association, as I assume most do, have an endorsed

1 insurance program for your members?

2 MS. PORAMBO: Yes, we do.

3 MR. SWEENEY: We do as well.

4 REPRESENTATIVE MUSTIO: I would assume that that
5 information is very readily available from them to address
6 Representative Saylor's concern. Most likely when they make
7 their filings for their rates they have to disclose that
8 information. And I think that that would help us. If
9 that's a concern of some of the members, I think that's
10 something they can readily get to us.

11 MS. FLAGG: If I may address that. We have
12 asked that question and they just said it's totally
13 confidential, they may not release those figures.

14 REPRESENTATIVE MUSTIO: Then perhaps we could
15 have our Insurance Department write to them and
16 request -- ma'am, excuse me. We're not asking for specific
17 privacy information. Lawyers all the time receive a
18 breakdown for their utilization reviews of all claims. And
19 really it's basic information. It's public knowledge at
20 this point. Thank you.

21 CHAIRMAN STURLA: And if I could just weigh in
22 on that, and then Representative Adolph has a question or
23 two. I imagine we could probably find that information for
24 those people that are currently licensed. What I don't
25 think we'd be able to find information for is those people

1 that aren't currently licensed, who don't carry insurance,
2 who aren't regulated, who aren't in any way controlled or
3 seen by any regulatory body.

4 If I'm their patient, and I technically right
5 now I guess in Pennsylvania I could hang out my shingle that
6 says I do massage, I give a really good back rub. But if I
7 injured somebody, who would they sue that would -- who would
8 it get reported to that -- what licensing agency would it
9 get reported to that I was committing malpractice for
10 massage?

11 MR. SWEENEY: No one in Pennsylvania.

12 CHAIRMAN STURLA: So there's this -- I don't
13 know how you would ever come up with the number of those
14 people that might be being injured by someone who is not
15 licensed and not capable because there is no entity to
16 report it to. That's just somebody who hung a shingle out
17 and, hey, they hurt my back and that's my tough luck.

18 MS. PORAMBO: I'd like to just make a comment.
19 When someone comes in to someone who claims to be doing
20 massage therapy, and let's assume that it is a massage
21 parlor, there can be psychological damage that is done to
22 that individual that's never reported as a physical injury.
23 And for those things -- for those reasons you may not see
24 those statistics. They may be in offices getting counseling
25 for whatever's been done.

1 And that seems to be where I can see harm coming
2 from the background that I do that there's emotional
3 distress because someone touched them inappropriately.

4 CHAIRMAN STURLA: Representative Saylor.

5 REPRESENTATIVE SAYLOR: I would disagree, Mr.
6 Chairman, in that if the Y's would be sued, the Y's, YW's,
7 YM's, wherever these people work at or any other agencies
8 these people work at, if they're working out of their homes,
9 I would not necessarily disagree with you. But I would
10 think that at some point the homeowner's insurance is going
11 to be a part of the lawsuit because you're performing a
12 business out of your home. So your homeowner's -- your
13 homeowner's would be sued as well. So I don't know of
14 anybody who works out of their home, they're usually working
15 with somebody else if they have a business and they're
16 licensed in Pennsylvania.

17 So I would disagree. There is a way to get that
18 information that is not confidential. You might have to go
19 to two different or three different insurance agencies,
20 depending on how you do it, but it's either through the
21 homeowner's insurance or it would be through just the
22 insurance agencies period that carry insurance insuring
23 people, liability insurance, whatever. There's got to be
24 something there.

25 And it's not protected information. It is

1 public information to us. And that's where I'm saying to
2 this point nobody provided evidence. Everything is I
3 think, I think. And I think doesn't cut it. I think it has
4 to be factual for us to do something and to take action on
5 this in today's world. Thank you.

6 CHAIRMAN STURLA: Representative Adolph.

7 REPRESENTATIVE ADOLPH: Thank you, Mr. Chairman.
8 Nancy, in the language of the bill it will be a state
9 license. Do you have an idea of how much that license would
10 be?

11 MS. PORAMBO: Based on the amount of members
12 that we calculated, and this was done years ago, we
13 estimated there was between seven to nine thousand massage
14 therapists either in the AMTB or the AMTA. These are the
15 two organizations that Les and I oversee. But there are a
16 lot of massage therapists out there who are practicing that
17 don't have insurance. They may be with another organization
18 called the IMA. We've calculated it would be about 89 to
19 around \$129.

20 And that was years ago. So there may be an
21 increase because massage schools have actually increased the
22 amount of massage therapists that they're putting out. So I
23 would assume that that may be more.

24 REPRESENTATIVE ADOLPH: Okay. That's in the
25 9,000 figure. That's nationally?

1 MS. PORAMBO: That's just in Pennsylvania.

2 MR. SWEENEY: Just in the state we have 3,600.

3 REPRESENTATIVE ADOLPH: That's just in
4 Pennsylvania?

5 MS. PORAMBO: Just in Pennsylvania alone.

6 MR. SWEENEY: Sir, the median as of last year, I
7 mean the median nationally for regulated states is around
8 \$55 per year. Some that are much more than that and some a
9 little bit lower.

10 REPRESENTATIVE ADOLPH: \$55 per year?

11 MR. SWEENEY: Correct.

12 REPRESENTATIVE ADOLPH: Thank you.

13 CHAIRMAN STURLA: Questions from other members?
14 Okay. Thank you.

15 Next on the agenda we have a panel from the
16 National Certification Board for Therapy Massage and
17 Bodyworks, Donna Feeley, Neal Delaporta, Pualani Gillespie
18 and Paul Parker.

