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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

WEDNESDAY, FEBRUARY 11, 2015
2:30 P.M.

TESTIMONY ON HOUSE BILL NO. 1390
RELATING TO MASSAGE

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1390, Relating to Massage. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following concerns about the bill.

House Bill No. 1390 adds four new definitions to Chapter 452, Hawaii Revised Statutes ("HRS"), that establish the practice of certified massage therapy

by a certified massage therapist, provides for the registration of a massage therapy assistant, and expands the definition of massage. The bill also amends Chapter 452, HRS, to include the new certification and registration schemes, eliminates apprenticeship, and revises the composition of the Board of Massage Therapy ("Board").

RICO defers to the Board on the amendments relating to Board composition, definition of massage, certification of licensed massage therapists, elimination of apprenticeship, and registration of massage therapist assistants, but has enforcement-related concerns about the bill for the following reasons:

1. House Bill No. 1390 defines a "licensed massage therapist" and a "massage therapist" on page 2, lines 1-3, as a person who is licensed to practice massage therapy. This new definition is overbroad and poses significant enforcement problems because it equates a licensed massage therapist with a massage therapist and, therefore, renders licensure as a massage therapist superfluous. RICO suggests the following language to address its concerns:

"Licensed massage therapist" means a person who engages in the practice of massage therapy, is licensed under this chapter, and whose license is in effect and not revoked, suspended, or encumbered."

2. The distinction between a certified massage therapist and a licensed massage therapist is insufficient for enforcement purposes. The distinction is not clear enough for RICO to readily determine whether certain conduct falls within or outside these designations. Moreover, the inclusion of the definition of "certified massage" to encompass the same conduct as "certified massage therapy" is

Testimony on House Bill No. 1390

February 11, 2015

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confusing and unnecessary from an enforcement perspective and RICO

recommends deleting this phrase.

Thank you for the opportunity to testify on House Bill No. 1390. I will be happy to answer any questions the members of the Committee may have.

**PRESENTATION OF THE
BOARD OF MASSAGE THERAPY**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 11, 2015
2:30 p.m.

TESTIMONY ON HOUSE BILL NO. 1390, RELATING TO MASSAGE.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Olivia Nagashima, Chairperson of the Board of Massage Therapy ("Board"). Thank you for the opportunity to provide written testimony on House Bill No. 1390, Relating to Massage. The Board has not had an opportunity to discuss this bill, and will do so at its meeting on February 26, 2015. Therefore, the Board is not able to offer comments on the proposed amendments at this time.

House Bill No. 1390 establishes licensure requirements for certified massage therapists and massage therapist assistants and amends certain provisions relating to the Board of Massage Therapy as well as the licensure, certification, and registration for the practice of massage.

As the bill creates new licensure categories for certified massage therapists and massage therapist assistants, a sunrise review is required. Section 26H-6, Hawaii Revised Statutes, requires that new regulatory measures being considered for enactment be referred to the State Auditor for a sunrise analysis. Referral is required to be made by concurrent resolution that identifies a specific legislative bill to be analyzed.

The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

Therefore, the bill should be deferred until a sunrise analysis on this measure is conducted by the State Auditor. No past sunrise review on massage therapists was found in the Auditor's Office sunrise review files. Thank you for the opportunity to provide testimony on House Bill No. 1390.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 09, 2015 9:25 PM
To: CPCtestimony
Cc: nara2040@hotmail.com
Subject: Submitted testimony for HB1390 on Feb 11, 2015 14:30PM

HB1390

Submitted on: 2/9/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Norman Arakawa	American Massage Therapist Assn of Hawaii	Oppose	No

