Business League for Massage Therapy & Bodywork (BLMTB)
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www.blmtb.org email: info@blmtb.org

December 5, 2005

SJ35 – Study Group 1 Response:

1) "examine the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety and to study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety."

In some cases, Combining Boards makes sense when:

- *there is significant overlap of practice* (i.e. Osteopaths joining the Board of Medical Examiners). Where there is no significant overlap it does not. In the case of Massage Therapy, we believe that the profession should not be combined with any of the current boards. None of them are appropriate to meet the needs of the profession due to its diversity: there is no significant overlap with any one profession.
- *the boards have similar objectives*. For example, we've been told that massage therapy should be placed with the Alternative Health Care Board. It is not an appropriate placement due to the difference in objectives: massage therapy is a complementary practice, meaning that we work with (not instead of) other health care professions. Naturopaths and Midwives are clearly alternatives to allopathic care. In addition, the threshold of training and (and competence) needed to meet consumer safety issues is much higher in Naturopathic and midwifery professions than it is in massage therapy. Yet, it is very possible that those same (unreasonable) standards would be applied to massage therapists if regulated by the AHCB.
- To be successful, the size of the professions combined should also be considered and taken into account when determining board composition. Representation should be determined in proportion to the numbers of practitioners regulated.
  The legislative intent when the AHCB was created was to provide a place where small professions could be regulated with maximum cost-effectiveness. Massage therapists would outnumber the current licensees on the AHCB by a greater than 15 to 1 margin (we estimate 1500 potential licensees for massage therapy). The professions currently regulated by the AHCB would be marginalized as massage therapy issues would consume most of its time. Due to the sheer number difference, a large amount of time would be spent on the profession with the most practitioners, but representation would be in the minority, *which is unfair to both the majority and minority professions.*

In General, Board Consolidation does not protect the public safety:

With a combined board of several professions, each member does not have a specific understanding of another's professional scope. This could create for confusion, erroneous assumptions, and unfair/unreasonable standards of practice being placed upon professions that are combined with professions with a higher level of competency/standards. This causes a burden on the profession and sets an unreasonable threshold of protection. Over protection of the public can be just as harmful as under protection, in that it unreasonably restricts public access to services.

In our experience, when we approached the Alternative Health Care Board during past licensing efforts, the midwives and naturopaths did not want massage therapists deciding issues affecting

them due to scope issues, but did not feel the same about making decisions about massage therapy. This type of professional arrogance and the presumption of knowledge would be devastating to the practice of any emerging profession.

Board consolidation does not protect emerging professions from unreasonable regulation by already established professions.

Emerging professions board members on an already established board will not have as strong as a voice or will not be heard. The stronger professions tend to intimidate those board members of lesser background, lesser scope, lesser training, and lesser experience with board issues. Therefore the potential for turf battles will continue. Whereas if a board is constructed of members of one profession, everyone understands the scope of that profession and that board is not bound by outside feedback.

Board consolidation could exacerbate turf wars, not prevent them.

Internal bickering due to turf wars could create an impasse, therefore making boards less effective. These disputes could be more costly and create inefficiency.

Board consolidation with subgroups within boards creates another layer of bureaucracy and seems contrary to the whole point of consolidating boards.

It would be more cost-effective to create Consumer Advocacy Screening / Arbitration Panels. These two panels (one for health related issues, one for non-health related issues) would be set up to hear all sides of the "merits of the case" (or dispute) and make decisions/recommendations based on competency, rather than protectionism of turf. They would be required to take the time to learn about the facts of the issues presented, and take evidence based on that presented by the disputing parties.

To avoid bias and potential conflicts of interest, there should be a separate board for health related issues versus non-health related issues. In health related issues, consumers would NOT be health professionals or members of health boards – there is an inherent bias by health professionals toward other professions and health related issues. A minimum of 5 persons are needed to provide for good discussion and to bring more insight into the panel. In addition, there should be not more than one or two legislators on the panels. A legislator's presence would be helpful to provide insight into that process. It would be helpful to have members who have experienced both allopathic and naturopathic health care for those staffing the health care panel.