19 MS. FEELEY: Good afternoon. My name is Donna
20 Feeley. I'm the Chair of the Board of the National
21 Certification Board for Massage and Bodywork Therapy.

22 I'd like to introduce to my left Pualani
23 Gillespie. She is the chair of our government relations
24 committee. And in the back we have Mr. Neal Delaporta who
25 is our chair-elect of the National Certification Board of

1 Massage Therapy, and Paul Parker who is our director of
2 testing.

3 And I'd like to thank all of you for allowing us
4 the opportunity to be present here at this meeting, and I
5 would like to congratulate all of you for considering
6 passage on certification. So I'd like to give you a little
7 bit of background on NCBTMB.

8 Can you hear me up there? And all of us will be
9 addressing some various points.

10 So NCBTMB, National Certification Board for
11 Therapeutic Massage and Bodywork, we were funded in 1992.
12 We're an independent nonprofit 501(c)(6). And we were
13 established to set high standards of ethical and
14 professional practice. And this is done through a
15 recognized credentialing program. We certify massage
16 therapists and bodyworkers on behalf of the profession and
17 for the benefit of consumers, employers and practitioners.

18 We have 90,000 nationally certified
19 practitioners across the United States, and we are
20 recognized in statute or rule for purposes by 32 states and
21 the District of Columbia. One of our primary goals
22 include -- members of our board represent law enforcement,
23 public health, public health background, nursing. We have
24 spa owners, we have legislative folks and we have health
25 educators on our board. So we are concerned and very

1 motivated to promote massage therapy licensure and national
2 certification because as the field moves forward and into
3 the health care arena it is recognized by NIH, national
4 offices of alternative medicine it's very important that we
5 move towards licensure and national certification in all
6 states.

7 So in Pennsylvania we actually have 2,000
8 massage therapists and bodyworkers that maintain the NCBTMB
9 certification. We have a national certification exam
10 program. It's been accredited by the NCCA, the National
11 Commission for Certifying Agencies. We are currently in the
12 process of ANSI accreditation. That's the American National
13 Standards Institute. And the reason we do this is because
14 these organizations basically help ensure that we're going
15 to be promoting and protecting public health and safety of
16 individuals and consumers in states and across the country.

17 We've administered our exam in the last 15 years
18 to over 250,000 practitioners and we administer 28,000 exams
19 annually. No other exam at this point in time has anything
20 approaching this track record of administration.

21 So after passing the examination, certificants
22 basically demonstrate their continued competency. We have
23 48 hours of continuing education requirements every four
24 years. And they are also bound -- this is very
25 important -- to uphold our strictest code of ethics and

1 standards of practice. We have national standards of
2 practice.

3 We perform job task analyses every five years
4 and that's to provide the evidence of validity for test
5 content. And Paul Parker can address this. The job
6 analyses are extensive, descriptive research studies that
7 detail job tasks and knowledge, skills and abilities needed
8 to practice safely. So to date we've accomplished and
9 offered four separate job analyses.

10 NCE, the National Certification Exam, is offered
11 in more than 200 testing sites nationwide and we have nine
12 in the State of Pennsylvania alone. And these are all
13 Pearson VUE.

14 We also have National Examination for States
15 Licensure and that's one of our options and this will offer
16 an ability to establish for the State of Pennsylvania to
17 apply all eligibility requirements for testing.

18 NCB has a dedicated staff of 33 based in Chicago
19 and we are responsible for the rapid processing of some
20 30,000 applications annually.

21 And currently NCB is working with several states
22 to create -- this is very important -- the first
23 professional disciplinary tracking database for massage and
24 bodywork. This data is going to be available to all
25 jurisdictions and will be owned by the jurisdiction that

1 posts the information. And this database will be used as a
2 conduit to report to the National Practitioner Database.

3 The other piece I want to say about our ethics
4 and standards program is that we maintain a rigorous process
5 for reporting and investigating violations, violations of
6 professional ethics or standards or practice. So that's a
7 little bit about us. Pualani.

8 MS. GILLESPIE: Thank you so much for allowing
9 us to present. Is this microphone on? Yes, thank you so
10 much. And, Representative Gillespie, who knows, you may
11 have some family in Hawaii.

12 I've come 6,000 miles for meetings and also to
13 come to this meeting today to stress the importance of
14 licensure in all states. As we are entering the
15 complimentary alternative medicine field being recognized by
16 the federal government in entrance in the medical
17 profession, in many ways it is necessary and mandatory that
18 licensure does occur. This is the reason why we're here to
19 support this as well and also to support the fact that we
20 are currently being used in the grandfathering clause as the
21 testing agency because of our certifying accreditation with
22 the national certifying agency and we present all these
23 programs to your state as a result of this. And we
24 encourage you to continue to use us as your certifying and
25 testing agency for your licensure that you're introducing in

1 this bill.

2 Representative Saylor, we're not here to talk
3 about your concerns. We're here to also just put an
4 additional push for passage of licensure in the State of
5 Pennsylvania. Because as this profession is being elevated
6 into hospitals and being elevated into other areas besides
7 spas, YMCAs, those types of areas where massage is being
8 done in the State of Pennsylvania there are medical centers
9 that are offering or want to offer massage therapy as part
10 of their program but in doing that they need to have
11 licensure passed by the board for that purpose.

12 The profession is being elevated into the fields
13 of nursing, physical therapy, all these areas that are
14 currently licensed, but as well as being licensed as an
15 individual field, to be able to provide those services. So
16 that's the reason why we're speaking today in response to
17 your concerns.

