

# Why This Is Not the Time to Go to Sacramento

A report from the  
**California Coalition on Somatic Practices (CCSP)**

**September, 1996**

In May 1996, the California Coalition on Somatic Practices approved its intent to "dissuade individuals and groups from seeking California legislation at this time by educating them as to the difficulties and potentially negative repercussions of such actions; and to propose alternative ways of achieving professional recognition and the benefits possible." This document attempts to clarify this position and the rationale for such a policy.

## **Introduction**

The California Coalition on Somatic Practices holds the position that pursuing state licensing for massage and other somatic practitioners in California is ill-advised at present. First, the absence of a united front within the somatic community may cause some somatic groups to openly contest licensing if it negatively affects them. It will also make it extremely difficult to sway legislators to our cause. We must go forward together if we are to go forward at all. Another reason is the very strong anti-regulation attitude in Sacramento. In fact, virtually no profession is even attempting to introduce a new licensing law at this time, although a number of emerging professions would like to. Other professions are fighting efforts to deregulate them. The current trend is toward state recognition of private certification programs.

Another obstacle would be the almost certain opposition by well-funded lobbies, from medical professions who may perceive us as potential competition, to those representing local governments reluctant to yield control. The massive confrontation that could result is one that will require large amounts of money, time, and energy with no guarantee of a "winning" outcome, i.e. legislation that will positively impact somatic practitioners. Finally, there is the very real possibility that more problems for somatic practitioners will be created; the cure may be worse than the illness.

It is *not* the intention of the Coalition to *eliminate* the option of state licensing. Instead, we wish to persuade groups and individuals to temporarily suspend any attempts to initiate legislation while all ramifications are explored. It is the intent of this paper to outline and explain our reasons for this position. Concurrently, we are examining other regulatory options that hold the possibility of providing the beneficial aspects of licensing while avoiding those that are harmful.

## **A Brief History**

In early 1995, we distributed a survey to somatic practitioners in California. Our goal was to educate massage therapists and other somatic practitioners about issues pertaining to professional identity, possible regulation, and to ascertain what regulatory options the field will support. As detailed in the published results, the option most supported by respondents is to establish a broad, private program through certification, possibly leading to a state law. We are currently researching means of establishing a so-called umbrella association which would evaluate and recognize private certifications. It would be open to non-affiliated practitioners, but perhaps existing associations would enroll their members in this self-regulatory organization. As we develop this vision, we will focus on how effectively it addresses the problems, both immediate and long term, as well as the more idealistic goals of defining our professional identity, and educating the public as to the values of touch and movement.

## **Why Do Some Want State Licensing?**

State licensing seems to be an appealing solution to many problems faced by California's somatic practitioners. The difficulty in obtaining a local business license is a very realistic hindrance to the establishment and expansion of a private practice. Many cities have local massage therapy ordinances that are created to restrict prostitution. However, legitimate practitioners are tarred with the same brush and are faced with prohibitively expensive local licensing fees, background checks, zoning limitations classifying us as adult entertainment, and other insulting, irrelevant restrictions.

Unfortunately, previous legislation supported by the powerful League of California Cities has already given the cities the right to regulate massage as a police issue; state licensing will not supersede this legislation. Many practitioners are tolerating unfair and expensive business licenses, operating "underground" without a license, or are actually unable to work in the city of their choice. Obviously, this environment of fear, anger, resentment, and frustration has created a desire for an immediate solution. Thus, the concept of state licensing is an attractive panacea but it is not the perfect solution to the problems of somatic practitioners in California.

There are other motivating factors involved in the pursuit of licensing. Recognition as a licensed California professional is extremely attractive. It is a good way for practitioners to define themselves to other health care professionals in order to achieve both respect and acknowledgment. It also provides an excellent opportunity to educate the public at large as to the presence of somatic practitioners. Marketing to potential clients is an inducement for some to pursue licensing as it seems to present an opportunity to stand above and beyond others in the field. Licensing would require some sort of minimum educational requirement; only some would qualify. Possession of a licensing title appears to be a good marketing angle for those who feel that competition affects them.

Often emerging professions favor state licensing in order to assure independence and recognition. After 10 years of trying to pass a licensing bill, Maryland massage therapists recently succeeded in efforts to pass a state law requiring certification. Prior to this, the state Physical Therapy Board claimed that the term "therapeutic massage",

and any massage claiming to be therapeutic, must be performed by physical therapists only. If nothing else, this new law recognizes massage therapy as a separate profession.

### **Lack Of Unity Within The Field**

In most states which license massage, many of the specialties which we include under the umbrella of "somatic practices" are affected. In some cases, the state boards have actively enforced the law in such a way that many specialties have had to obtain massage licenses in order to practice. This has been a problem for large groups of practitioners who do not study massage but do use touch in their practices. Many somatic practitioners feel that their work is so different from massage that the training and examinations required in order to be qualified for licensing are irrelevant to their practices.

