

**To:** House Health & Human Services Committee  
Representative Brenda Landwehr, Chair

**From:** Kelli J. Stevens, General Counsel  
Kansas State Board of Healing Arts

**Date:** February 7, 2012

**Subject:** HB 2564- Massage Therapist Licensure Act

### Neutral testimony

The Kansas Board of Healing Arts (KSBHA) appreciates the opportunity to provide neutral testimony on HB 2564. The KSBHA presently licenses and regulates 13 health care professions. The mission of the KSBHA is to safeguard the public and strengthen the healing arts. Currently, the practice of massage therapy is unregulated in Kansas, notwithstanding local business permit/license requirements which may exist. At present, the public can receive massage therapy services in Kansas and there is no prohibition on the practice when performed “for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out as physicians or healers. K.S.A. 65-2913(c)(18)

HB 2564 would provide for massage therapists to be licensed and regulated by the KSBHA. While the agency’s position on regulation of massage therapists is neutral, the bill raises some concerns. As defined in the proposed legislation, massage therapy is performed “to enhance or restore the general health and well-being of the recipient.” It can also be purely for the purpose of relaxation and enjoyment. As such, massage therapy is less connected to the practice of the healing arts than the other professions regulated by the KSBHA. Some massage therapists work in a health care setting. However, many massage therapists work in private business settings, often as part of a cosmetic salon, a “spa,” through guest services offered at a hotel, or a kiosk at a mall. In this respect, massage therapy may be more akin to the professions regulated by the Board of Cosmetology.

Additionally, HB 2564 does not contain any provisions for licensure of the massage therapy establishment. A brief survey of other states’ regulation of this profession indicates that approximately 9 states regulate both the massage therapist and the establishment. This includes the neighboring

states of Missouri and Nebraska. As an example, Missouri performs inspections of massage establishments to ensure adequate facilities and cleanliness. In order to fully ensure the safety of massage recipients, it may be necessary to also regulate the establishment. As such, regulation of the profession may be more appropriate with the Board of Cosmetology which already inspects many of the facilities in which massage is performed.

Of additional concern to the agency is the anticipated increase in expenditures by the agency if HB 2564 is passed. It is estimated that the KSBHA would need to add staff in the form of 1 full time licensing staff member, 1 temporary, full time legal assistant to assist in the initial drafting of regulations and the creation of applications and forms, and 1 additional position in our disciplinary/investigative department after enactment. The anticipated expenditures will be higher if the business establishments would also be regulated. The licensing fees currently proposed are likely to be insufficient to support the expenditures the agency estimates would be required to regulate this profession.

Lastly, HB 2564 is lacking some provisions contained in other practice acts which are needed to effectively regulate the profession. If it is likely that the KSBHA is the agency which will oversee the profession, we would like to have the opportunity to propose additional provisions and amend some of the language to be more consistent with the other professions in the areas of standards for violations, disciplinary procedures and remedies, and others. As an example, HB2564 contains a provision for fines, but does not allow the agency to recoup costs when the agency prevails in a disciplinary action. Another item needing clarification involves record-keeping and under what circumstances the records would constitute patient records as opposed to simply client records.

We are available to respond to any questions. Thank you for your consideration.