

**REPORT OF RECOMMENDATIONS AND FINDINGS
ON THE PROPOSAL TO LICENSE REFLEXOLOGISTS**

By the Nebraska
State Board of Health

To the Director of the Division of Public Health of the Department of Health
and Human Services, and the Members of the Health and Human
Services Committee of the Legislature

March 19, 2018

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent written reports on the same credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

The Members of the Nebraska State Board of Health

Kevin Borchert, PharmD, RP

Shane Fleming, BSN, MSN, RN

Michael Hansen, (Hospital Administrator)

Russell Hopp, DO

Diane Jackson, APRN (Chair)

Kevin Low, DDS

Joel Bessmer, MD

Anthony Moravec, DVM

Debra Parsow (public member)

Teresa Konda, PE

Brian Brightman, OD

Wayne Stuberger, PhD, PT

Travis Teeter, MD (Vice Chair)

Joshua Vest, DPM

Douglas Vander Broek, DC

Jeromy Warner, PsyD, LP

Meetings held to discuss the Reflexology proposal

The Meeting of the Credentialing Review Committee of the Board, March 15, 2018

The Meeting of the Full Board of Health, March 19, 2018

Part Two: Summary of Board of Health Recommendations on the Reflexology Proposal

Summary of the Board's Credentialing Review Committee Recommendations

The members of the technical review committee recommended against approval of this proposal.

Summary of the Recommendations of the full Board of Health

The members of the Nebraska State Board of Health recommended against approval of this proposal.

Part Three: Summary of the Reflexology Proposal

The Platte Institute is proposing that reflexology be removed from the massage therapy law and scope of practice. Current Nebraska State Law does not include a definition of reflexology practice or training requirements for a practitioner because they fall under the broad definition of massage therapists and are not specifically exempt as other professions have been. Massage therapy focuses on muscle relaxation through the manipulation of soft tissue across the body, while reflexologists only treat the feet, hands and ears. Nebraska state licensure to become a massage therapist is 1,000 hours where no reflexology coursework is required, and reflexology national certification requires an initial 200 hours of training.

An established standard of practice has been accepted by the reflexology profession as represented by the professional organizations, Reflexology Association of America and the American Reflexology Certification Board. It is, *“Reflexology is the physical act of applying pressure to feet and hands with specific thumb, finger, and hand techniques that do not utilize cream, lotion or oil, assessed on the basis of zones and reiterative areas with the premise that such work effects a physical change in the body.”* Reflexology is a non-invasive complementary modality involving the uses of alternating pressure applied to the reflexes within the reflex maps of the body located on the feet, hands and outer ears. The scope of practice is generally agreed to be from the ankle to the tips of the toes; and from the elbows to the tips of the fingers and the outer ears.

In addition, the University of Minnesota Center for Spirituality and Healing defines the different approaches between massage and reflexology. Specifically, they state,

“...it is important to recognize that massage therapists have a different orientation than reflexologists. A massage therapist is focused on manipulating the soft tissues, and soft tissue manipulation techniques do not apply to the feet. A reflexologist applies pressure to reflex points, and by an internal mechanism, not directly related to manipulation of the tissue, creates relaxation and release of tension. Massage therapists also spend a small percentage of their studies on reflexology (typically 2-3 weeks), whereas a student of reflexology spends 100% of her or his time in a longer course studying the art and science of reflexology. Thus, the breadth and depth of knowledge and experience in reflexology is much greater for the reflexology student than that acquired by the massage student.”

The Platte Institute is proposing the least restrictive form of credentialing for reflexology. Reflexology is exempt from massage laws in more than 30 states and the District of Columbia. There are four states that have no massage law, and in these states reflexology is not regulated or licensed. In many states, reflexology is not a licensed profession, but voluntary registration where practitioners receive certification and training through the national associations. There are four states that have reflexology specific laws (North Dakota, Tennessee, New Hampshire, and Washington). Whichever level of credentialing that is decided upon, there should be a reciprocity agreement for those moving to Nebraska from another state with the national certification and previous training.