18 MR. DELAPORTA: Thank you very much. I just
19 wanted -- I hope I can be heard -- I want to take the
20 opportunity to thank the authors of the bill for including
21 the piece on continuing education as part of the law. That
22 is one of the things that helps to establish a measure of
23 professionalism across professions. That commitment to
24 ongoing continuing competency I think is the key element in
25 the legislation, and I'd like to thank you very much for

1 including that.

2 MR. PARKER: One of the things obviously a
3 license doesn't want to do, at least from our perspective,
4 is restrict an otherwise qualified therapist from practice.
5 Given that our exam is rigorous, we think it's a good
6 measure of competency.

7 Sort of to address those issues of restricting a
8 qualified therapist's ability to practice in the State of
9 Pennsylvania, I'll give you this statistic. First-time test
10 takers on the national exam in Pennsylvania passed around 77
11 percent of the time. So the practitioners in Pennsylvania
12 are doing a good job, but it still gives you an indicator
13 that there are some therapists who are not passing this
14 standardized examination that has essentially been validated
15 by professional peers. Thank you.

16 CHAIRMAN STURLA: Thank you. Questions from
17 members? I have one question. Given the fact that there
18 are people passing right now the exam, how are they
19 obtaining the knowledge to pass the exam now? Are they
20 taking courses or are they -- and what does it usually
21 require? I mean obviously if you put this test in front of
22 me tomorrow, chances are I'm going to fail it. What would
23 it take for me to get to a point where I might have a 77
24 percent chance of passing this?

25 MR. PARKER: In order to be eligible to test

1 pursuant to certification, an individual needs to have
2 graduated from a program with a minimum of 500 hours of
3 education. There's not necessarily a direct correlation
4 between 500 hours and passing the exam, but, again, in order
5 to be eligible to test you must have at least had that. And
6 obviously that education is broken down according to certain
7 content areas, business, assessment and physiology, ethics,
8 codes of conduct, et cetera.

9 CHAIRMAN STURLA: Thank you. Questions from
10 other members? All right. Thank you very much.

11 Next we have a panel of massage therapists,
12 Craig Denega and Nancy Tomer.

13 While we're waiting for them, it has been
14 suggested that it might be advantageous for us all to go to
15 Hawaii and figure out whether or not this is worthwhile.

16 REPRESENTATIVE GILLESPIE: I just want the
17 record to show that I only wish I had relatives in Hawaii.

18 CHAIRMAN STURLA: I'll also point out that we've
19 been joined by Representative Waters.

20 Do you want to start the testimony?

21 MS. TOMER: Absolutely. First, I'd like to
22 introduce myself. My name is Nancy Tomer. I've been an
23 independent sole practitioner for 25 years. I trade under
24 the name of Cynergetics, Inc. I've been a long-standing
25 member of the AMTA, American Massage Therapy Association,

1 almost the entire 25 years, but I don't know exactly the
2 date.

3 I am also nationally certified by the certifying
4 board that the AMTA actually helped to get off the ground in
5 1992. I've been certified as one of the first I think
6 hundred or 200 people that were tested or some of the very
7 beginning people that were tested for the exam.

8 I would like to testify in two ways. First, as
9 a therapist having read the bill and being in practice for
10 25 years, and then as a patient, which I recently was as a
11 result of a car injury. And I think both are very pertinent
12 to this.

13 In this house bill you are stating on Page 1,
14 Lines 12 and 13 that the practice of massage therapy may
15 cause public safety issues if it is not regulated. Well, I
16 take issue with the safety issues. I think that we need to
17 have a definition of what that is.

18 I apologize. I've been on the road for over
19 three hours to try to get here. I apologize that I did miss
20 the earlier testimony in case that was handled. But in the
21 25 years of experience that I have had I know of no one in
22 all of the education I've done around the country and all my
23 own peers in this area who has injured anyone to any degree
24 even nominally.

25 And I do believe that there are statistics that

1 indicate that over a 30-year period of time there is
2 something like 12 cases around the globe in a 30-year period
3 of time. So I don't believe that that substantiates or
4 that's significant enough to want to regulate, especially
5 with a bill that reads like this.

6 Secondly, we do have -- we are actually
7 regulated. It is voluntary. But I think that's an asset.
8 We are regulated by a national board who is certified to do
9 so. And, in fact, most of the criteria that you are using
10 for your very own bill and other bills around the nation
11 have come from the research done and the application of that
12 and the real life experience of this national certifying
13 board. And the acronym is NCBTSB. And that's the National
14 Certification Board for Therapeutic Massage and Bodywork.

15 As I said, they were established in 1992. They
16 require continuing education. They have a four-hour written
17 test that is constantly updated and improved. They have
18 continuing education requirements very much like the ones
19 that you have. They have a different time span in the
20 recertification period, four years versus two years, but the
21 same number of credits. If you divide the four years of
22 continuing education credits into two, it's the same number
23 of credits.

24 I see nothing, no benefit -- first of all, I
25 don't see any need, but aside from that I don't even see any

1 benefit to the general public safety. I don't see any
2 benefit to my profession in this bill and in the reading of
3 this bill. And I -- in a number of ways I will try to
4 address that briefly.

5 I want to get back to the certifying board. The
6 reason, actually, I think that it's advantageous the
7 certifying board be voluntary to certify yourself is because
8 it is absolutely the easiest way for anyone in the general
9 public who knows nothing about nothing, which 99 percent of
10 them are when it comes to massage therapy are in that
11 category. It is really easy for them to find the people who
12 are really serious about what they do because they are
13 volunteering to put themselves through the rigors so that
14 they can meet those standards, those requirements, take that
15 four-hour test, which nobody likes to take, in order to say
16 I'm better than the rest.