These panels could be used in two ways:

a) To screen legislation prior to the session to pre-arbitrate any differences between the professions, and to hear the "merits of the case" should there be any irreconcilable differences. They can then make recommendations to the legislature, which could adopt or reject those recommendations. It could even be required by statute that any legislation affecting professions must be heard by a screening panel first.
b) To hear disputes between boards and make decisions as to how these differences should be handled.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

- Defining "public health, safety, and welfare issue"
  Meeting any **one** of the criteria should suffice.
  - The Definition should also include "common good"
    In *Board ABC's,* in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
    A definition needs to be developed for the term "common good." When licensing/creating a board for the profession, while the threshold of physical "harm" may be small or the other criteria may not be met, it is important to legislate in order to protect the existence of the profession. It is not done for the profession's sake, it is done to protect the consumer by ensuring that the consumer has access to a wide variety of services at a reasonable cost. It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope. Such limits create state-sanctioned monopolies and drives up consumer costs, while decreasing the availability of services.
  - "Health and Welfare" should include protection of access to a profession (with its commonly accepted scope of practice intact). Denial of services harms the public. Consumers should have the right to seek out health care from the provider of their choice, and have available to them the full scope of practice of that practitioner.

    As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scopes of practice as there is a perception that already licensed professions are harmed if new professions' scopes are allowed to overlap, *even if the national standards of the profession being limited include that competency*. We believe that the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting scopes of practice and limiting access limits the consumer's possibilities for health and healing and is therefore harmful.

    There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:
    1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
    2. Create competency-based scopes of practice that allow for overlap of scopes of practice. Boards and Licensure should be geared toward competency: if the professional is trained in that competency, then they should be able to perform that competency.
    3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.
  - Protecting the public's health, safety, welfare and common good also includes granting Title licensure to "non-invasive" professions (such as massage therapy). Practice acts should be

reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).

- In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
- We believe that a title act/ board serves the consumer/public and the profession by:
    1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
    2. defining standards so that consumers can be fully informed
    3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.

All of the following functions of board / licensing are important to the protection of the public.

With Regard to Licensure:

- licensure defines standards of practice, so that consumers can be fully informed as to what constitutes the standard
- licensure creates a mechanism for consumers to find "qualified" practitioners
- licensure provides a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.
- licensure defines (thus protects) the scope of practice of the profession which ensures consumer access to that profession

With Regard to a Board:

- There are the usual tasks performed by any board and they apply here as well. Boards are better suited to address these issues than delegating them to a non-professional or departmental employee:
    - Refuse to issue or renew or may suspend, revoke, censure, reprimand, restrict or limit the license of or fine anyone in violation
    - Adopt, amend and enforce rules consistent with the law relative to consumer health, safety and welfare
        - Establish minimum standards of practice and code of conduct via rulemaking
            - Establish and enforce criteria for professional standards and rules of conduct
    - Determine what is and is not unprofessional conduct
    - Establish and enforce criteria for continuing competence
    - Makes recommendations for further training, standards, education.
    - A Board provides a place for consumers to complain

While there are nationally accepted guidelines for massage therapists, there are still atypical types and forms of training, such as apprenticeships. A Board made up of professionals and consumers would be able to ensure that qualified persons are not overlooked due to atypical training, nor allow unqualified persons to become licensed because of lack of knowledge on the part of departmental personnel. Our understanding is that this happened with the nursing board recently. A Board would:

- Screen atypical applications
- Define what training is valid.

2) How do you think fees should be determined? (What are the basic costs? Should there be different levels of boards or programs to meet different costs?)

The BLMTB has no informed comment on this, although we tend to lean toward a "fee for service" scheme.

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SJ35 – Study Group 2 Response:

2) "address the tensions created by jurisdictional disputes between boards and seek ways to resolve these disputes through consolidation, more specific delineation of authority, or other alternatives."

In our study of the issue, we have found *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (Report of the Taskforce on Health Care Workforce Regulation of the Pew Health Professions Commission, 1995) to be most helpful. http://www.futurehealth.ucsf.edu/summaries/reforming.html

Turf Wars tend to be about scope issues, so the two are inextricably intertwined.
But how is a Scope of Practice developed? There is an assumption in the questions that the scope of practice is developed through either statute or rule. Neither is really the case. As a profession emerges and develops, standards of practice, core competencies, and scope of practice (and maybe even a testing process) are also developing. The legislative process ideally should merely codify them.

