

Testimony in opposition to SB 492

EarthTouch Shiatsu

Asian Bodywork and Massage Therapy
for body, mind, and spirit

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Dear Delegates:

SB0492 proposes to change the statutes regulating massage therapy advertising. While this bill is well-intended to prevent sex workers from conflating their work with massage – something every Licensed Massage Therapist (LMT) supports! – it seems ill-informed about **how small business advertising works in the internet age**, as well as raising privacy and safety concerns for independent massage therapists and First Amendment issues.

Website Ads Are Placed On Networks

This bill states that an LMT “may not place, publish, or distribute, or cause to be placed, published, or distributed, an advertisement for massage therapy services:...**(ii)** on a website known for advertising prostitution services, escort services, or sexual services”

In today’s media world, small businesses often place ads on networks such as the Google Display Network. **An advertiser does not know on what websites their ad may be placed.** For more background on advertising networks I recommend the Wikipedia articles on “Advertising network” and “Run of network”

https://en.wikipedia.org/wiki/Advertising_network

https://en.wikipedia.org/wiki/Run_of_network

Combined with the vagueness of section (E)(1)(ii), this raises concerns. Certainly we want to go after fraudulent advertisers who conflate sex work with massage therapy! But **"sexual services" is a vague term – please remember that sexual health care is health care.** A massage therapist should not be punished if their “run of network” ad appears next to, for example, an ad for a men’s health clinic offering ED treatment, which could be read as a “sexual service”; or even if their “run of network” ad appears, though no choice of their own, next to an ad in a less savory category.

This section runs into **constitutional concerns**, in that it treats websites differently than print media, a clear **First Amendment** violation; and in that it calls for the Board of Massage Therapy examiners to determine whether a website is “known for” advertising certain things, without a sufficiently rigorous definition of what that means – in its current form the bill runs squarely into the **nondelegation doctrine**.

Safety and Privacy

When SB 492/ HB 975 was first introduced, licensed massage therapists on social media were outraged about it would require public disclosure of personal information that would actually **enable stalkers**, an important concern for a profession where the majority of practitioners are women. The buffer of a brand name rather than one's own can be an **important personal safety practice**.

While much of the language about this requirement has been removed from the current bill, 6-401 (D) (2) still requires that "the advertisement includes the name of a licensed massage therapist". When a trade name registered with the Board is used in an ad, the **Board has the ability to easily map the ad to an LMT** to provide accountability. **There is no need for an LMT's name to appear in an ad, a demand which could literally endanger people's lives.**

Unnecessary Burden

Besides safety concerns, **in today's internet-centric world**, advertising often takes the form of **short bits of text linked to a website**. When placing an ad on Google, a business has only a few words to capture the eye. Making LMTs use that space for a personal name is burdensome and unfair.

At the very least, the bill could add a provision that, for any disclosure or information required by statute or by regulation to appear in an advertisement, the requirement can be fulfilled if the information appears on a website linked to by the advertisement (whether via HTML, QR code, a textual URL, or other means).

Thank you. I'd be delighted to discuss any of these points with you further.

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