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With Legislative Intent

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Just as the creative fusion of ideas can occur by holding seemingly antithetical thoughts in the mind simultaneously, so creative collaboration between people can occur by an effort to retain conflicting cultural and disciplinary viewpoints in the mind without discarding or allowing either to dominate.

-Jerry Hirshberg, *The Creative Priority*, p.
33.

I take on this month's topic with the "slight" hesitancy characteristic of following my two sons into an unheated swimming pool in winter. There are few issues that can polarize massage practitioners as quickly as that of licensing and regulation. Not coincidentally, there are also few issues that could benefit from dialog and critical reflection as much as this one.

Massage is a profession seeking credibility, a useful scope of practice, and freedom from the vagaries of local regulations. We habitually seek such goals within the realms of state occupational regulation (OR). Such regulation has been the most successful strategy for wresting control of massage from local agencies. However, local laws may apply even in states with licensing, unless the state's statute specifically forbids this.

In many states, the practice of medicine is defined so broadly that there is no unclaimed area of health care practice.⁸ Under such definitions, only professions that have their scope of practice carved out by a licensing law are free from the potential of prosecution. An alternative approach, recently taken in Minnesota and under consideration in California (SB577), is to redefine the business and professions code to specifically allow the unlicensed practice of noninvasive complementary methods.

The Legislative Intent of Occupational Regulation

For most states, the motivation for OR is to protect the public from harm that is recognizable and not remote. Without likely harm, there are fundamental rights for a person to be free to choose a profession.^{5,7} Motivations of legitimizing or recognizing the credibility of a profession are notably missing from state statutes defining the purpose of OR. So the key question becomes, what is the likelihood of harm occurring at a level of practice that licensing would prevent?

In 1997, the Georgia Occupational Regulation Review Council concluded that there was minimal potential for harm from massage.³ Recently, the British Columbia Health Professions Council concluded that there were no massage practices that warranted being declared as restricted acts.¹ These conclusions, coupled with extremely low liability insurance rates, indicate that harm from massage is remote. Massage licensure would have rough sledding in states with sunrise (review) acts.^{5,7} and such states, like Florida, that currently regulate massage, would be much less likely to do so if the regulation were newly proposed.² The assumption that unlicensed massage results in client harm is a dog that won't hunt.

Standards and Quality

Licensure is often promoted on issues of standards and quality, yet when closely examined, these are far from clear. When quality is measured by client satisfaction and availability of service, the relationship between licensure and quality is often weak.^{4,5,8}

Measures of quality based on hours of education have been driven more by eligibility requirements for federal financial aid⁹ than by the need for specific training. In contrast, massage school owner Ramona Moody⁶ provides one of the few starting points that is based on examining the training needed to achieve minimum competence:

I participated in a task force initiated by the BPPVE [Bureau for Private Postsecondary and Vocational Education], which legislates massage schools among others. The purpose of the task force was to decide what the absolute minimum requirements should be for massage training. The massage schools, owners who participated in the task force decided that rather than develop a curriculum for the 250 hours suggested by the Bureau representatives as a minimum, we would discuss what knowledge we feel the students really need, and how many classroom hours it realistically takes to impart that knowledge. It was a really interesting discussion, carried out over several meetings, and the conclusion we came to was that it takes

about 200-300 hours in the classroom to impart to students the minimum education we felt they really need in the marketplace. This included more than one massage modality, along with health and safety, anatomy and physiology, business practices and ethics, as well as communication skills. We felt this would make the student competitive in the marketplace, as well as no danger to the public.

Similar to massage, piloting a plane requires both kinesthetic skills and technical knowledge. Piloting, however, is much less forgiving of incompetence. The FAA requires 250 hours of flight experience to issue a single-engine commercial pilot certification.¹⁰ Coupling this FAA requirement with Moody's observations, it seems clear that minimal training requirements for massage are being significantly overestimated. It is incongruent to advocate integrity for the profession of massage when we have not assured the integrity of our own claims for licensing. If we are truly committed to improving the delivery of massage services, we need to take account not just the hours, but the modern teaching concepts and the social fabric for increasing the availability of massage.

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