Comments: Representative Aquino: My name is Norman Arakawa, and I live in Waipahu. I have been a licensed massage therapist for 25 years, and I am opposed to HB 1390. The Hawaii Chapter of the American Massage Therapy Association (AMTA) has more than 500 members and this bill would impact the status of their licensure by adding an additional tier of practice. Tiered systems of licensure are not common and this bill could potentially dilute our professional license, make it difficult for the regulatory board to monitor that each massage therapist is practicing at the appropriate level of their licensure and add confusion for consumers. The new tier level of licensure proposed in HB 1390 is for “certified massage therapists”, which has some concerning language in the definition of the scope of practice for this tier of licensure. HB 1390 states, “Massage Therapy performed by a certified massage therapist, or by a massage therapist assistant being supervised by a massage therapist that includes the assessment and treatment of humans to evaluate, prevent, and alleviate pain, anguish and other physical and mental diseases and disorders primarily by means of massage therapy.” Massage therapists do not receive education on treating, evaluating, and assessing mental diseases and disorders. While massage therapy has been shown to help reduce the symptoms of some mental disorders, we are not trained or educated in evaluating, assessing, and treating them. As a profession, we recognize the value and importance of massage therapy as an integral part of an individual’s well-being and health care. But we do not wish to expose our profession to greater liability risks that would accompany these changes to scope of practice. Furthermore, it is unlikely our current liability insurance would cover massage therapists making such judgments about mental health and proceeding with treatment when we clearly don’t have the education or training to do this. The AMTA-Hawaii Chapter fully supports regulation and licensure of massage therapists in our state. We want to continue to protect our profession, while also assuring consumer health and safety. As it currently stands, the Massage Therapy Practice Act does this – it regulates the profession and ensures public health and safety. It is for these reasons that I ask you to oppose HB 1390. Thank you for your time and consideration. Respectfully, Norman Arakawa 2nd Vice President AMTA, Hawaii Chapter

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 7:35 AM
To: CPCtestimony
Cc: catdrummer@hotmail.com
Subject: Submitted testimony for HB1390 on Feb 11, 2015 14:30PM

HB1390

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lahela Hekeia	Individual	Oppose	Yes

Comments: I am qualified to provide this analysis as a licensed attorney, I am not just an LMT. The Bill as worded adds an alarming scope of practice which includes assessment and treatment of mental disease/disorders and other unauthorized medical practices which require either a license as an MD from the Board of Medical Examiners (HRS 453-2), or a professional license in Psychology. This places the LMT at unacceptable risk of complaints to the DCCA Regulated Industries and Complaints Office as well as state consumer protection statutes, which provide for triple damages. And they are open to felony prosecution for practicing medicine without a license, carrying stiff fines and jail time under HRS section 453-2 (also see section 453-1 for the definition of the practice of medicine). This Bill should be killed immediately. LMTs do not have the training nor legal authority to assess or treat someone for mental disease by any means, let alone massage therapy. This proposed additional tier of licensure is unreasonably vague and likely to cause undue risk of harm to the massage profession. And there is no need for it.

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My name is Arlene Estrella and I live in Makakilo. I have been a licensed massage therapist for 18 years, licensed in Hawaii 5 years and I am opposed to HB 1390. The Hawaii Chapter of the American Massage Therapy Association (AMTA) has more than 500 members and this bill would impact the status of their licensure by adding an additional tier of practice. Tiered systems of licensure are not common and this bill could potentially dilute our professional license, make it difficult for the regulatory board to monitor that each massage therapist is practicing at the appropriate level of their licensure and add confusion for consumers.

The new tier level of licensure proposed in HB 1390 is for “certified massage therapists”, which has some concerning language in the definition of the scope of practice for this tier of licensure. HB 1390 states, “Massage Therapy performed by a certified massage therapist, or by a massage therapist assistant being supervised by a massage therapist that includes the assessment and treatment of humans to evaluate, prevent, and alleviate pain, anguish and other physical and mental diseases and disorders primarily by means of massage therapy.” Massage therapists do not receive education on treating, evaluating, and assessing mental diseases and disorders. While massage therapy has been shown to help reduce the symptoms of some mental disorders, we are not trained or educated in evaluating, assessing, and treating them. As a profession, we recognize the value and importance of massage therapy as an integral part of an individual’s well-being and health care. But we do not wish to expose our profession to greater liability risks that would accompany these changes to scope of practice. Furthermore, it is unlikely our current liability insurance would cover massage therapists making such judgments about mental health and proceeding with treatment when we clearly don’t have the education or training to do this.

The AMTA-Hawaii Chapter fully supports regulation and licensure of massage therapists in our state. We want to continue to protect our profession, while also assuring consumer health and safety. As it currently stands, the Massage Therapy Practice Act does this – it regulates the profession and ensures public health and safety.