17 I take what I do seriously. And nobody is
18 forcing me to do it. I'm doing it because I'm dedicated to
19 my profession.

20 Mandating legislation, regulation does not do
21 that. It doesn't accomplish that. Also, what it does, it
22 gives the general public a false sense of credibility across
23 the board for all people practicing hands-on work. And
24 that's just not the case.

25 So I think that having a national certification

1 board is advantageous for that reason, as well as for the
2 reasons we know our society, we're very mobile, we're all
3 over the place. I have a tenant whose husband works down in
4 D.C., his wife lives in Willow Grove. He comes up here and
5 he lives on the weekends in Willow Grove. So he's in D.C.
6 for a few days and in Willow Grove, Pennsylvania, for a few
7 days. He can seek massage at both locations.

8 The beauty of having a national certification
9 board is that it's one standard throughout the nation.
10 Nobody has to go through and try to figure out, well, are
11 they okay, and what makes this person in D.C. different than
12 a person whose may be licensed in another state. They don't
13 have to go through all that. There is a level playing field
14 that makes it much easier for people to discern the level,
15 and it is a minimum standard as all of them will be, at
16 least the minimum standard that there is tremendous value in
17 that, in making this easy for the general public.

18 And my understanding of licensing laws is that
19 it is not to protect the profession. It is to protect the
20 general public from harm and to make it easy for them to be
21 able to distinguish among those who are qualified to do the
22 work for them and those who are not. National certification
23 board, for the reasons I just mentioned, tops any state bill
24 for those reasons.

25 If you'll just give me a moment. I would like

1 to mention the validity of this rationale, this level
2 playing field, has just been demonstrated beautifully by our
3 federal government in instituting the USDA organic label.
4 Their argument was exactly what mine is. That is that, you
5 know what, there's too many certifying organizations out
6 there and they don't all have the same standards. How is
7 the general public to possibly know what's really organic,
8 what's not organic, is this better organic or is that not as
9 good organic.

10 So the federal government came in and said, you
11 know what, we're leveling this playing field. These other
12 organizations can be in existence, but we're telling you
13 anything that has this label you can trust. That's what the
14 national certifying board does. It does it and it does it
15 very simply and easily.

16 I think that this bill is actually fatally
17 flawed in countless ways. This bill, first of all, it's
18 classified as massage therapy or massage therapist as
19 practitioners. I've been doing this for 25 years and
20 there's not one year from day one that I've ever classified
21 myself as a massage therapist. I never, ever did any work
22 that looked or resembled spa-type work, which is what most
23 people think of. Relaxation work. That's what most people
24 think of when they think about massage therapy.

25 There's those of us who have been in practice,

1 and there's not many of us who have been in practice as long
2 as I have, those of us who have been in practice this long
3 and choose to work on cases that no one else can work on,
4 including traditional health care practices, which is what
5 my practice has always revolved on, working on people that
6 have fallen through the cracks, gone through surgery, gone
7 through injections, gone through all sorts of physical
8 therapy, occupational therapy, other massage therapists, you
9 name it, homeopathy, they've been through everything
10 imaginable, drugs, everything, and they are still looking
11 for an answer.

12 And I have been able to help them. I
13 distinguish myself from the massage therapists and have
14 always, as well as a number of other people, by calling
15 myself a bodyworker because that's what I work is the body.
16 I don't limit myself to techniques that might be classified
17 under massage even though that's a very broad category.
18 That's over 150 techniques in and of itself that are
19 classified under the label massage. I don't limit myself to
20 that.

21 And because I don't limit myself to that and
22 I've learned to implement a variety of things and integrate
23 them much like an artist would the primary colors on a
24 palette to come up with all different gradations and apply
25 it specifically to the people that I'm working on and not

1 rubber-stamp any particular technique on any one person.

2 I've been successful in helping these people,
3 significantly helping these people, not just
4 symptomatically, getting them out of their migraines,
5 getting them to be able to breathe through their noses for
6 the first times in their lives and they're 40, 50 years old,
7 getting them out of asthma, working children with behavioral
8 disorders by using manual therapies, non-invasive,
9 non-painful manual therapies that are not delineated in this
10 bill.

11 I would be precluded from using these skills by
12 implementation of this bill. That means these kids, these
13 parents who don't want to put their kids on Ritalin, don't
14 have another option. This is controlling the child. This
15 is actually facilitating the body's own ability to heal
16 itself. It's incredible. It works. I do not want to be
17 limited in my practice because somebody wants to protect who
18 from what. It's unclear.

19 CHAIRMAN STURLA: If I could just interrupt you
20 for a second. When you say you would be limited by this
21 bill because you're doing things that are not included in
22 this bill, are they things that are included in the physical
23 therapy law?

24 MS. TOMER: I don't know the physical therapy
25 law, and I would suggest not because physical therapy -- you

1 know, we really should take an historical --

2 CHAIRMAN STURLA: The only reason I saw that is
3 there's nothing in this bill that says you can't do other
4 things that you might want to do that aren't covered by the
5 physical therapy law by this massage therapy law, by
6 chiropractic law. But if you do those things, then that's
7 malpractice.

8 MS. TOMER: It is a gray area for -- okay.
9 Let's just go right to Page 3, Lines 5 and 6 -- I'm sorry,
10 Not 5 and 6 -- 3 and 4 and Line 14. There is a reason why
11 they have included specific things in this bill. They have
12 been advised by legal counsel that if they're not
13 specifically mentioned in this bill, it's such a gray area
14 it leaves you vulnerable. You may not be able to protect
15 yourself in a court of law even though you are not
16 committing malpractice.

17 So we have over 150 techniques that the AMTA
18 considers under massage therapy, and what they have
19 mentioned here are five or six. There's something seriously
20 wrong with this.

