

**MINUTES OF THE
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE**

Tuesday, September 17, 2013 – 4:00 p.m. – Room 20 House Building

Members Present:

Sen. John L. Valentine, Senate Chair
Rep. Derek E. Brown, House Chair
Sen. Karen Mayne
Sen. Todd Weiler
Rep. Larry B. Wiley
Mr. Duane Gardner
Ms. Heather Johnston

Members Absent:

Rep. Gregory H. Hughes
Mr. Merlin Taylor

Staff Present:

Mr. Bryant R. Howe, Policy Analyst
Mr. Peter L. Asplund, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Brown called the meeting to order at 4:11 p.m. and noted that Mr. Merlin Taylor was excused from the meeting.

MOTION: Sen. Valentine moved to approve the minutes of the June 18, 2013, meeting. The motion passed unanimously. Sen. Weiler was absent for the vote.

2. Sunset Review of the Massage Therapy Licensing Act

Mr. Howe referred committee members to "Utah Code Section 36-23-107, Sunrise or Sunset Review – Criteria," which was distributed in the mailing packet. He outlined the criteria to be followed by the committee when conducting a sunrise review of any proposals for new licensure or a sunset review of professions that are scheduled for termination. Mr. Howe indicated that the Massage Therapy Practice Act is scheduled to sunset on July 1, 2014.

Ms. Sharon Muir, Chairperson, Massage Therapy Board, Division of Occupational and Professional Licensing, distributed and reviewed "Massage Therapy Practice Act Summary Statistics." Ms. Muir briefed the committee on the scope of practice of a massage therapist as outlined in statute, the number of licensees in the state, fees for initial licensing and renewal, and complaints received and resolved by the division.

Rep. Wiley asked if there were common, reoccurring complaints reported to the department.

Mr. Mark Steinagel, Director, Division of Occupational and Professional Licensing, estimated that 80-90% of citations issued by the division have been for practicing without a license or for hiring unlicensed individuals. Mr. Steinagel also responded to other questions from committee members.

Ms. Muir stated that the Massage Therapy Practice Act helps to make certain that those practicing massage therapy in the state are educated, licensed, and have proper information to insure the health and safety of the public.

Mr. Roger M. Olbrot, President, Utah Chapter, American Massage Therapy Association, discussed the state's educational and national examination requirements for massage therapists.

Mr. Kirk Jorgensen, Secretary, Utah Chapter, American Massage Therapy Association, noted some areas of study, including first aid and cardiopulmonary resuscitation, also known as CPR, pathology, sanitation and general precautions, and communicable disease awareness and prevention.

Committee discussion followed, and the presenters responded to questions.

Sen. Valentine noted that Section 36-23-107 requires the committee to consider whether state regulation of the occupation is necessary to address a "compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public." He said that is a much higher standard than the usual "rational basis" test.

Mr. Gardner asked how the committee should interpret the "compelling state interest" test. Sen. Valentine said that there is now a higher standard to be met in considering whether to establish or reauthorized a given occupation or profession.

Rep. Brown asked if the public health and safety could also be protected through the public safety system instead of licensing. Mr. Olbrot said that any enhancement of public safety enforcement and oversight of the profession would be welcomed.

Sen. Mayne noted that a common thread in the testimony is that the Division of Occupational and Professional Licensing is understaffed.

MOTION: Sen. Weiler moved that the committee recommend the reauthorization of the Massage Therapy Licensing Act for ten years.

Sen. Valentine expressed concern that the committee has not collected sufficient information to make a finding of a compelling state interest in regulating this profession.

SUBSTITUTE MOTION: Sen. Valentine moved that the committee take no action in this meeting, but request additional information from the Division of Occupational and Professional Licensing prior to making a decision.

Sen. Weiler spoke in opposition to the substitute motion. He said that the committee still has time to collect needed information before the next General Session.

The motion passed with Sen. Mayne, Sen. Weiler, and Mr. Gardner voting in opposition.

3. Consideration of Application for Licensure: Music Therapists

Mr. Asplund described the process an occupational group is required to follow in order to apply for and to be considered for licensure in the state.

Rep. Rebecca Edwards stated that she has been working with members of the Utah Association of Music Therapists in seeking licensure for their profession. She then introduced Dr. Craig Jessop.

Dr. Craig Jessop, Dean, Caine College of the Arts, Utah State University, expressed support for the work of music therapists, and specifically for the Music Therapy program at Utah State University. Dr. Jessop stated that the Music Therapy program at Utah State University has been nationally accredited since 1979 and is one of only six such programs in the western United States.

Ms. Maureen Hearn, Director, and Ms. Letha Mark, Clinical Training Director, Music Therapy program, Utah State University, distributed "Utah Music Therapy" and "Music Therapy Licensure in Utah, Facts to Consider."

Ms. Mark presented "What is Music Therapy?" She explained that trained musical therapists use music as a tool to accomplish nonmusical goals, and she presented video clips to illustrate. Ms. Mark discussed the therapeutic nature of music interventions to aid children and adults in wellness or hospice programs and medical settings. She also discussed course requirements of the Music Therapy program at Utah State University, including the national board certification exam administered by the Certification Board for Music Therapists.

Ms. Maureen Hearn, Director, Music Therapy program, Utah State University, provided an overview of the development of the music therapy profession in the past 60 years. She discussed some challenges music therapists have faced and met, including being recognized for the professional degree and credential they hold as board-certified music therapists.

Sen. Mayne asked what harm could occur through the unlicensed practice of music therapy. Ms. Hearn replied that improper application of music therapy techniques can lead to ineffective treatment and higher total treatment costs.

Ms. Mark and Ms. Hearn responded to questions from the committee about why music therapists should be licensed in the state and whether licensing musical therapists would impose restrictions on the use of music by other licensed therapeutic professions.

Sen. Valentine expressed concern about the overlap of the work of music therapists with other licensed therapeutic professions. He wondered if there would be "turf battles" between various licensed professions. Ms. Hearn said that licensing music therapists does not preclude other therapeutic professions from using music within that profession's scope of practice.

Ms. Emily Horton, Board-Certified Music Therapist, University Neuropsychiatric Institute, commented that she senses an openness of communication with coworkers of different professional disciplines who often discuss with her the appropriate use of music in their work.

Ms. Emily Bailey, Board-Certified Music Therapist, University Neuropsychiatric Institute, commented on the importance of understanding the scope of practice a music therapist may be working in as well as strict adherence to their code of ethics when working with persons of different professional disciplines.

Ms. Cami Davis, Music Therapist, briefly discussed the obstacles she faced during her education prior to becoming a music therapist, and spoke in support of licensing music therapists in the state.

Rep. Brown thanked the witnesses for their thoughtful and well-prepared presentations.

No action was taken on this item.

4. Less Restrictive Alternatives to Licensing

Mr. Asplund defined and discussed licensing and the committee's statutory requirement to study potentially less restrictive methods of regulating professions, including certification and registration. He explained that staff is seeking guidance from the committee on how to proceed. He noted that changing the regulatory structure for occupations and professions presents significant policy and political challenges for the legislature.

Rep. Brown said that the level of government regulation and oversight over a certain occupation or profession should be reasonably linked to the potential risk of harm to the public.

5. Other Items/Adjourn

The next meeting was scheduled for Tuesday, October 15, 2013, at 4:00 p.m.

MOTION: Rep. Wiley moved to adjourn the meeting. The motion passed unanimously.

Chair Brown adjourned the meeting at 6:48 p.m.