According to the national associations, a legitimate reflexology profession is: a graduate of a reflexology program consisting of at least 200 hours of training, certified through a national certification board, and/or certified through accredited vocational schools. Certification with the American Reflexology Certification Board (ARCB) is the highest standard to which reflexologists aspire. National certification is voluntary in most states. Practitioners are recognized by the ARCB

and entitled to use the designation National Board Certified Reflexologist after meeting the established standards of the field by passing: A 300 question written exam testing theoretical knowledge and analytical skills; a practical portion testing hands-on techniques including pressure & flow; and the submission for grading of 90 sessions testing the reflexologist's ability to document areas of sensitivity, make professional assessments by recording observations, and monitoring the client's reactions to reflexology and progress made.

During the review the members of the review committee requested that the applicant group clarify its proposal regarding the following:

Would there be a credential for Reflexologists under the terms of the proposal?

If so, what would it be?

If so, would a new regulatory board to oversee the new credential be created, or would an existing board be used?

What specific educational and training standards would be utilized, and who would define them?

What would be the scope of practice for Reflexologists in Nebraska if the proposal were to pass?

An applicant representative responded to these questions by stating that the applicants had decided to seek licensure for Nebraska's Reflexologists. This representative went on to say that the applicants decided to utilize the Board of Massage Therapy to administer their credential rather than create a new board to do this. However, this board would be required to add at least one licensed Reflexologist to the membership of this board. The educational and training standards would be defined by the profession's current national certification body which is the American Reflexology Certification Board (ARCB). Pertinent to the scope of practice the applicant representative stated "Reflexology is a method of manual techniques such as thumb and finger-walking, hook and backup, and rotating-on-a-point applied to specific reflex areas involving reflex maps resembling the human body found predominantly on the feet, hands, and outer ears. These techniques are only performed from 1) the knee distal to the tips of the toes, 2) from the elbow distal to the tips of the fingers, and 3) the surfaces of the external ear. Clients remain fully clothed, only footwear is removed."

The full text of the applicants' proposal can be found under the Reflexology subject area on the credentialing review program link at http://dhhs.ne.gov/Pages/reg_admcr.aspx

Part Four: Discussion on the Issues by the Credentialing Review Committee of the Board during its March 15, 2018 Meeting

Comments by Diane Jackson, APRN-FNP, Chairperson of the Reflexology Technical Review Committee

Diane Jackson stated that the Reflexology Technical Review Committee met four times and heard from both opponents and proponents of the proposal. The proposal was modified during the review to clarify that it included a licensing provision that included mandatory education and training and a licensing examination. On March 1, 2018 the Committee took action to formulate its recommendations on the proposal. During this meeting the Committee members recommended against approval of the proposal, voting against approval on each of the four criteria and on the up/down vote on the proposal as a whole. The Committee members did not find enough in the proposal for the public interest. They were also concerned that the contending parties--the Massage Therapists and the Reflexologists--made no attempt to negotiate with one another to resolve their differences via compromise.

Comments by supporters of the proposal:

Comments by Sarah Curry of The Platte Institute on behalf of the applicant group

Sarah Curry informed the Board Committee members that in 2017 a State Senator told her about a person who had been prohibited from practicing Reflexology because of the current legal and regulatory situation in Nebraska. This Senator asked her group--The Platte Institute--to seek a credentialing review of Reflexology issues in order to clarify facts and identify options for policy development to address the concerns of those who seek to provide Reflexology services.

Ms. Curry briefly summarized the circumstances of those Reflexology providers who seek only to practice Reflexology without having to first satisfy the requirements of becoming licensed as a Massage Therapist before they can legally provide their services as current statutes and regulations in Nebraska require. Ms. Curry commented that no other state in the Middle West imposes such a requirement on Reflexologists. Ms. Curry went on to state that Reflexologists do not regard themselves as being Massage Therapists. They believe that they are a separate and distinct profession from Massage Therapy and that they should be recognized as such. This situation forces those Reflexologists who choose not to comply with these requirements to either cease-and-desist, or, to practice clandestinely. Those who do the latter live in constant fear of being subjected to disciplinary action for practicing their profession as they were trained to do so.