21 And the fatty techniques is a very broad term.
22 However, myofascial release is not. Myofascial release is
23 very specific. It's talking about working fascial membranes
24 but as they pertain to the muscle only. You have fascia
25 that permeates every structure of your body and cranium,

1 including your brain. It's one system. You don't have 50
2 bones, a hundred bones, 50 muscles, whatever the numbers
3 are, you don't have that. You have one fascia. It's
4 completely connected. It's completely integrated. It's
5 completely interrelated.

6 You cannot possibly just work fascia on the
7 muscles, nor should you if you want to be successful in your
8 practice. Period. It should not be. So if we have fascial
9 mobilization techniques I might have an easier time with
10 that.

11 That still is limiting, but at least it opens me
12 up to cranial-sacral therapy which is basically fascial
13 mobilization of the structures that house the brain and
14 spinal cord, the central nervous system. That's what
15 cranial-sacral therapy is, is working those associated
16 structures. And they're all fascial membranes.

17 Visceral manipulation is effectively working
18 fascial members of the viscera, the internal organs, which
19 attach to your bony structure which attach to other soft
20 tissue structures.

21 You cannot stop and start this. This is the
22 reason physical therapy doesn't work. Number one, they
23 don't do hands-on work, which is what they were actually
24 started to do originally but they took up machines instead
25 of doing hands-on work because they can work on ten people

1 at a time.

2 We have the honor of doing hands-on work. I
3 work anywhere from three to four hours, contiguous hours, on
4 my clients because that's the way it works best. And that's
5 the way I get the best results in the least amount of time.
6 You won't find this under this law. You won't find anybody
7 doing it. It's difficult finding people that do it now.

8 When you implement this, you're not going to
9 find it. You are now just completely bastardizing the
10 technique and the potential of this modality by massage
11 therapists doing any kinds of hands-on work. You are
12 severely limiting, and if you're not limiting and you put me
13 in a position who is truly dedicated to working on these
14 people -- my heart goes out to these people who don't have
15 answers. They should have it readily available but because
16 our health care system is so political they do not. So
17 you're putting me in a position of making a choice to say,
18 you know what, after 25 years I guess I need to find a new
19 occupation because I'm putting myself severely at risk to be
20 sued.

21 I may win every one of those lawsuits. The
22 outcome is not my concern. My concern is being dragged into
23 court and having to defend myself, not only putting out the
24 time and the money and the energy, it's the emotional stress
25 that that will cause is just unnecessary.

1 This bill does nothing to console me in any way,
2 shape or form, and in fact it confuses me, a therapist who
3 has been in this field for 25 years who only does advanced
4 techniques.

5 I read this bill and I'm really confused as to
6 what I can and can't do. How is it that this is going to be
7 defined in a court of law by attorneys who know nothing
8 about the field and can pay anybody to spout their
9 particular viewpoint on it since we all know there ain't a
10 whole lot of scientific research to back this stuff up for
11 the very reason that they can't. It's wholistic in its
12 practice. It works with many things simultaneously.
13 Science breaks everything down to bits and pieces and they
14 study those bits and pieces.

15 That's not how this works. This works as a
16 whole organism if you do it well. It works the whole
17 organism. We cannot study the whole organism. It's
18 impossible for us with scientific methods to study the whole
19 organism. So you are just putting me in a nightmare
20 situation where I have to choose another occupation, which I
21 so do not want to do, or to limit what I'm now doing which
22 means that I am now just being a whore, being a prostitute,
23 doing something for money that I know I can do better for
24 them but this piece of paper says I'm not going to.

25 CHAIRMAN STURLA: If I could -- if I could, the

1 only thing that this law would say that you can't do are
2 things that are currently covered by the chiropractic law or
3 the physical therapy law. And if you're doing that now,
4 you're in violation of those laws now. It's susceptible to
5 those same suits that you claim you might have if this
6 passes.

7 MS. TOMER: I would disagree with you. What I
8 am doing -- you know, this conversation is just not as
9 simple as this bill. It's just not. We really need to have
10 an historical perspective on all of this because without
11 that we will make a big mistake in passing this bill or any
12 bill.

13 The historical perspective is hands-on work used
14 to be the be all and end all for all health care. Doctors
15 did it. Okay. That's what they did. Then they got into a
16 position where they said nurses and then nurses could do
17 that and doctors pulled out of doing the hands-on work.

18 Then nurses decided they weren't going to do
19 that anymore. Physical therapists came in saying, we're
20 going to do the hands-on work, we're going to do it. Well,
21 now physical therapists have all these machines, ultrasound,
22 electric stim, all these things that they can plug in, hook
23 you up to, plug in a hot tub, whatever, and they don't do
24 hands-on work.

25 So now we have massage therapists to do hands-on

1 work and we're being limited. We're being limited by
2 physical therapists for why? Why? Why would they limit us?
3 And if we have the education, we have the skill to do the
4 techniques that we can do, why does it matter whether or not
5 the physical therapists can also do it? This should not be
6 a turf war. Remember it is the public we're trying to
7 protect and it's the public's health care that's at interest
8 here, not who can protect their little piece of the market.

9 Which is all this bill serves to do. It
10 effectively does that. And I really have a hard time with
11 that because ultimately then the individual who needs the
12 care that's a little bit outside of somebody's box just
13 doesn't get it, and then ultimately what happens is my tax
14 dollars pays to support them on Social Security or in some
15 other kind of living environment.

