

**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.

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Reflexology
Technical Review Committee

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

March 1, 2018

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Part One: Preliminary Information

Introduction

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**LIST OF MEMBERS OF THE REFLEXOLOGY TECHNICAL REVIEW COMMITTEE
FALL, 2017**

Diane Jackson, APRN-FNP, Chair

Edmund Bruening

Jeffrey L. Howorth

Stephen M. Peters, BA, MA

Edward D. Discoe, MD

Peg Kennedy, RN, VP, Chief Nurse Executive

Mary C Sneckenberg

Part Two: Summary of Committee Recommendations

The committee members recommended against approval of the applicants' proposal.

Part Three: Summary of the Applicants' 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.

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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?

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The full text of the applicants' proposal can be found under the Reflexology subject area on the credentialing review program link at

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Part Four: Discussion on issues by the Committee Members

What are the shortcomings of the current practice situation, if any? If there are, does the public need remedial action to rectify these shortcomings?

Sarah Curry, the representative of the Platte Institute and principal spokesperson for the applicant group, came forward to speak on behalf of the Platte Institute, commenting that the Platte Institute will serve as the applicant group for the Reflexology profession for the duration of the review. Ms. Curry briefly walked the committee members through the proposal, and then briefly clarified that the Platte Institute became involved in this matter in part because of its role as a “think tank” for identifying ways to address problems associated with restrictive regulations, and because members of the Reflexology profession contacted her asking for help in getting changes made in the laws and regulations governing their profession in Nebraska.

Ms. Curry went on to state that Nebraska’s Reflexologists seek to eliminate the current statutory provision that requires that Reflexologists must be licensed as Massage Therapists in order to practice in Nebraska. Under current Nebraska law any Reflexologist who provides Reflexology services per se without the benefit of a Massage Therapy license is practicing illegally. Ms. Curry clarified that Reflexologists want to be exempted from all requirements and restrictions they currently must adhere to under the Massage Therapy statute and rules and regulations. Ms. Curry added that the current Reflexology proposal does not seek to credential the members of this profession, rather, it only seeks the independence of this profession from the Massage Therapy statute and its restrictions and requirements which are onerous and irrelevant to what Reflexologists do. Ms. Curry stated that her group would encourage Reflexologists to acquire national certification if the proposal were to pass, but that the proposal as currently written does not require this or any other specific credential, per se.

Ms. Curry stated that Reflexology training and practice is much more focused around specific areas of the human body than is Massage training and practice, and that Reflexologists work only on a patient’s feet, hands, and ears, for example. She added that Reflexologists training focuses exclusively on these parts of the human body and that they don’t need or use the training or modalities pertinent to the treatment of other parts of the human body that typifies Massage Therapy, per se.

Mr. Peters asked Ms. Curry if Massage Therapists are allowed to do Reflexology under the current practice situation. Ms. Curry responded that a 1985 ruling by the Attorney General of Nebraska clarified that Massage Therapists can provide these services under the current statute regardless of whether they are specifically trained to do so or not. She added that this is yet another inconsistency inherent in the current practice situation wherein Massage Therapists are not required to get any training in Reflexology in order to practice it, but yet Reflexologists are required to acquire all of the training necessary to practice the full scope of Massage Therapy even though they do not utilize this training or in any way engage in the full scope of Massage.

Ms. Issel, an applicant spokesperson, commented that Reflexologists do not want to be Massage Therapists, but current Nebraska law requires that they must be licensed as

Massage Therapists in order to legally provide Reflexology services. Not only must Reflexologists take education and training to be licensed as Massage Therapists, they must seek out education and training on their own, outside of what the Massage Therapy statute requires in order to learn how to be Reflexologists. Ms. Issel commented that this situation creates an unnecessary burden on Reflexologists and that this situation needs to be rectified so that these practitioners are only required to take what education and training they need to provide their Reflexology services.

Becky Ohlson, MED, ATC, LMT, Chapter President of the American Massage Therapy Association, and Kim Adams-Johnson, LMT, Chairperson of the Nebraska State Board of Massage Therapy responded to Ms. Issel's remarks by informing the committee members that the Nebraska Massage Therapy statute allows those who seek to provide Reflexology services to specialize in Reflexology and that there are continuing education courses that can be taken in this area of specialization which can be used to help satisfy their overall continuing education requirements.

