

N.D.A.G. Letter to Larson (Nov. 3, 1986)

November 3, 1986

Mr. Stuart A. Larson
Traill County State's Attorney
P.O. Box 188
Hillsboro, ND 58045

Dear Mr. Larson:

Thank you for your opinion request regarding whether the practice of reflexology by a person not licensed as a massage therapist constitutes a violation of N.D.C.C. Ch. 43-25. I apologize for the delay in responding to you.

Enclosed is a research memorandum on your opinion request which was prepared by a member of my staff. Although it appears that the practice of reflexology may constitute body massage pursuant to N.D.C.C. Ch. 43-25, it is difficult to provide a definite answer to your question because we have no specific facts from an actual incident to which the statutes may be applied. In addition, upon researching the rather obscure topic of reflexology on WestLaw, only one case defining and explaining the practice of reflexology was found.

Whether reflexology constitutes the practice of massage may depend on witness testimony regarding what physical contact the reflexologist actually made with the patient. The determination may also vary depending on whether the practitioner used foot reflexology, hand reflexology, or body reflexology on the subject.

One of the difficulties in proving a criminal violation arises from the definition of massage therapist in N.D.C.C. §43-25-02(3), which defines massage therapy as "the art of **body massage . . . for the purpose of body massaging. . .**" A reflexologist may argue that the physical contact was made not for the purpose of massaging the body but for the purpose of massaging or triggering reflexes.

A private citizen who was interviewed by one of my staff members regarding reflexology asserted that the foot reflexology treatment which he had once received was substantially different than what he perceived a massage to encompass. Testimony such as this could make it difficult to obtain a conviction.

Because of the difficulty of determining whether the practice of reflexology by an unlicensed person constitutes a violation of N.D.C.C. Ch. 43-25 without a factual situation, the enclosed research memorandum has been prepared rather than a formal opinion. Hopefully, it will be useful to you in resolving your reflexology question when a specific incident occurs.

Finally, the Legislature may wish to amend the definition found at N.D.C.C. §43-25-02(3) so as to include the practice of reflexology.

Sincerely,

Nicholas J. Spaeth

cv
Enclosure