It is for these reasons that I ask you to oppose HB 1390.

Thank you for your time and consideration.

Respectfully,

Arlene Estrella, LMT 11968

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 11:13 PM
To: CPCtestimony
Cc: cindyogata@aol.com
Subject: Submitted testimony for HB1390 on Feb 11, 2015 14:30PM



HB1390

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cindy Ogata	Individual	Oppose	No

Comments: I am an AMTA-Hawaii chapter member and a Licensed Massage Therapist since 2002. I oppose HB1390 as it could do a disservice to the licensed massage community. Please hold in your committee. Mahalo.

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Despite the many protests and reasons against HB 1390, this proposed legislation has a silver lining. Medical doctors flee our State, not for social reasons, but for economic reasons while U.H. medical school keeps generating graduates. Doctors just can't make enough money for themselves. This proposed certified massage therapy industry would provide for the overflow of medical graduates that want to stay in Hawai'i. Primary care needs to shift somewhere. Massage therapists, even those on Ke'eaumoku Street and Kapi'olani Blvd are good real-world supervisors for the young, green medical school graduate.

Too, HB 1390 would support our legal industry hoping that U.H. Law School graduates won't suffer the dismal future as their U.H. medical graduate counterparts. Having "experienced" LMTs engaging in pathology, and then clinical reasoning founded upon critical thinking is prospectively stupendous. It just can't get any better by requiring academic training as well in "professional development for healthcare providers." Boiler-plate complaints for medical malpractice are easily amended toward this new industry into clinical medicine. Our public will be protected.

Certified Massage Therapists are also primary health care providers as well! The CMT is an all-in-one primary care and primary health care provider – in only 7 classes (2 easy semesters)! Combining primary disease care with primary wellness health into the newly defined venue of "*soft tissue parts of the musculoskeletal system*" is genius. Anything that is not bone is treatable – internal organs are muscles, too. Fetuses qualify, and even childbirth as "guided movement." Besides a midwife, the CMT even gets to be a personal trainer and PTs.

Concerns that this venue can become schizophrenic primary care v. primary health care, or genius for healing and wellness aren't considerations. From the draped backrooms of apartments and dusty gyms to clinics, community health care facilities, and physical therapy rehab quarters is an astounding vision. Hawai'i needs prospects for creative industries. In all, HB 1390 provides the highest social utility for our economy.

In 1998, LMTs lost their legal right to practice Hawaiian massage commonly known as lomilomi, because most LMTs are not licensed for lomilomi practice by the Board of Medical Examiners as required under HRS Chapter 453. Most all LMTs today risk prosecution for petty misdemeanors or worse, because most all advertise and practice "lomilomi" which is now a medical practice under the Board of Medical Examiners. I think it only fair that the Board of Massage Therapy gets the equal opportunity to encroach into medicine.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 4:23 PM
To: CPCtestimony
Cc: mahanalmt5@yahoo.com
Subject: Submitted testimony for HB1390 on Feb 11, 2015 14:30PM



HB1390

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mahana Byington	Individual	Oppose	No

Comments: Aloha Chair McKelvey, Vice Chair Woodson and Committee Members, My name is Mary Lynn "Mahana" Byington, Licensed Massage Therapist, LMT. I am a Past President of MATAH, The Massage Therapists Association of Hawaii and Licensed in the State of Hawaii for over 20 years. I oppose HB1390 mainly for its attempt to change our designation from Licensed to Certified therapists and the change of an apprenticeship program. This can affect insurance pay issues among other things. There are over 15,000 licensed massage therapists in our State. I also concur with the AMTA-Hawaii Chapter's position on other parts of the bill. I respectfully ask that you please HOLD this bill in committee and do not pass it out. Thank you for the opportunity to testify in opposition of HB1390. Please contact me should you have any questions, ph 351-8098. Mahalo, Mary Lynn "Mahana" Byington, LMT MAT#3692

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LATE TESTIMONY

Hawaii Massage Association

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(808) 734-4598

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info@hawaiimassage.org

Chairman Angus L.K. McKelvey
HB1390
February 11, 2015
2:30 PM Hearing, Room 325

Dear members of the Committee on Consumer Protection and Commerce,

My name is Matthew Pardini, and I am the President of the Hawaii Massage Association. I also own a busy private massage practice on Oahu that receives referrals for massage therapy from dozens of different doctors around the island.