In the last several years, massage groups seeking licensing in other states have been more willing to work in coalitions with other approaches. In Massachusetts, a bill introduced this session would have licensed both massage and somatic practitioners, with each group defining their own standards and regulations. It died due to last minute opposition from the physical therapists. In most other licensed states, the law pertains to massage and covers other specialties to varying degrees.

In California, we have chosen, through the CCSP, to include massage under the large umbrella of somatic practices, rather than as a separate entity. One quite practical reason for this is that in this state, we have many more practitioners of other types of work than in other states, and also have many massage therapists trained in additional specialties. This gives us all a wider perspective on who we are, and more of a commitment to establish and maintain a trusting, cooperative relationship as we consider issues common to us all.

Even within the so-called narrow definition of massage, there is a lack of unity. Many massage practitioners in California have 100-200 hours of formal training. Some want to be licensed as health care practitioners. There are a great number of massage therapists who have no interest in being part of the existing health care system, preferring to align themselves with emerging complementary fields, or as a personal service. A current attempt to license massage would likely meet with formidable opposition from those adversely affected. A divided profession stands virtually no chance in Sacramento. However, we have the opportunity, by focusing as we have been on communication, developing trust and privately establishing standards and protocols for self determination of our future, to heal the profession. In doing so, perhaps we can be a model for healing of those we touch in both our private and professional lives.

### **Does State Licensing Solve Problems?**

A state license *will not replace* the oppressive local ordinances, but instead will *add* another level of regulation. As stated previously, California state law gives cities and counties the right to regulate massage. The League of California Cities is not likely to give up or limit these rights in regards to our profession. Cities and counties also have the right to determine their own fees for business permits, and to zone businesses according to their own criteria.

If we currently had a state law licensing massage, we would be subject to the required educational standards, examinations, fees and other provisions of the *state law*. State boards also have considerable power in defining and overseeing the scope of practice of professions, and such things as ethics, record keeping and other business practices. We would also be subject to ALL THE SAME EXISTING LOCAL VICE LAWS, FEES AND EXAMS, as well as any zoning restrictions and requirements for expensive conditional use permits.

The state of Washington has had a massage law for twenty years, which takes precedence over local regulations. To this day, some cities continue to regulate massage by local ordinances as well, ignoring the state law. Massage therapists have had to work with these cities one by one, threatening to file lawsuits, and still have a difficult time getting the cities to relinquish control. After Louisiana passed a state massage law two years ago, not a single township repealed their local regulations. Again, massage therapists must work tediously with each one to change this. This is essentially the same frustrating process we go through in California as we work to improve existing local ordinances in one city after another.

State licensing has no effect on local zoning laws. Massage therapists may still find themselves zoned to undesirable neighborhoods or subject to the need for a conditional use permit. This can take months and usually costs several thousand dollars.

Many health related professions see licensing as a means to achieve provider status and receive insurance reimbursement. This usually requires other laws and massive efforts after becoming state licensed. In fact, any perception that we may be competing for insurance money is certain to attract the attention of the powerful medical lobbies. We are sure to get opposition from the chiropractors and physical therapists, who are in constant battle with each other over who can bill for what services. Both professions have therapeutic massage within their scopes of practice. Currently, many people receive massages from aides, who may or may not be trained massage therapists, in their chiropractor's or physical therapist's office. We would be perceived as a financial threat if their patients could come directly to independent somatic practitioners who could then have insurance companies pay the bills. In order to even be considered as an allied health profession, we would have to have high educational standards, and almost surely pass a medically oriented licensing or certifying exam.

Even with a state license, provider status is not automatic. Acupuncture is not covered by many insurance companies, and chiropractic, if covered, is often limited. Although both are included in State Worker's Compensation plans, acupuncture just recently fought attempts to expire their acceptance, and chiropractors are in a constant battle to stay in the system. Medicare is even more restrictive, excluding acupuncture altogether. HMO's rarely cover massage therapists in licensed states, although Washington recently passed a law including massage therapists in HMO's. The HMO's are challenging the law. In all states these days all health care providers are being burdened by massive amounts of paperwork. Most are finding managed care usurping their own decision making, as health care practitioners become employees of the insurance industry.

Some feel that state licensing enhances professional status. A number of factors contribute to the perceived status of a profession. These include the competence and

demeanor of the practitioners, social perceptions and relationship to other professions and the public.

### **Does State Licensing Cause Problems?**

Unfortunately, state licensing can actually produce additional hindrances. First of all, somatic practitioners would have very little control over a bill after it is introduced. Many groups and interests add, change, and delete portions of a bill as it makes its way through the legislative process. The resulting license might bear little resemblance to the original. Of course, once the law is in place, it will require a vigilant watchdog; other laws and regulations might be introduced to alter or supersede any that we might construct.