Mr. Peters responded to the exchange between Ms. Issel and Ms. Adams-Johnson by commenting that it seems as if Massage Therapy and Reflexology are so closely related as to be virtually the same field with only slight differences between them in emphasis or focus. At this juncture Sarah Curry of the Platte Institute asked Jack Roso who was listening on speaker phone to help clarify the differences between the two fields for the committee members. Mr. Roso stated that Massage Therapy is full body work with the utilization of long, stroke procedures, whereas Reflexology is treatment of hands and feet by providing pressure to certain points thereon to eliminate blockages to relieve pain and help the patient feel better. He also commented that this is not treatment of disease or condition per se, but is treatment for the purpose of relieving pain. Mr. Roso went on to say that national certification standards call for completion of a 200-hour course which includes "hands on" work as a component of the training requirement and that renewal of the certificate must be done annually.

Mr. Bruening asked Mr. Roso if the national certification standard includes required training in Massage Therapy. Mr. Roso responded by stating that training in Massage is not required for certification in Reflexology. This is because Reflexologists do not need to know the full anatomy and physiology of the human body since all they do is treat hands and feet. He went on to state that Reflexologists need to be able to map areas of the hands and feet so as to identify critical pressure points for treatment purposes. He went on to say that Massage Therapists do not receive this kind of education and training. He informed the committee members that whereas the two-hundred hours is the typical amount of training required, there is a three-hundred hour course for more advanced practice, as well.

Kim Adams-Johnson, speaking on behalf of Massage Therapists, responded to Mr. Roso's comments by stating that those who seek to provide Reflexology services can take either the two-hundred or the three-hundred hour course right now, as they wish, except that neither is required for licensure.

Would the proposal be in the public interest? Would any new harm result from the proposal?

Mr. Peters asked Ms. Curry about a comment in the proposal that defines Reflexology as “art and science”. Mr. Peters asked for clarification of this comment and asked to what extent the profession interfaces with any medical concerns or issues. Ms. Curry responded that in many ways Reflexology is like traditional Chinese Medicine, and that most people seek out their services when so-called western medicine has failed them.

Mr. Peters then asked Ms. Curry whether or not Reflexologists are able to diagnose a patient’s health condition. Ms. Curry replied that they do not diagnose, rather they accept patients on the basis of self-referral, treating them on the basis of their own stated concerns and descriptions of their own condition.

Mr. Bruening asked for input from persons opposed to the current proposal in regard to its potential for creating new harm. Responding to this request for input were Becky Ohlson, MED, ATC, LMT, Chapter President of the American Massage Therapy Association, and Kim Adams Johnson, LMT, Chairperson of the Nebraska State Board of Massage Therapy. Ms. Adams responded that there are concerns about public safety under the unregulated practice of Reflexology as is evidenced by our neighboring state of Kansas. There the unregulated state of this profession has led to an increase in human trafficking and the associated problem of prostitution. Additionally, the profession in Kansas has acquired a reputation for having serious sanitation problems, as well, since there is no oversight of health conditions in their work places in that state.

Mr. Howorth commented that Massage Therapy also has had problems associated with human trafficking, as well, and that regulation, per se, has not made this problem go away.

Ms. Adams went on to state that another reason her group is opposed to the current proposal is that it could very well result in the fragmentation of the Massage Therapy profession, with various modalities of the profession each seeking their independence from the larger group.

Mr. Howorth then asked the opponents to briefly summarize the public health and welfare concerns about the current proposal. Ms. Adams responded by providing the following list of concerns about the current proposal:

- Untrained service providers would be allowed
- Unregulated service conditions would be allowed
- Illegal behaviors and conduct would be much more likely to occur than under a regulated situation
- The current Massage Therapy profession would be undermined
- Public safety would be undermined because of a lack of liability insurance for Reflexology providers and the absence of a code of ethics for them
- Access to care would be undermined because of the loss of licensure status
- There would be no reimbursement from third party payers

Mr. Peters asked these Massage Therapy representatives if their services actually constitute “therapy” as the name implies. Ms. Adams-Johnson responded by stating that Massage Therapists do not treat illnesses or maladies but instead seek to provide relief from pain via relaxation. Ms. Issel commenting on behalf of the applicant group commented that seeking relief from pain is also the goal of Reflexologists. She added

that Reflexology services are all about health maintenance and patient well-being rather than treatment of illnesses, maladies, or poor physical condition. However, Ms. Issel added that Reflexologists go about providing their services very differently than Massage Therapists, focusing exclusively on working on patients' feet and hands, for example, whereas Massage Therapists work on the entire body of their patients. Ms. Adams-Johnson responded to Ms. Issel's remarks by stating that Reflexology evolved from Massage as a specialty of Massage in Germany in the 1890's, and that this shows that Massage and Reflexology are closely related fields.