I am testifying today in support of HB1390 on behalf of Hawaii Massage Association, the doctors and healthcare providers who have asked me to come support this bill, and on behalf of my patients who I have seen after they have been injured by previous massage therapy treatments.

HB1390 protects consumers and healthcare professionals by clearly identifying licensed therapists that are trained in massage for health conditions and who fully understand patient privacy laws. By establishing a second tier of licensure through the certification language, we will be communicating to other healthcare professionals that a certain portion of the industry is trained appropriately to see patient referrals. There are many incidences of licensed massage therapists injuring patients (see first attached document). More training is needed in order to work safely with medical referrals and it is imperative that Hawaii addresses this issue now because more and more patients are asking for referrals for massage each year (see second attached document).

HB1390 is also of benefit to massage therapists. This bill does not force change upon current licensed therapists or change the status of their license in any way. This bill provides an optional credential that a licensed massage therapist can attain to open the doorway to working safely in the healthcare field. And by eliminating the problematic apprenticeship program, the very last one of its kind in the United States, we will be preventing the status of the entire industry from getting watered down.

Massage therapy has a very bright future in Hawaii. With this bill, we can be a leading example of how to safely integrate the massage therapy industry into the world of healthcare. Please support HB1390 to protect consumers of massage therapy, other healthcare providers, and the professionalism of our licensed massage therapists.

Thank you,


Matthew Pardini, LMT

President of Hawaii Massage Association
(808) 561-0450 • matthew@hawaiimassage.org

Full references for these summaries available upon request to matthew@hawaiimassage.org

Scholarly Articles:

Systematic Review (highest level of scientific evidence)

The safety of massage therapy: an update of a systematic review: "Evidence suggests that massage therapy may occasionally lead to moderately severe adverse effects. Reported adverse effects include acute paraplegia and abdominal distension, bladder rupture, bilateral cerebellar infarction, cervical lymphocele, cervical cord injury, cervical internal carotid and vertebral dissection, chylothorax, haematuria, interosseous nerve palsy, myopathy, perinep haemorrhage, rhabdomyolysis, severe headache, blurred vision, paresthesia and focal motor seizures. In the majority of cases, case/effect relationship was certain or almost certain. Serious adverse effects were most commonly associated with massage techniques applied to the neck area." - "The safety of massage therapy: an update of a systematic review." - *Focus on Alternative and Complementary Therapies*, 2013.

Other Full Articles:

Spinal Cord Injury: "Spinal cord injury in the neck due to herniated cervical neck disc from massage." - "Spinal Cord Injury Incurred by Neck Massage" - *Annals of Rehabilitation Medicine*, 2012

Acute Renal Failure and Rhabdomyolysis: "Deep tissue massage led to compression induced rhabdomyolysis" - "Fever with acute renal failure due to body massage-induced rhabdomyolysis" - *Nephrology Dialysis Transplantation*, 2006.

Spinal Nerve Damage: "Injury to the spinal accessory nerve from deep tissue massage leading to permanent scapular winging and droopy shoulder." - *Archives of Physical Medicine and Rehabilitation*, 2009.

Pub Med Abstracts:

General Finding: "Around half of manual therapy patients may experience minor to moderate adverse events after treatment." - "Adverse events and manual therapy: a systematic review." *Manual Therapy*, 2010.

Venous Thromboembolism: "67 year old male with no other identifiable risk factors had a Venous Thromboembolism following vigorous deep tissue massage on legs... Under reporting of such events is likely." - "Venous Thromboembolism following vigorous deep tissue massage." *Physical Sports Medicine*, 2010.

Acute Spinal Subdural Hematoma: "41 year old male. Patient with traumatic spinal subdural hematoma after vigorous back massage. 2 weeks in the hospital. Severe back pain, motor and sensory impairments of both legs, urinary dysfunction." - *"Acute spinal subdural hematoma after vigorous back massage: a case report and review of literature."* *Spine*, 2014.