Other challenges are involved in the creation of a state licensing board. The ideal situation is to have regulatory decisions made by a board comprised of people within our profession but that would not necessarily be the case. Licensing boards are usually made up of political appointees from within the profession and lay members, who set policy and interpret the law. Actual administration is done by professional bureaucrats, who often have no understanding of our field. Non-massage somatic practitioners in other states, such as Washington and Florida, have had serious problems resulting from decisions made by powerful bureaucrats. We should not forget that state licensing will bring all forms of bureaucracy to the fore. Reports to the licensing board, record maintenance, continuing education requirements and the like will be obligations for all licensed practitioners.

Other states have no massage boards at all but instead place massage licensing under the boards of other professions. Virginia passed an act naming the Board of Nursing as the overseeing agency to regulate massage therapists. In a last minute move, Maryland changed a proposal for state licensing to be regulated by the Board of Nursing to certification under the Board of Chiropractic Examiners. This is also a clear example of how easily the plans of somatic practitioners can be changed in the legislative process. How fair these Boards are in interpreting the law and defining and administering regulations remains to be seen.

Fighting between licensing boards is not unheard of either. Scope of practice can become a nightmare as licensed professions maneuver to carve out, expand and protect their own niche with a "hands off" sign attached. In California, most complaints that health care practitioners are practicing beyond their scope of practice are made by one licensed professional against another. There is little doubt that jealousy and financial competition motivates most of these complaints.

A state law can mean less autonomy for a profession, especially if they are regulated under another Board, or subordinate to medical professions. Dental Hygienists in California, while state licensed, do not have the independence to establish practices separate from within a dentist's office. Several attempts to obtain such independence have failed, due to opposition from the dentists.

### **Alternative Means Of Achieving Benefits**

As noted previously, the California legislature continues to be opposed to new

professional regulation. The recommended path in preparation for such an effort is called the "Sunrise Process". The Sunrise Process involves completing an extensive questionnaire to prove that:

1. the unlicensed profession is a serious danger to the public health and safety;
2. state licensing will adequately protect the public health and safety; and
3. no other means can also protect the public health and safety.

The good news is that we injure very few clients. As a result, though, we will have difficulty meeting the Sunrise criteria without manipulative presentation of the data.

State licensing is not the only way to achieve recognition. The attitude of the public toward somatic practices is becoming more positive and accepting as time passes. By educating our own clients, we are gradually communicating the advantages of somatic practices. Media coverage in mainstream newspapers, magazines, and television is becoming more prevalent.

Other forms of regulation combined with public education can be just as effective in achieving recognition as competent, legitimate professionals. No matter what we do, educating the public and other professions as to the value of our work is crucial. Without clients who experience the value of our work, no regulation is going to help us make a living. The fact that so many of us have been able to succeed without a state license, and despite obstacles such as local regulations, also demonstrates that our work will be judged on its own merits.

As noted previously, the trend in California is clearly toward private regulation. This is the option that the CCSP is currently focusing on. We must first establish our own educational and ethical standards, scope of practice, and regulatory process, as other professions have done. For example, California Drug and Alcohol Counselors considered licensing in order to establish themselves as a profession separate from other mental health services, with specialized training and expertise in their field. They instead chose to create a national certification exam and self-regulation. They then focused on getting this standard recognized by the state in order to obtain insurance and Medi-Cal payments for their services.

Occupational Therapists are recognized in the California Business and Professions Code. Although it is not a license, in order to be an Occupational Therapist, the therapist must graduate from a school accredited by one of their recognized national associations or other national accrediting agencies, and pass a national certification exam or equivalent program. The law also recognizes qualifications that allow occupational therapists to receive insurance reimbursement.

Since we prepared the surveys, we have done further research into options for a narrow state massage license and a wide massage and somatic practices license. A law extending only title protection is possible, stating simply that in order to call oneself a "massage therapist", one would need to have a license. Others could continue to practice, but would need to call themselves by another term, such as "bodyworker", "somatic practitioner", "educator", or by the service marked name of the specialty practiced, such as Tragerwork or Rolfing. Although such a title law protecting the term

"massage therapy" could give us state recognition of the title, it does not affect existing local regulations. Nor will it be likely to give us third party reimbursement. It may cause many more problems as well.

A practice act defines what we do, as the scope of practice, and requires a license. This is typically what is considered licensing of a profession. If it was a massage law, it might say, for example, that massage is the act of "rubbing, stroking, kneading, etc.". It is this type of language which often negatively affects other somatic practitioners, and is likely to generate widespread opposition from such groups.. A massage and somatic practice license could include movement, touch, education. In general, however, there is very little support now in the somatic practice community for such a broad license.

There are so many variables, and so many practitioners possibly affected that we would need to agree upon all the previously mentioned elements before we embark on a legislative proposal.

## **Conclusion**

The primary goal of the California Coalition on Somatic Practices is to support the field of somatics in California. Seeking state licensing at this time is not in the best interest of all somatic practitioners. An attempt to force this issue would, at best, produce legislation to satisfy one group at the expense of others and, at worst, create a license that will do more harm than good. By working *together*, we will strive to find a regulatory solution that will produce the highest good for all involved.

For more information on our meetings, or for comments, you can contact us at:

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