At this juncture Ms. Kennedy commented that the current situation as described by the Massage Therapy opponents of the Reflexology proposal makes no sense because under the current situation there literally are no statutory requirements in Nebraska to safely and effectively practice Reflexology. Allowing someone to take a certain course of training in Reflexology is fine but this does not define a standard or protect the public vis-à-vis the services of Reflexology per se. Ms. Kennedy went on to comment that requiring Reflexologists to take one-thousand hours in an area of care that they don't even use in order to be licensed adds to the senselessness of their situation. Mr. Bruening responded to Ms. Kennedy by stating that Reflexology seems to be a specialization within Massage and that it makes sense for them to first take Massage training and then, later, specialize in Reflexology. At this juncture Ms. Adams-Johnson stated that it makes sense for those who seek to provide Reflexology services to stay within the general framework of Massage Therapy because their scope of services and training is too limited to stand alone as a separate, distinct profession, and because it is too limited to be able to protect the public from harm.

A proponent spokesperson responded to Ms. Adams-Johnson by stating that Reflexologists clarify up-front with their clients the importance of conferring with a physician before seeking Reflexology services, and that this helps to address concerns about the safety of Reflexology services. This spokesperson added that this is also the same approach to safety used by Massage Therapists, as well.

Dr. Discoe asked the attending parties to help clarify the crux of the issue in this review, focusing his question as follows: Is it public protection versus "give us our freedom"? Ms. Adams-Johnson responded that this is the crux of the issue and expressed concern that the current proposal would provide no regulation or oversight of Reflexology services in Nebraska, leaving the public with no protection from harmful or fraudulent services. Dr. Discoe then asked the applicant group representatives if they have a plan to address these public safety concerns. Ms. Issel responded that her group could accept state regulation of Reflexology. Sarah Curry replied that this would have to be done by something other than the current Board of Massage Therapy because many Reflexologists do not trust this body to treat them fairly. Mary Sneckenberg responded to Ms. Curry by stating that her concern is a short-term concern and that over time trust can be created between the two groups. Ms. Sneckenberg added that the current Board of Massage would be able to play this role, and that there no need to incur the added costs of creating yet another board.

Mr. Peters commented that there would be a need for oversight and regulation of Reflexology per se if it were to become independent of Massage Therapy, adding that it is also crucial that rigorous educational and training standards be created for them if they become an independent profession.

Opponent spokesperson Vyanne Zink asked what would happen to those Massage Therapists who might also want to occasionally provide Reflexology services if Reflexology did become independent, clarifying her question by asking, “Would I have to meet the new standards created for the newly independent profession or cease and desist, if not?” Mr. Howorth responded to her question by stating that as long as one’s license is in Massage Therapy one’s practice and practice standards would be governed by that statute, not by the one for the new credential for Reflexology, whatever that might be.

At this juncture the committee members indicated that they need more clarification from the applicant group regarding what, if anything, they want for a credential or a regulatory mechanism for their profession if it does become independent. Mr. Bruening commented that this is an element that has been lacking in the current proposal and that this needs to be rectified. Program staff commented that for the applicant group to say that they can accept whatever the committee comes up with is not an adequate response because committee members in the Credentialing Review Program are not allowed to act as if they are members of an applicant group. Each element in the review process must play their respective roles for the process to work equitably and objectively. If something is going to be proposed vis-à-vis a regulatory process for Reflexology it must come from the applicant group itself, not the technical review committee.

Pursuant to clarifying what they were asking the applicant group to do—prior to the next meeting, that is—the committee members commented that the applicants need to respond to the following questions:

- What credential is being sought? The choices are Licensure, Certification, or Registration
- What regulatory mechanism is being sought? A separate Board, a currently existing board, an ad hoc committee, or no mechanism at all
- What education and training for Reflexologists would be defined and how would sufficient rigor be maintained so as to protect the public?
- What would be the statutorily-defined scope of practice for Reflexology?

Staff asked that the applicant group submit answers to these questions in advance of the February 1, 2018 committee meeting so that they can be posted as part of the applicants’ proposal.

Is there a better way to address concerns raised about Reflexology services than the applicants' proposal? Or, are there modifications to the proposal that would make it more effective?

Mr. Peters asked whether there were any other states that have conducted studies on this or similar proposals. Ms. Curry responded in the affirmative stating that Arizona did such a study. She added that she was not sure if Arizona passed this proposal or not but she did say that the State of Washington did pass an exemption from their Massage Therapy statute. She added that from her review of information from other states that registration of the members of this profession seems to be the standard for those states that have chosen to make Reflexology independent of Massage.