According to the Pew Report, the manner in which scopes are codified is at the root of the turf war problem: granting some professions broader scope while limiting others causes those with the broad scope to protect their turf. In addition, these laws are written to define the differences between the professions, thus creating turf wars in an attempt to protect territory and maintain those boundaries. This view is alluded to in the EAIC report *Board ABC's* in the *Overlapping functions/scope of practice/dual licensure* section:

> "Discussions ensued regarding … dual licensure for physical therapists trained as athletic trainers ***and how much to limit the scope of practice to avoid conflicts*** [our emphasis] with other healthcare practitioners."

We believe that it is erroneous to limit scopes of practice of professions (particularly Complementary / Alternative Medicine – CAM – professions) because another, already licensed, profession "claims" a procedure or process. To do so creates a state-mandated monopoly to the detriment of the consumer. **This type of protectionism does not protect the consumer, but instead restricts access to services, drives up costs, and stifles development of new professions.**

From what we have seen in Montana, emerging professions have little chance of entering the legislative arena and emerging unscathed with an intact scope of practice: the legislative process and legislators tend to side with the more established professions and their needs rather than look very carefully at the competencies of the new profession. The Athletic Trainer's bill is an example of this: legislators appeared to be more interested in protecting the turf of established professions rather than learning about and examining the nationally accepted scope of the ATs.

Although we realize that this view may anger or alienate some and may have a negative effect on our profession's bid to seek licensure, The BLMTB believes that "turf wars" are not a "board

problem" but instead are due to a flawed legislative process that places more emphasis on the political and disregards the fact that more than one profession can provide similar services (based on competencies of the profession) and that combining boards or changing the configuration of boards will not solve the problem.

We believe that combining boards to solve jurisdictional problems will not work, and only exacerbate the problem. Boards will be rendered ineffective due to the resulting infighting, or one profession will run roughshod over another should they have a majority on the board.

Suggestions / Ideas

The Pew Report posed several options, and we found it most helpful. We also have some ideas. In short, there are several possible solutions to the problem:

The first step is for the legislators to acknowledge that no one profession has the "lock" on a particular service area. From the Pew Report:

> "a regulatory system that maintains its priority of quality care, while eliminating irrational monopolies and restrictive scopes of practice would not only allow practitioners to offer the health services they are competent to deliver, but would be more flexible, efficient, and effective."

Secondly, it is important for legislators to acknowledge that in the current arena of turf wars, emerging professions sometimes seek legislation in order to, out of necessity, protect their own scope of practice. As we discuss this, we do not imply that everyone in our profession takes this same view. However, in Montana, the BLMTB believes that one reason why it is imperative for massage therapists to seek legal protection is precisely because turf wars exist, and because our scope is being usurped by the various professions already licensed. For example, trained massage therapists learn how to do salt glows, scalp and face massage. These are all regulated by the cosmetology board. Massage therapists also are trained in soft tissue rehabilitative techniques, which include not only massage, but also the use of hot and cold packs, ice, postural evaluations, stretching, Swedish gymnastics, manual therapy, myofascial release, and movement therapy, etc. These are regulated by the boards of medicine and physical therapy. However, in entering the legislative arena to "carve out" our place, we very well could end up NOT being able to perform all of what we have been trained to do. This is problematic in that it discourages formation of professions and drives up consumer costs, while doing nothing to protect the health, safety and welfare of the public. In fact, we believe that the public is actually harmed when access to services is decreased or limited. Each profession delivers a particular service in a unique way: what works for one consumer may not work for another. Limiting access limits the consumer's possibilities for health and healing and is therefore harmful.

We would suggest the following:

1. Adopt a competency-based platform for developing legislation. As mentioned before, legislation brings out professions intent on protecting their turf. Adopting a competency-based platform would require that the parties show why they are or why they are not competent in a particular area based on standards of practice, national tests, etc. If the competency is there, no profession should be able to lobby to prevent a profession from performing that competency.