16 It doesn't make any sense. Our health care
17 costs an awful lot as it is. This is a way to give people a
18 choice. This is a way to give them options they don't have
19 any other way. And unless that it can be proven that what
20 we are doing is causing harm, we should not be limited just
21 because the chiropractors are afraid they're going to lose
22 business and PTs and OTs are afraid they're going to lose
23 business.

24 If they were doing their jobs and it worked, we
25 wouldn't have a profession. We have it because there's lots

1 of people that have fallen through the cracks. We get those
2 people. And I don't think we should be limiting the general
3 public from that access again for reasons that are not
4 clearly stated. There's no real harm, and I don't know why
5 we would be passing a bill like this.

6 What I can tell you is I know how this
7 originated because I was part of the AMCA when they started
8 the licensure. And in the beginning, I'll be honest with
9 you, I was actually in favor of it. And you know why?
10 Because I felt that it was difficult for me to build a
11 practice, to build a business when prostitutes were using
12 the term massage, they were doing massage to get clients in.

13 I also thought that if I were licensed the
14 insurance companies would more readily pay for my services,
15 therefore give me a greater number of clients and make it
16 easier for me to grow my business.

17 Number one, I changed my idea because I learned
18 that that's not the purpose of regulation and certification.
19 It's not to benefit me, the practitioner. It's to benefit
20 the general public.

21 Number two is those two things were wrong
22 thinking. They were wrong-minded anyway. I am not
23 particularly threatened by prostitutes. My work is so far
24 beyond that. My people don't even take off their clothes.
25 They don't need to. I am quite effective in what I do. I'm

1 not threatened by them. I have developed my skill level so
2 far beyond anything that could even be misconstrued as
3 something like that, I don't have a problem with that.
4 So I don't feel that that's a reason to define me and
5 separate me from a prostitute, and it's certainly not a
6 reason to limit me.

7 As far as the insurance companies, licensure is
8 not going to mandate insurance companies to reimburse. And
9 even if they do, since I have been nationally certified for
10 so many years over the years insurance companies have
11 realized that they are losing -- they used to occupy -- they
12 used to have 100 percent of the health care pie, they now
13 know they don't have it. They see themselves losing market
14 share. They see where the market share is going to
15 non-traditional techniques. So what are they doing?
16 They're sending me letters saying, come on board, you're not
17 really going to be called a provider, but if you give us
18 your name we'll refer patients to you and you can work on
19 them, however, you're only allowed to do this and you're
20 only allowed to make this.

21 It's like, well, okay, if I comply with that,
22 number one, I won't be effective. Number two, if I were to
23 work at the level that you're willing to reimburse me, it's
24 not a living wage. I can't possibly afford to do it.

25 So that doesn't work either. So the more I'm in

1 this field and the more I evaluate things from the
2 perspective from which we should all be looking at this and
3 this is the little guy who needs the care, there is no
4 substantiation to regulate massage therapy. Period. There
5 is no substantiation to regulate massage therapy in this
6 way.

7 And as a bodyworker I am not regulated by this.
8 You don't mention me. I am different than a massage
9 therapist. You haven't defined me. You haven't defined my
10 scope of practice. So how have you protected the general
11 public? Now they're even more confused. So that's a big
12 hole right here.

13 But I will mention that the national certifying
14 board has right from the beginning taken in massage
15 therapists and bodyworkers and covered us both.

16 CHAIRMAN STURLA: Thank you. If you could wrap
17 it up, I want to get to Mr. Denega.

18 MS. TOMER: Okay.

19 CHAIRMAN STURLA: Before we lose the members
20 here.

21 MS. TOMER: I'm also -- as I mentioned before, I
22 think that the definition of massage is vague at best,
23 confusing and very limiting. Also, what it does do, if I
24 were to follow this, be afraid to practice how I know to
25 practice. And try to follow this outline, what it will do

1 is it will turn my wholistic and wholistic is spelled
2 with a "w" not an "h" so it's dealing with the whole,
3 w-h-o-l-e, not h-o-l-e. Big difference. It will take me
4 from being able to treat the whole person, the whole being
5 and treat it in parts.

6 We have tons and tons and tons and tons and tons
7 of practitioners at every level from doctors all the way
8 down to OTs and PTs that do that. We do not need more
9 people in the system that do that. It is one philosophy, it
10 is one way of thinking.

11 We should not have a health care system that has
12 blinders on that eliminates everything else, oh, unless, of
13 course, the insurance companies decide to cover it, then we
14 will, then maybe we'll let acupuncture in now. So that's
15 not the reason to let something into the health care
16 practice.

17 The very fact that there are many different
18 philosophies that underpin the health care practices, that's
19 what we should promote is a variety, not a monopoly. This
20 bill will turn me back into more of a physical therapist,
21 oh, I can't say that I'm a physical therapist, even though
22 I'm working on a physical body it actually is physical
23 therapy, but I can't say that. See how insane this is? I
24 mean it's really insane.

25 When I first went to Harrisburg to try to get my

1 business name, they asked me what I did. I said I do
2 massage therapy. Now, this is 23 years ago or so. I was
3 refused because the physical therapy association did not
4 allow me to use the word therapy at that time. I had to
5 come up with some other politically correct language to
6 describe what I did. This is insane. It didn't change what
7 I was doing. Why is it I'm being put under -- into this
8 little box when I don't need to be and actually work
9 contrary to the very philosophy that I practice. Wholism,
10 Avedic, Eastern philosophies, these are all Eastern
11 philosophies. That's like saying I'm going to have the pope
12 tell the Jews what to do. You're saying there's only one
13 religion when you do stuff like this.

14 So if we are going to pass a bill, which I
15 highly think we shouldn't, that bill better be worded that
16 it is all inclusive and it does not limit me and it talks
17 about different philosophies and it does not pigeonhole me
18 into traditional health care. I do not do that. I will not
19 do that. There are plenty of people who do.