Ms. Curry went on to state that Reflexologists do not believe that they need to be trained and educated as Massage Therapists in order to safely and effectively practice Reflexology. They want to be recognized as a separate profession with their own

education and training standards, standards that are focused on what they do, not on what Massage Therapists do. Massage Therapy requires about one-thousand hours of training to qualify for licensure, most of which barely touches on what Reflexologists do. Reflexology training consists of approximately two to three hundred hours and is focused on treatments to hands, feet, and ears, for example.

Ms. Curry went on to state that Reflexologists do not seek licensure for their profession. The reason that the current proposal includes a licensing provision is that including this provision was necessary to address criticisms regarding public safety by opponent testifiers. All the Reflexologists want is to be exempted from the Massage Therapy statute. They do not regard themselves to be Massage Therapists nor do they regard themselves to be an “offshoot” of Massage Therapy. About thirty states have made such an exemption. Ms. Curry added that if lawmakers deem that some kind of State regulation is necessary for this profession something like registration or certification would be better for the profession than licensure which might be too costly for individual Reflexologists.

Committee member Shane Fleming, RN, commented that there is little information on who these Reflexologists are or how many of them there are. He added that all we’ve heard is that there might be about fifteen of them in Nebraska, but we have no way of knowing the veracity of this estimate. He added that we have no way of knowing what this group of practitioners are actually doing, and that it would be premature for us to advance a proposal to exempt and/or credential persons about whom we know virtually nothing. He ended his remarks by stating that the circumstances of this review are very murky, unclear, and hypothetical.

Comments by those with concerns about the proposal:

The following comments were submitted in writing by Kimberly Adams Johnson, LMT, on behalf of the Board of Massage Therapy

Reflexology is defined as a protocol of manual techniques, such as thumb and finger walking, hook and backup and rotating on a point, applied to specific reflex areas predominantly on the feet and hands. These techniques stimulate the complex neural pathways linking body systems and supporting the body's efforts to function optimally. Massage Therapy, in Nebraska, is defined as, " the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being". The Nebraska State Board of Massage Therapy feels the definition of Reflexology, as a protocol of manual techniques, includes the profession under the scope of the Massage Therapy regulations.

The Nebraska State Board of Massage Therapy also feels that the 407 application is too vague, at this time, and needs further clarification as to what is ultimately being sought. The application has evolved several times and initially did not state they were seeking separate regulation, only exemption. The focus has flip flopped from meeting

to meeting. The Nebraska State Board of Massage Therapy also has expressed concern over the fact that that representatives from the Reflexology profession and the Platte Institute have stated on several occasions that they feel if the regulations are changed that Licensed Massage Therapists would have to go through additional training or no longer be able to provide Reflexology. We feel that this is counter-productive and also contrary to the scope of practice for Massage Therapists, in that, Reflexology is within the definition of Massage at this time.

One of the arguments presented by the Platte Institute on behalf of the Reflexologists, is that exemption would facilitate more unhindered and financially less burdensome practice. Currently, the exam fee for a "certified" Reflexologist is \$295, the annual renewal fee is \$65 and they American Reflexology Certification Board requires 12 hours of continuing education every 2 years. The exam is only offered at specific times every year and it is not offered in Nebraska. The exam is said to be "psychometrically sound", but is offered at hotel facilities and not at a secure testing facility, increasing the chances of fraudulent activity. There are currently not any approved continuing education courses offered in Nebraska, that I could find. Continuing education courses may be approved if the Reflexologist fills out an application and pays a fee to get a class approved. The Massage and Bodywork Licensing Examination is currently \$195, the licensing fee for Massage Therapists is \$110 every 2 years and 24 hours of continuing education are required every 2 years. The exam is offered at numerous Pearson Vue testing centers across the nation, with locations in Nebraska. These testing centers are top rated in on demand computer testing and are also high stakes security, ensuring the integrity of the exams being offered. Continuing education for Licensed Massage Therapists is readily available within the state and in nearby locations.