At this juncture Mr. Peters asked Ms. Curry if her group had considered the idea of continuing to regulate Reflexology under the Board of Massage providing that Reflexology be granted autonomy as a separate profession within this kind of regulatory framework. This way they could be credentialed separately under their own statute and yet share a common regulatory board with Massage Therapy. Ms. Curry indicated that she would attempt to get responses from Nebraska's fifteen Reflexologists to find out what they think of this idea.

Mr. Peters then asked Ms. Curry if the applicant group would be willing to consider amending the proposal to provide for continuance of the current placement of Reflexologists under the Board of Massage Therapy but yet provide for independent practice and a separate license for Reflexology practitioners. Ms. Curry responded by stating that she would have to discuss this idea with the members of the Reflexology profession before being able to give a definitive response regarding this idea. Mr. Howorth commented that at this point in the review process no one is ready to amend the proposal and that much more information and discussion is needed before we're ready to take such a step.

Kim Adams Johnson wrote comments on behalf of those opposed to the current proposal regarding ways the current proposal could be modified so as to enhance its ability to effectively protect the public. Her comments were as follows:

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 of 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.

That being said, if the Technical Review Committee feels it is in the best interest of the 15 individuals in the State, the Board would like to see the regulations under a similar

structure as the Massage Regulations. We feel establishments, schools, and individuals should be regulated, as in Licensed Massage Therapy, in the interest of public protection. The regulations we would like referred to are in Chapters 81, 82, and 83 in Title 172 Professional and Occupational Licensure.

Prior to the public hearing on February 1, 2018, Sarah Curry submitted a document which described the following additions to the applicants' proposal created in response to the committee requests for further clarification of the proposal:

The applicants have decided to seek licensure for Nebraska's Reflexologists. Additionally, the applicants have decided to utilize the Board of Massage Therapy to administer this credential rather than create a new board to do this. However, the applicants believe that this Board should be required to add at least one licensed Reflexologist to its membership. 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 defining a scope of practice the applicants stated the following: "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."

All sources used to create Part Four of this report can be found on the credentialing review program link at http://dhhs.ne.gov/Pages/reg_admcr.aspx

Part Five: Committee Recommendations

Committee Discussion

The committee members asked the representatives of the applicants and the representatives of Massage Therapy whether any networking had occurred since the previous meeting. Responses from these respective parties indicated that no networking occurred during this timeframe. When asked why there had been no such networking the respective parties both indicated that there hadn't been time for this to occur. Sarah Curry commented that her group would make an effort to contact Massage Therapy representatives after the current credentialing review of their proposal has concluded. There was a consensus among the committee members that the best way to address the concerns raised by the applicant group in its proposal would be via discussion and compromise between the two contending parties.

Committee Actions Taken on the Four Statutory Criteria:

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

Action taken: An 'aye' vote is a vote in favor of approval of the proposal. A 'nay' vote is a vote against approval of the proposal.

Voting aye was Kennedy. Voting nay were Peters, Discoe, Sneckenberg, and Bruening.

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: An 'aye' vote is a vote in favor of approval of the proposal. A 'nay' vote is a vote against approval of the proposal.

Voting nay were Bruening, Discoe, Kennedy, Peters, and Sneckenberg. 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: An 'aye' vote is a vote in favor of approval of the proposal. A 'nay' vote is a vote against approval of the proposal.

Voting nay were Bruening, Discoe, Kennedy, Peters, and Sneckenberg. There were no aye votes.

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

Action taken: An 'aye' vote is a vote in favor of approval of the proposal. A 'nay' vote is a vote against approval of the proposal.

Voting nay were Bruening, Discoe, Kennedy, Peters, and Sneckenberg. There were no aye votes.

Action taken on the entire proposal was as follows:

Action taken:

Voting nay were Bruening, Discoe, Kennedy, Peters, and Sneckenberg. There were no aye votes. By this vote the committee members recommended against approval of the applicants' proposal.

Comments from committee members:

Mr. Bruening stated that a regulatory process for Reflexology already exists under the auspices of the Massage Therapy Statute and the Board of Massage Therapy. The applicants have not demonstrated that there is a need for creating an alternative to this regulatory process.

Dr. Discoe stated that passing the proposal would weaken the regulatory process that already exists for Reflexology. Creating a separate regulatory process for a very small group of Reflexology practitioners would not be in the public interest.

Ms. Sneckenberg stated that the applicants did not demonstrate that there is an unfilled need among the members of the public that the proposal could address.