Carotid Dissection: "A 38 year old woman had with no significant stroke risk factors had sudden onset of severe dysarthria and left hemiparesis several days after receiving approximately 20-minutes of massage with a hand held electric massager." - *"Carotid dissection associated with a handheld electric massager."* *Southern Medical Journal*, 2004

Abnormal Myopathy: "66 year old had 10 cycles of heat and massage and had went to ER with unbearable pain and and swelling of the neck and arms. One month later, only 70% decrease in symptoms. Study concludes: "Patients do not report [injuries from massage] unless they are specifically asked."" - *"An unusual complication: prolonged myopathy due to an alternative medical therapy with heat and massage"* - *Southern Medical Journal*, 2009.

News Items:

Torn Shoulder Tendons and Skin Rashes from Oil: ABC news reports Dr. Jay Goldman in Emergency Medicine at Kaiser Permanente said he has seen torn shoulder tendons as a result of massage. Dr. Richard G. Roberts professor of family medicine at University of Wisconsin School of Medicine says he has seen skin rashes from oils that therapists use. - *ABC news, Massage or Massacre?, April 3, 2008, Tere Dickson, M.D.*

Ruptured Appendix: From psoas release, abdominal cavity deep massage. - *Physio Detective, Serious Warning: If you do any releases to the Psoas or Abs you MUST READ THIS, January 21, 2015.*

Massage therapists received more referrals from health care professionals⁵

Massage therapists received more referrals from all categories of health care professionals in 2013 than in 2012.

<i>Type of Health care Professional</i>	2011	2012	2013
Hospitals and Medical Offices	46%	51%	53%
Chiropractors and Integrated Health Clinics	63%	67%	70%
Other Health care Professionals	68%	69%	73%
Other Massage Therapists	76%	75%	79%

Figure 30. Percentage of massage therapists who received referral at least once every 6 months by category of referring health care professional

Applying the Research:

1. The number of consumers who discuss massage therapy with their doctor or healthcare professional has remained constant over the past few years. How can your school leverage relationships with healthcare professionals and consumers in your area to include massage therapy as part of a discussion about healthcare?
2. Referrals from all types of healthcare professionals are an important component of a successful massage practice. Host a networking event for your students that include many varieties of healthcare professionals so that your students can start building professional relationships that will help them in their careers.

LATE TESTIMONY

HAWAII MASSAGE ASSOCIATION
Wednesday February 11, 2015

To: The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection and Commerce

The Honorable Justin Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

Members of the House Committee on Consumer Protection and Commerce

From: Keith Fukuda, Executive Director

Re: Testimony on H.B. No. 1390
Relating to Massage

Thank you for the opportunity to testify on this bill. The Hawaii Massage Association supports this bill.

Section 1 of the bill adds four new definitions to be appropriately inserted where applicable. These being "Certified massage", "Certified massage therapist", "Licensed massage therapist", and "Massage therapy assistant".

Section 2 of the bill defines the role, rules, and parameters of the massage therapist assistant.

Section 3 of the bill establishes an opportunity for enhancement and increased participation of the professionals and general public in the administration of the licensing board. To accomplish this, the bill recommends increasing the board by two (2) members.

Section 4 of the bill reinforces the powers and duties of the licensing board authorized by law.

Section 5 of the bill purports vocabulary amendment to the statute for purpose of clarity.

Section 6 of the bill expands the role of the executive secretary of the board that shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing or certification.

Section 7 of the bill attempts to employ the letter "s" to "Examination" citing that there are more than a singular category of tests or examinations for massage licensures.

Section 8 of the bill permits the license board to award license, certification, or registration as it may apply to an applicant who successfully passes the examination to the satisfaction of the board.

Section 9 of the bill reiterates the renewal of licenses, certifications, and registration to whom it may apply and the accompanying protocol.

Section 10 of the bill expands and embraces the penalty of a petty misdemeanor to any person who practices massage or maintains a massage therapy establishment, or acts in any capacity wherein a license or otherwise is required by this chapter.

Section 11 of this bill defines that any person that advertises with or without any limiting qualifications as a massage therapist now to include a massage therapist assistant guilty of a misdemeanor. Further section 11 prohibits advertising massage service with escort or dating services.

Section 12 of this bill expands the actions authorized by law to discipline any licensee, certificant, or registrant.

Thank you for the opportunity to testify in support of H.B. No. 1390. I would be pleased to answer any questions that you may have.