The Nebraska State Board of Massage Therapy, ultimately, is not in favor of creating a separate licensure for Foot Reflexology or the exemption of this profession from the Massage Regulations. This seems like a massive undertaking for a small group of people. While the Board recognizes the efficacy and importance of the profession of Foot Reflexology and the individuals within the profession, we also recognize the importance of public safety and consistency in regulation. According to the Platte Institute and the representatives of the Foot Reflexology community, there are approximately 15 Reflexologists in the State of Nebraska. According to an article written in 2015 in the New York Times titled, "Reflexologists Are Squeezed by Cheaper Competitors and State Rules", there were approximately 645 individuals certified through the Reflexology Association of America. A quote from Christine Issel with the American Reflexology Certification Board, in 2013, stated the ARCB had certified just over 1600 individuals. The Nebraska State Board of Massage Therapy does not feel that this is a significant enough population to warrant changing the structure of the current Board and to create new regulations for a profession that is already effectively regulated.

Comments by Briana Cudly and Beverly Riley, representing the American Massage Therapy Association

Briana Cudly stated that Reflexology is inherently part of the profession of Massage Therapy and that it has been, and should remain, a subspecialty of Massage Therapy. Allowing Reflexology to become a separate profession would encourage other subspecialties of Massage Therapy to seek their own separation from the profession, possibly leading to a fragmentation of the entire Massage profession.

Beverly Riley commented that Massage Therapy education and training provides benefits for all of Massage subspecialties including Reflexology. This education and training provides them all with a broad based background of knowledge and understanding of human anatomy which enables them to provide their services more safely and effectively than they otherwise would. Ms. Riley went on to state that this education and training teaches that what is done to a foot or a hand has implications for the entire body and visa-versa. This kind of knowledge and perspective would be lost to Reflexology if the current proposal were to pass, and there would be greater potential for harm to the public from Reflexology services under this scenario. Ms. Riley went on to state that there are no schools of Reflexology in Nebraska which is another complicating factor for those who seek independence from Massage Therapy.

Board member Russ Hopp, D.O., asked how many subspecialties there are in the field of Massage Therapy. Briana Cuddly responded by submitting a handout that listed the variety of modalities and services provided by Massage Therapy. Dr. Hopp then asked how many of these listed modalities and services would qualify as “subspecialties” and what is the likelihood that one day they might seek to separate from Massage Therapy and go their own way. Ms. Cuddly responded that she could not answer these questions without more information.

Board member Hopp also commented that the applicants should consider alternative approaches to regulating Reflexologists such as registration or certification, for example. These credentials might be less costly and less restrictive than licensure.

The Formulation of Recommendations by the Board Committee members

Action taken on each of the four criteria: Actions were taken regarding whether or not the applicants' proposal satisfies the four criteria. An 'aye' vote indicates that the applicants' proposal satisfies a given criterion. A 'nay' vote indicates that it does not.

Criterion one: Absence of a separate regulated profession creates a situation of harm or danger the health, safety, or welfare of the public.

Action taken:

Voting nay on this criterion were Jackson, Moravec, Fleming, Hopp, and Parsow. There were no aye votes.

Criterion two: Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public.

Action taken:

Voting nay on this criterion were Jackson, Moravec, Fleming, Hopp, and Parsow. There were no aye votes.

Criterion three: Creation of a separate regulated profession would benefit the health, safety, or welfare of the public.

Action taken:

Voting nay on this criterion were Jackson, Moravec, Fleming, Hopp, and Parsow. There were no aye votes.

Criterion four: The public cannot be protected by a more effective alternative.

Action taken:

Voting nay on this criterion were Jackson, Moravec, Fleming, Hopp, and Parsow. There were no aye votes.

Action taken on the entire proposal

The Board Credentialing Review Committee Members took action to advise the full Board of Health on whether or not to recommend approval of the proposal via an 'up-down' vote.

Voting against approval of the proposal were Jackson, Moravec, Fleming, Hopp, and Parsow. There were no votes in favor of approval.

By this vote the members of the Board of Health's Credentialing Review Committee members recommended against approval of the Reflexology proposal.

Part Five: Recommendations of the Full Board of Health on the Proposal

Actions taken by the Board of Health members:

The members of the full Board of Health took the following action on the recommendation of their Credentialing Review Committee that the Reflexology proposal not be approved:

Voting in favor of this recommendation were Borchert, Fleming, Hansen, Hopp, Jackson, Konda, Moravec, Parsow, Teetor, VanderBroek, Vest, Bessmer, Brightman, and Warner. There were no nay votes or abstentions.

By this action the members of the full Board recommended in favor of the recommendation of their Credentialing Review Committee that the proposal not be approved.