

CB21-2017 Howard County Lacks Explicit Authority to Inspect Massage Registrations

JH joel hurewitz <joelhurewitz@gmail.com>
Today, 3:59 AM
CouncilMail

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Dear County Council,

While the County's objectives to stop illegal trafficking and prostitution are laudable goals, County officials and community advocates have from the inception expressed a lack of understanding of the technical details of the regulation of massage therapists and massage practitioners in the Maryland Health Occupations Code.

When the Police Chief and other members of the Police Department state that massage therapists and massage practitioners are "licensed" by the State, they do not realize that this not a technically correct statement. As discussed further below, massage therapists receive "licenses" while massage "practitioners" have registrations. When advocates cite the regulation of massage in Charles and Washington Counties, they show that they do not understand the regulatory and legal landscape. While Howard County has home rule with a charter, Charles and Washington Counties have more limited commissioner governments. Noticably, Charles County's ordinance has many similarities to the existing Howard County Code which CB21 repeals. In addition, there seems to be no evidence that Washington County ever enacted any local massage ordinance pursuant to the state enabling law. This has been confirmed by a search of county code and a phone call with the office of the County Attorney. See http://www2.washco-md.net/washco_2/pdf_files/legal/CPLL2007.pdf

I believe that the state enabling law for the massage regulation is flawed in that the County was not given explicit authority to inspect massage "registrations," and therefore risks, like the recent tasar prohibition, having it challenged one day by a defense attorney.

In addition CB21 seems to inaccurately use "practitioners" on line 5 of page 2 as a short-hand term for people who perform massage. Because "practitioners" is a legal term in the Health Occupations Code, it should be amended to "providers."

HB671 2016 gives Howard County the authority to confront illegal activity operating under the guise of massage establishments by inspecting and verifying massage **"licenses"**:

"(2) In Howard County, after consultation with the Board, the governing body may adopt ordinances or regulations relating to verification, inspection, and display of licenses issued under this subtitle."

Health Occupations Code §6-405

However, the Health Occupations Code makes a distinction between those "licensed" and those "registered:"

"§ 3-5A-01. Definitions

* * *

(d) License. -- "License" means, unless the context requires otherwise, a license issued by the Board to practice massage therapy.

* * *

(h) Registered massage practitioner. -- "Registered massage practitioner" means an individual who is registered by the Board to practice massage therapy in a setting that is not a health care setting.

* * *

(i) Registration. -- "Registration" means, unless the context requires otherwise, a registration issued by the Board to practice massage therapy in a setting that is not a health care setting."

* * *

As seen in the definitions, "registered massage practitioners" operate outside of health care settings. Generally the establishments which concern the Howard County Police operate outside of health care settings. Therefore, the omission of "registrations" from the law creates a possible enforcement issue and ambiguity for illegal activity to continue, by limiting the scope of Howard County's explicit authority to "licenses" but not "registrations."

The enforcement provisions for Charles and Washington Counties recognize the distinction between "license" and "registrations" and clearly give law enforcement the authority to inspect both licenses and registrations:

"(d) Charles County and Washington County. --

(1) In Charles County and Washington County, an individual may not perform a massage or offer to perform a massage on another person for compensation unless the individual who performs the massage or offers to perform a massage is a **licensed massage therapist or registered massage practitioner**.

(2) A law enforcement officer in Charles County or Washington County may demand proof of **licensure or registration**."

Health Occupations Code § 3-502. Misrepresentation (Emphasis added).

There are additional instances of the distinction between "licenses" and "registrations" from the Health Occupations Code including the following:

"§ 3-5A-04. License and registration required.

Except as otherwise provided in this subtitle, an individual shall be:

(1) Licensed by the Board before the individual may practice massage therapy in this State;
or

(2) Registered by the Board before the individual may practice massage therapy in a setting that is not a health care setting in this State."

"§ 3-5A-06. Qualification for license and registration."

"§ 3-5A-06.1. Issuance of license or registration.

(a) In general. -- The Board shall issue a license or registration to any applicant who:

(1) Pays a license or registration fee set by the Board; and

(2) Meets the requirements of this subtitle.

(b) Contents. -- The Board shall include on each license and registration that the Board issues:

(1) The seal of the Board; and

(2) The kind of license or registration."

Therefore, because of the clear statutory distinctions between "licenses" and "registrations" an amendment should be made to the Howard County provision in the state code to insert after Licenses "OR REGISTRATIONS." Without this clear authority, Howard County risks having the

whole regulation of purported massage establishments operating outside of health care settings thwarted by a legal challenge to its authority to inspect massage "registrations."

Sincerely,

Joel Hurewitz

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CB 21-2017, In Favor Of.

Keith Ohlinger <kohlinger05@verizon.net>

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Today, 7:22 AM

CouncilMail

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CB 21-2017, In Favor Of.

Keith Ohlinger
2790 Florence road
Woodbine, MD 21797

Dear Members of the County Council:

I was horrified to hear the testimony regarding this bill last month. I had no idea this was going on and I just cannot imagine the pain and suffering these women face. This needs to stop and this bill should be a great help to the authorities in shutting these places down.

As a farmer, I sustain many injuries both from normal wear and tear on the body and in handling animals far larger than myself. Over the past several years I have had several surgeries and injuries that required physical therapy, acupuncture, chiropractor adjustments, and massage. Massage is a huge benefit in recovery and prevention of these injuries. I believe this bill is important in preserving the integrity of the lawful establishments that help people every day. I urge you to vote in favor of this bill. As always, thank you for your time and consideration in this matter.

Very Truly Yours,

Keith Ohlinger
Heritage Hill Farm