2. Revising all scopes of practice to be competency based could be phased in over time. In the meantime, this concept could be applied to development of scopes of practice of new professions.

3. Encourage development of new professions by passing a "Freedom of Access" law similar to ones in Minnesota and California. These laws allow consumers to access alternative health care modalities and for providers to exist without fear of prosecution if there is full disclosure present. Providers are to obtain a signed consent form from the consumer that outlines specific items required by the law: training, certifications, years of practice, the nature of the services to be provided, etc. This could solve a lot of problems. If an emerging profession felt protected enough by a statute of this nature, they might not seek regulation, therefore avoiding another turf battle. The members of that emerging profession could then practice without fear of prosecution from an already established profession intent on protecting their turf. The consumer is fully informed and should therefore be protected.

4. Consumer Advocacy Screening / Arbitration Panels. These panels would be set up to hear all sides of the "merits of the case" (or dispute) and make decisions/recommendations based on competency, rather than protectionism of turf. They would be required to take the time to learn about the facts of the issues presented, and take evidence based on that presented by the disputing parties.

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   b) To hear disputes between boards and make decisions as to how these differences should be handled.

5. Restructuring Licensing all together:
   a. 2 Bureaus:
      1. Medical
      2. Business/Occupations (that would deal with all non-medically oriented professions)
   b. The Medical Bureau would have 2 Divisions:
      1. Allopathic: this would include Medicine, physical therapy, occupational therapy, etc.

2. CAM: Complementary and Alternative Health Care (includes the Alternative Health Care Board and other emerging professional boards) This division would not be very big yet, but could have the potential to expand.

In having separate divisions for the medical bureau, there would be an understanding that any CAM profession overlapping with an allopathic profession's scope is not only accepted but encouraged by the legislature.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

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- Protecting the public's health, safety, welfare and common good also includes granting Title licensure to "non-invasive" professions (such as massage therapy). Practice acts should be reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).
    - In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
    - We believe that a title act/ board serves the consumer/public and the profession by:
        1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
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- Screen atypical applications
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SJ35 – Study Group 3 Response:

3) "address for each board created by the Legislature the balance of professional and occupational membership to public interest membership and whether changing the board membership would improve public protection, which is the basic rationale for the state's regulation of boards."

- From our perspective, this question folds another topic into it: combining boards. We also refer you to our responses for Study Question/Group 1 as the points we make there are pertinent to this discussion (we've added it to the end of this paper).
  - To be successful, the size of the professions combined should also be considered in board composition.

    The legislative intent when the AHCB was created was to provide a place where small professions could be regulated with maximum cost-effectiveness. Massage therapists would outnumber the current licensees on the AHCB by a greater than 15 to 1 margin (we estimate 1500 potential licensees for massage therapy). The professions currently regulated by the AHCB would be marginalized as massage therapy issues would consume most of its time. Due to the sheer number difference, a large amount of time would be spent on the profession with the most practitioners.
  - If boards are to be combined, representation on the board should be determined in proportion to the numbers of practitioners regulated.

    In the AHCB/Massage Therapy example above, massage therapists would vastly outnumber the other professions on the board, but representation would be in the minority. Coupled with what could happen when groups are with non-compatible standards/objectives are combined, and the frustration that their issues would be marginalized due to time constraints, it is a recipe for disaster.
  - Specialties licensed by a board should have representation on the board loosely based on the proportions of practitioners.

    If a big board is combined with smaller boards, then the combined number of smaller board representatives and public members should outnumber the big board representation.

    This ensures that if the big board members get out of control, they can be reigned in by the other members. Yet, the big board members should have greater influence over the board if they can convince others to go along with them.

- Public members are a vital part of any board. Every board should have at least 2, if not more, public members. Public members help provide consumer protection by reminding the practitioners that licensure is about protecting the public and not the profession.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

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The BLMTB has no informed comment on this, although we tend to lean toward a "fee for service" scheme.

SJ35 – Study Group 1 Response:

1) "examine the appropriate role of boards in implementing professional and occupational licensing and oversight with the goal of protecting public safety and to study whether consolidating boards and providing subgroups within boards would increase cost efficiencies and governance efficiencies while protecting the public safety."