20 The bill is also fatally flawed --

21 CHAIRMAN STURLA: Okay. We need to wrap this
22 up. We need to get to Mr. Denega now.

23 MS. TOMER: I will be done.

24 CHAIRMAN STURLA: Well, ma'am, you are. And
25 that's my point. We need to get to Mr. Denega.

1 MS. TOMER: Excuse me. This is a public
2 hearing.

3 CHAIRMAN STURLA: Yes. And I'm in charge of
4 this public hearing and you've had a chance to testify and I
5 asked you to wrap it up and now I'm telling you that you're
6 done. And you can submit the rest in a written form if
7 you'd like to. I'd like to get to Mr. Denega.

8 MS. TOMER: May I add one more sentence, just
9 one more sentence.

10 CHAIRMAN STURLA: No. Mr. Denega, please.

11 MR. DENEGA: The esteemed members of the House
12 Professional Licensing Committee, in reference to House Bill
13 2499, once again I thank you for the opportunity to speak up
14 against this measure to unconstitutionally place limitations
15 on the practice of massage in Pennsylvania.

16 I think I've spoken to this group about three or
17 four times, but I don't recognize any faces. It would seem
18 that this group has always accepted my logic and reasoning
19 and declined to pass the many incarnations of this same
20 bill, albeit with minor wording changes that have been
21 proffered during the time period. I must admire the AMTA
22 for not accepting no for an answer. But making each
23 proposal more detailed than the last does not erase the
24 glaring insufficiencies inherent in their concept. My
25 admiration does not preclude my feelings that our profession

1 is slowly being pecked to death by a flock of chickens.

2 Responding to this assault on our and the public
3 freedoms every two years could wear down the strongest
4 individuals so I would like your decision to settle this
5 issue once and for all.

6 Number one, there's no need for this action.

7 Number two, there's no public outcry for such legislation.

8 Number three, there's no logic and proper reasoning to this
9 bill, only unsubstantiated assertions and non-sequiturs.

10 Number four, the whole concept is unconstitutional as it is
11 an obvious power grab by an organization using our state to
12 legislate themselves into a monopoly. And, number five, the
13 public's right to decide their own fate should take
14 precedent over the AMTA's deciding the fate of our
15 profession.

16 Number one, need. A search of Medline by Dr.
17 Grant reveals just how "dangerous" massage really is. I
18 quote, "Medline citations from 1965 to 2003 were searched
19 for cases relating to significant injury to the practice of
20 therapeutic massage. Eleven such cases were found from over
21 12 million medical citations.

22 While this number is far too small for
23 statistical analysis of injury patterns, six recommendations
24 for training and practice were obtainable from these reports
25 on mechanistic grounds. The conclusion of the general

1 safety of massage follows from a paucity of reported injury
2 cases in conjunction with the corroborative insurance
3 statistics.

4 Remember this. Massage relies on feedback from
5 the client at all times. They are willing participants in
6 their treatment. They're not knocked unconscious. They're
7 conscious at all times. They can terminate the session at
8 any time, and if they are unsatisfied they can refuse to
9 pay.

10 Now, undoubtedly, today you heard anyone can
11 give a massage. This is true. However, can they get paid
12 for it? Will the customer come back? Can they make a
13 career out of it? Not unless they have the talent. It
14 might be safe to assume from the above study that more
15 people are killed by lightening each year than were wounded
16 by a bad massage in the last 38 years.

17 Undoubtedly you heard today we need to stop
18 prostitution. Does that mean that there's no prostitution
19 masquerading as massage in licensed states? I believe there
20 are already laws on the books dealing with prostitution.
21 Perhaps this hearing should be about licensing prostitutes.
22 I find it hard not to be offended by being forced by this
23 categorization to prove that I am not one of them. So much
24 for innocent until proven guilty.

25 Undoubtedly you heard today some sort of skill

1 measurement is necessary to protect the public. Since
2 massage is sort of an intangible art like music, would you
3 suggest a written test to measure the proficiency of a
4 musician? I suggest Stevie Wonder could not pass the
5 written test, but I bet he could give a passing massage.

6 Finally, there's the fact that given the
7 established safety record of massage and the fact that no
8 one is really in the profession of massage just for the
9 money, it's more of a calling, you're setting up a whole
10 bureaucracy based on mostly part-time workers who depend on
11 a client base with disposable income which is dwindling as
12 we speak. This current problem compounded by the necessity
13 of having to pay a substantial entrance fee to enter the
14 profession will not make it better for anyone.

15 Public outcry. And I ask this from the
16 audience. Anybody in here not involved in the profession,
17 raise your hand. I take it there's not anyone here
18 demanding to be protected.

19 Allegations. Under close scrutiny the arguments
20 to restrict massage fall apart and show themselves to be
21 akin to a Hollywood set, that is to say all show. Take the
22 word protecting the public. From what?

23 There's no proof or studies that someone with
24 formal training gives a better massage than someone with a
25 natural talent. In fact, I've heard the opposite about

1 newly-graduated students with the requisite hours and no
2 practice. There's no proof that licensing deters
3 prostitution. There's no connection between written
4 proficiency and manual talent and skills. We're talking
5 apples and oranges here.

6 Finally, massage uses another framework entirely
7 from the accepted quote, unquote, scientific method. At the
8 end of this document I printed a copy of the original
9 Hippocratic Oath. Only one med school uses it anymore.
10 When you read it you will not find above all do no harm.
11 That's not in the Hippocratic Oath. You will find four
12 precepts which I dare say the current medical profession
13 does not and cannot follow in its present incarnation.