Mr. Peters stated that there are gaps in the current proposal in the area of rigorous training standards. He added that the applicants have not demonstrated that there is a need to create an entirely new regulatory process for their group, and that there is no reason why they cannot work towards their stated goals within the framework of the current regulatory framework. He added that passing the proposal would likely increase risk of harm to consumers.

Ms. Kennedy stated that there are too few Reflexology practitioners in Nebraska to justify creating a separate regulatory process just for them. The applicants should remain within the framework of the current regulatory process and work towards compromise within that framework to address their grievances and concerns.

Additional recommendations from the committee members:

There was a consensus among the committee members on the following points:

- The applicant group should remain within the current regulatory framework provided by the Massage Therapy Statute rather than seek to create their own independent profession or independent regulatory process for an independent profession.
- The applicants should work within the current regulatory framework to get their grievances and concerns addressed via discussion and compromise with Massage Therapy professionals.
- Massage Therapy professionals should be willing to make a good faith effort to address the concerns and grievances of Reflexologists and thereby find a resolution to the long-standing disagreements between them and Reflexologists.
- There is no demonstrated benefit to the public in creating a separate, independent Reflexology profession.
- There is a need for the development of mandatory, rigorous education and training standards for Reflexologists and the contending parties need to discuss ways in which this need can be addressed under the current regulatory process.

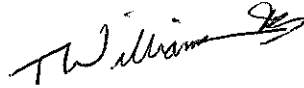
March 2, 2018

DIRECTOR'S REPORT ON THE PROPOSAL TO LICENSE REFLEXOLOGISTS

Date: July 30, 2018

To: The Speaker of the Nebraska Legislature
The Chairperson of the Executive Board of the Legislature
The Chairperson and Members of the Legislative Health and Human Services Committee

From: Thomas L. Williams, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services



Introduction

The Regulation of Health Professions Act (as defined in Neb. Rev. Stat., Section 71-6201, et. seq.) is commonly referred to as the Credentialing Review Program. The Department of Health and Human Services Division of Public Health administers the Act. As Director of this Division, I am presenting this report under the authority of this Act.

Description of the Issue under Review

The applicant group is seeking to license Reflexologists in Nebraska as an independent profession from Massage Therapy.

Summary of Technical Committee and Board of Health Recommendations

The technical review committee members recommended against the applicants' proposal.

The Board of Health recommended against the applicants' proposal.

I concur with the Board of Health's recommendation against licensing Reflexologists for reasons that I have clarified, below.

The Director's Recommendations on the Proposal

Action taken on the four criteria:

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: I recommend against the proposal on this criterion.

Comments:

There is no evidence to indicate that licensure of Reflexology services is necessary to protect the public.

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: I recommend against the proposal on this criterion.

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

Action taken: I recommend against the proposal on this criterion.

Comments:

The applicant representatives provided no information or argumentation that the public would benefit from licensing Reflexologists.

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

Action taken: I recommend against the proposal on this criterion.

Comments:

Very little was provided or discussed during this review that touched upon the public interest, and it is the public interest that is the principal concern of the credentialing review program.

The concerns raised by applicant representatives in their proposal do not relate to such things as public safety or access to care or the cost of services, for example.

Action taken on the entire proposal: I recommend against approving the proposal to license Reflexologists in Nebraska.

Comments:

The creation of a licensed Reflexology profession in Nebraska is not necessary. However, I see no reason why Reflexology should not become an independent profession separate from Massage Therapy. Most states recognize Reflexology as a separate and distinct profession in its own right. I see no reason why Nebraska needs to be different in this regard.

Notably, the Reflexology Association of America maintains that Reflexology is and should “remain separate from other hands on practices” (www.reflexology-usa.org), which would support the interpretation that reflexology is not promoted by its practitioners as a type of massage therapy. Certified Reflexologists would not qualify for membership in the major massage professional organizations; the American Massage Therapy Association (www.amtamassage.org) or the American Body Work and Massage Professionals (www.abmp.com).

Given that Reflexology is arguably safely unregulated in most states--no physical harm or insurance claims ever reported, for example--it is difficult to justify Nebraska holding possibly the most arduous Reflexology licensure requirements in the United States in requiring training and licensure for massage therapy in addition to training befitting reflexology. It is difficult to conceive of any treatment or approach more medically risk free than Reflexology.

Perhaps the Washington model, previously endorsed by commenters, could provide an initial approach for future deliberations. Attempts to achieve “resolution of grievances,” as suggested by reviewers, may prove helpful also.