In some cases, Combining Boards makes sense when:

- *there is significant overlap of practice* (i.e. Osteopaths joining the Board of Medical Examiners). Where there is no significant overlap it does not. In the case of Massage Therapy, we believe that the profession should not be combined with any of the current boards. None of them are appropriate to meet the needs of the profession due to its diversity: there is no significant overlap with any one profession.
- *the boards have similar objectives*. For example, we've been told that massage therapy should be placed with the Alternative Health Care Board. It is not an appropriate placement due to the difference in objectives: massage therapy is a complementary practice, meaning that we work with (not instead of) other health care professions. Naturopaths and Midwives are clearly alternatives to allopathic care. In addition, the threshold of training and (and competence) needed to meet consumer safety issues is much higher in Naturopathic and midwifery professions than it is in massage therapy. Yet, it is very possible that those same (unreasonable) standards would be applied to massage therapists if regulated by the AHCB.
- To be successful, the size of the professions combined should also be considered and taken into account when determining board composition. Representation should be determined in proportion to the numbers of practitioners regulated.
  The legislative intent when the AHCB was created was to provide a place where small professions could be regulated with maximum cost-effectiveness. Massage therapists would outnumber the current licensees on the AHCB by a greater than 15 to 1 margin (we estimate 1500 potential licensees for massage therapy). The professions currently regulated by the AHCB would be marginalized as massage therapy issues would consume most of its time. Due to the sheer number difference, a large amount of time would be spent on the profession with the most practitioners, but representation would be in the minority, *which is unfair to both the majority and minority professions.*

In General, Board Consolidation does not protect the public safety:

With a combined board of several professions, each member does not have a specific understanding of another's professional scope. This could create for confusion, erroneous assumptions, and unfair/unreasonable standards of practice being placed upon professions that are combined with professions with a higher level of competency/standards. This causes a burden on the profession and sets an unreasonable threshold of protection. Over protection of the public can be just as harmful as under protection, in that it unreasonably restricts public access to services.

In our experience, when we approached the Alternative Health Care Board during past licensing efforts, the midwives and naturopaths did not want massage therapists deciding issues affecting them due to scope issues, but did not feel the same about making decisions about massage therapy. This type of professional arrogance and the presumption of knowledge would be devastating to the practice of any emerging profession.

Board consolidation does not protect emerging professions from unreasonable regulation by already established professions.

Emerging professions board members on an already established board will not have as strong as a voice or will not be heard. The stronger professions tend to intimidate those board members of lesser background, lesser scope, lesser training, and lesser experience with board issues. Therefore the potential for turf battles will continue. Whereas if a board is constructed of members of one profession, everyone understands the scope of that profession and that board is not bound by outside feedback.

Board consolidation could exacerbate turf wars, not prevent them.

Internal bickering due to turf wars could create an impasse, therefore making boards less effective. These disputes could be more costly and create inefficiency.

Board consolidation with subgroups within boards creates another layer of bureaucracy and seems contrary to the whole point of consolidating boards.

It would be more cost-effective to create Consumer Advocacy Screening / Arbitration Panels. These two panels (one for health related issues, one for non-health related issues) would be set up to hear all sides of the "merits of the case" (or dispute) and make decisions/recommendations based on competency, rather than protectionism of turf. They would be required to take the time to learn about the facts of the issues presented, and take evidence based on that presented by the disputing parties.

To avoid bias and potential conflicts of interest, there should be a separate board for health related issues versus non-health related issues. In health related issues, consumers would NOT be health professionals or members of health boards – there is an inherent bias by health professionals toward other professions and health related issues. A minimum of 5 persons are needed to provide for good discussion and to bring more insight into the panel. In addition, there should be not more than one or two legislators on the panels. A legislator's presence would be helpful to provide insight into that process. It would be helpful to have members who have experienced both allopathic and naturopathic health care for those staffing the health care panel.