14 In fact, I suggest since the medical profession
15 doesn't use the Hippocratic Oath anymore and it's such a
16 good fit for what bodyworkers hold near and dear that we
17 bypass this whole discussion entirely if you would just let
18 us adopt the original Hippocratic Oath for our own use.

19 And constitutional issues. There's the matter
20 of the Constitution, the corpus juris secundum says, Section
21 497, discrimination, it defines it as the right to transact
22 business in a manner not contrary to public health, public
23 safety, morals or public policy must be preserved to
24 citizens without discrimination.

25 Now, we are not upsetting public health, public

1 safety, public morals or public policy.

2 Section 498 addresses arbitrary governmental
3 interference. It defines as follows: To one who is
4 qualified, the pursuit of a business or occupation is a
5 right and not a matter of the state's grace or favor or a
6 privilege subject to withdrawal or denial at the whim of the
7 state. Thus the right may not be taken away or impaired
8 unless there is a paramount and compelling public interest.

9 And I maintain there is none. In other words,
10 the state may not through regulation deprive or infringe
11 upon the right to pursue a lawful business or occupation,
12 unless the regulation is reasonable or reasonably necessary
13 to promote the public order, safety, health, morals or
14 welfare. And this is not the case.

15 The regulation must have a definite, rational,
16 reasonable relationship to the legitimate state interest
17 sought to be protected. Furthermore, the limitation must
18 bear in relation to the calling or profession, and
19 compliance must be reasonably attainable.

20 Compliance with this bill is going to cost
21 somebody 5,000 bucks just to get into the profession.

22 An individual's right to engage in a lawful
23 business may not be arbitrarily denied to him and granted to
24 another under the guise of regulations. And I think that's
25 what we have here.

1 As stated, the bill removes my right to practice
2 a profession where no harms resulting from the present
3 status quo have been shown. There are no comparative
4 studies offered to prove that this plan will meet the needs
5 and this bill clearly violates the constitutional
6 prohibitions against restricting what could be the second
7 oldest profession, but is clearly legal.

8 Lastly, freedom of choice. This bill will
9 result in the demise of bodywork as it has developed
10 currently. You heard one story here. It eliminates the
11 possibility of apprenticeship as suggested in the
12 Hippocratic Oath. It instead moves massage therapy over to
13 the control of the medical professions, which use an
14 entirely different framework than we do. Just how different
15 can be seen by reading the oath below and realizing that
16 modern medicine cannot swear in good faith to any of the
17 tenets of the Hippocratic Oath anymore. All they have to
18 offer are drugs and surgery.

19 Who else works with natural remedies and
20 treatments but bodyworkers? Pretty much every other
21 profession that could offer anything alternative has already
22 been subsumed by the medical scientific model. MDs have
23 evolved into primarily trauma practitioners, and they're
24 excellent at it, but we've gone the other way. One could
25 say back to the roots. Bodyworkers do not ever have to deal

1 with trauma, blood, life-and-death circumstances. We refer
2 out to 911. However, we are more probably aware of the
3 benefits of apple cider vinegar or Hawthorne berries for
4 high blood pressure or the value of stretching.

5 Will these associated tidbits be forced off the
6 table by this bill? I'm sure of it. It severely limits
7 what we can do and say and how we can do it and where.
8 There is much greater harm to the public and us than the
9 remote possibility of some vague harm raised in this AMTA
10 referral. They sell liability insurance. They should be
11 able to support their claims with numbers. Have you gotten
12 any numbers?

13 It certainly doesn't help our profession to have
14 one of our organization linking massage to prostitution,
15 instead of asking their members just to report such shady
16 establishments and have them closed down.

17 Heck, if this group offers to pay my expenses
18 and a small stipend, I might offer to go on a one-man
19 crusade. It would certainly be cheaper and more effective
20 in the long run than setting up a whole bureaucracy for an
21 ill-advised non-issue.

22 It is all well and good to want to benefit the
23 art of massage. However, I don't think dragging our name
24 into the gutter, equivocating our name with illicit
25 practices, and setting up a monopoly so that one

1 organization can dictate and control a profession and all of
2 its aspects, including entrance, education, testing,
3 membership and liability insurance, as well as continuing
4 education and certifications, literally cradle to grave, is
5 in anyone's best interest, no matter what the high-priced
6 lobbyists say.

7 I beg you to consider and study this plea for
8 this reason, common sense and our established track record
9 to prove once and for all this thinly disguised,
10 self-interested bill will never be worthy of passage no
11 matter how many words they rearrange within it.

12 Let everyone know that Pennsylvania legislators
13 cannot be swayed by first-year debate fallacies such are
14 used here. Let your constituents know that hasty
15 generalization, appeals to authority and non-sequiturs, let
16 alone not proving that plan meets need, cannot fool this
17 group. Let your constituents know that you voted to save
18 the last bastion of nonscientific thought left in America.

19 Let your constituents know that you do support
20 the constitutions of the United States and the Pennsylvania
21 Constitution and voted to uphold them for the good of the
22 public and their right to know and choose. Thank you.

23 CHAIRMAN STURLA: Thank you. Questions from
24 members for either of the panelists? Okay. Hearing none,
25 thank you.

1 Obviously, there is a lot of testimony we got
2 here today. If there are additional comments people would
3 like to make, they can submit them to the committee.

4 And I appreciate you all coming out today. The
5 meeting is adjourned.

6 (Whereupon, the hearing from adjourned at 12:37
7 p.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me on the within proceedings, and that this copy is
4 a correct transcript of the same.

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Pamela L. Packer

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Court Reporter-Notary Public

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