These panels could be used in two ways:

a) To screen legislation prior to the session to pre-arbitrate any differences between the professions, and to hear the "merits of the case" should there be any irreconcilable differences. They can then make recommendations to the legislature, which could adopt or reject those recommendations. It could even be required by statute that any legislation affecting professions must be heard by a screening panel first.
b) To hear disputes between boards and make decisions as to how these differences should be handled.

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December 5, 2005

SJ35 – Study Group 4 Response:

4) "address the role of a board's rulemaking authority and the oversight of a board's rulemaking to determine what policies may be necessary to improve implementation of legislative intent and the degree and the extent of the delegation of rulemaking authority to boards rather than to a department."

- According to **2-15-121(1)(a) MCA**, the board shall
  > "exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department"

  This means that rulemaking is under the purview of the Board and not the Department, and it should stay that way. Boards are responsible for writing and approving rules. The Department implements them based on direction by the Board.
- We are not familiar with the process whereby rules are made in Montana, and there has been some allusion that there is an issue that some boards do not know how to make rules without overstepping the statutes and legislative intent. It seems that if there is not already a mechanism in place, that there should be an independent review (much like when bills are submitted for Legal Review and Edit) to ensure that they are in keeping with the intent of the law. Since the Legislative Services Division is set up to do this for Legislation, either they or a comparable agency could do it for rules, before rules are adopted. Rules in conflict with the statutes as determined by this review could not be adopted.
- Rules that apply to all boards (such as those in Title 37 Section 1) could be drafted by the Department but should be approved by all the boards to ensure no conflicts. If conflict arises, then, those rules should be carefully looked at, negotiations for compromise reached, or exceptions to the rule allowed.

In short, the Department serves the Board, not the other way around.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

- Defining "public health, safety, and welfare issue"
  Meeting any **one** of the criteria should suffice.
  - The Definition should also include "common good"
    In *Board ABC's*, in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
    A definition needs to be developed for the term "common good." When licensing/creating a board for the profession, while the threshold of physical "harm" may be small or the other criteria may not be met, it is important to legislate in order to protect the existence of the profession. It is not done for the profession's sake, it is done to

protect the consumer by ensuring that the consumer has access to a wide variety of services at a reasonable cost. It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope. Such limits create state-sanctioned monopolies and drives up consumer costs, while decreasing the availability of services.

- "Health and Welfare" should include protection of access to a profession (with its commonly accepted scope of practice intact). Denial of services harms the public. Consumers should have the right to seek out health care from the provider of their choice, and have available to them the full scope of practice of that practitioner.

  As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scopes of practice as there is a perception that already licensed professions are harmed if new professions' scopes are allowed to overlap, *even if the national standards of the profession being limited include that competency*. We believe that the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting scopes of practice and limiting access limits the consumer's possibilities for health and healing and is therefore harmful.

  There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:

  1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
  2. Create competency-based scopes of practice that allow for overlap of scopes of practice. Boards and Licensure should be geared toward competency: if the professional is trained in that competency, then they should be able to perform that competency.
  3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.

- Protecting the public's health, safety, welfare and common good also includes granting Title licensure to "non-invasive" professions (such as massage therapy). Practice acts should be reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).
  - In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
  - We believe that a title act/ board serves the consumer/public and the profession by:
    1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
    2. defining standards so that consumers can be fully informed
    3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.

All of the following functions of board / licensing are important to the protection of the public.

With Regard to Licensure:

- licensure defines standards of practice, so that consumers can be fully informed as to what constitutes the standard
- licensure creates a mechanism for consumers to find "qualified" practitioners
- licensure provides a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.
- licensure defines (thus protects) the scope of practice of the profession which ensures consumer access to that profession

With Regard to a Board:

- There are the usual tasks performed by any board and they apply here as well. Boards are better suited to address these issues than delegating them to a non-professional or departmental employee:
    - Refuse to issue or renew or may suspend, revoke, censure, reprimand, restrict or limit the license of or fine anyone in violation
    - Adopt, amend and enforce rules consistent with the law relative to consumer health, safety and welfare
        - Establish minimum standards of practice and code of conduct via rulemaking
            - Establish and enforce criteria for professional standards and rules of conduct
    - Determine what is and is not unprofessional conduct
    - Establish and enforce criteria for continuing competence
    - Makes recommendations for further training, standards, education.
    - A Board provides a place for consumers to complain

While there are nationally accepted guidelines for massage therapists, there are still atypical types and forms of training, such as apprenticeships. A Board made up of professionals and consumers would be able to ensure that qualified persons are not overlooked due to atypical training, nor allow unqualified persons to become licensed because of lack of knowledge on the part of departmental personnel. Our understanding is that this happened with the nursing board recently. A Board would:

- Screen atypical applications
- Define what training is valid.

2) How do you think fees should be determined? (What are the basic costs? Should there be different levels of boards or programs to meet different costs?)

The BLMTB has no informed comment on this, although we tend to lean toward a "fee for service" scheme.

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SJ35 – Study Group 5 Response:

5) "provide policy considerations for the Legislature to use in reviewing creation of new boards."

- Such criteria should Not include any of the old Sunrise Criteria (2-8-204, MCA) that boards demonstrate that: "(1)(b) the scope of practice is readily identified and easily distinguished from the scope of practice of other professions and occupations;" and "(i) no other board licenses a similar or closely related occupation or profession".
  - Overlap of scope of practice is, in our opinion, the primary reason for opposition of new professional regulation (and/or legislative restriction of that new profession's scope).[1] We are adamantly against any resurrection of this type of language. If these criteria did not create the problem, it certainly has contributed to it and is particularly devastating to professions where such overlap exists. It is particularly harmful to Complementary and Alternative professions that are seeking recognition now.
  - Who would have thought 50-60 years ago that Complementary and Alternative Medicine (CAM) would be such the burgeoning industry? As such, professions that did not exist then now do, and they overlap with existing (licensed) professions. New professions will continue to emerge in the future. However, if the old sunrise criteria is re-adopted, the emergence of new professions will be impeded, and technologically, Montana will be left behind.
  - Professional scopes do overlap. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting access via adherence to outdated criteria limits the consumer's possibilities for health and healing and is therefore harmful.

- Emerging CAM professions should not be lumped under the Alternative Health Care Board (AHCB). It the same as saying that all health care professions such as nursing, occupational therapy, physical therapy and so on, should be regulated by the Board of Medical Examiners.
  - Lumping all CAM professions under this board undermines the legislative intent for creating the AHCB. When the AHCB was created, the legislative intent was to provide a mechanism for small professions to be able to afford a board by providing an umbrella board, not create a dumping ground for all CAM professions.
  - If the profession is large enough to sustain its own board, it should be allowed its own board. If the profession is not large enough to be self-sustaining for a reasonable cost for licensure, then put it under a "combined" board that is either the Alternative Health Care Board, or a "big board" that is in the CAM field most closely related.

[1] It was even mentioned in the report: *Board ABCs* in the *Overlapping functions/scope of practice/dual licensure* section: "Discussions ensued regarding … dual licensure for physical therapists trained as athletic trainers and **how much to limit the scope of practice to avoid conflicts with other healthcare practitioners** [our emphasis]. In the end, the discussions came too late in the legislative session to resolve all difficulties."

Suggestion: Restructure Licensing so as to have an Allopathic Medical Bureau/Division that provides oversight to all allopathic professional boards, and a CAM Bureau/Division that provides oversight to the AHCB and other emerging professional boards.

- Protection of the Public Criteria:
  Before determining the answer to any "public health, safety, and welfare issue, define what that means first. Determine what criteria must be met in order to protect the public. Meeting any **one** of the criteria (health, safety, welfare, common good) should suffice.
  - Criteria should include protection of the "common good"
    In *Board ABC's,* in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
    It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope.
  - Protection of access to a profession (with its commonly accepted scope of practice intact) is a public health issue.
    As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scope of practice because there is a perception that to license additional professions with overlapping or similar scopes can be harmful to already licensed professions. This bias can be found in the repealed sunrise statutes. (MCA 2-8-204 (2)(g)(ii)). This restriction of access is particularly harmful to Complementary/Alternative Medicine (CAM) professions, as these emerging professions are quashed before they are able to become established legally. Consequently, the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting access limits the consumer's possibilities for health and healing and is therefore harmful.
      There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:
      1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
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