

COPY

IN THE CHANCERY COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

MARTHA STOWE and LAURIE
WHEELER.

Plaintiffs,

v.

THE TENNESSEE BOARD OF
VETERINARY MEDICAL
EXAMINERS; LISA LAMPLEY, in
her official capacity as Board
Director, R.A. TAI-FEDERICO,
ELIZABETH B. THOMPSON,
STEPHEN M. LADD, KIM D.
JOHNSON, KAREN S. WALSH,
ROBERT J. SIMPSON, and
BEVERLY ANN STRONG, in their
official capacities as members of
the Board.

Defendants.

Case No. 17-232-IV

JURY DEMAND

FILED
2017 MAR -9 AM 10:20
CLERK AND MASTER
DAVIDSON CO. CHANCERY CT.
BCM

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This civil rights lawsuit seeks to secure the constitutional right of Plaintiffs Martha Stowe and Laurie Wheeler to earn an honest living free from irrational, arbitrary, protectionist, and, frankly, silly regulations, as guaranteed by the U.S. and Tennessee Constitutions, and 42 U.S.C. § 1983.

2. Plaintiffs Martha Stowe and Laurie Wheeler are experienced and highly trained equine massage therapists. That is, they provide

therapeutic relief to horses using massage techniques. They practice a particular form of therapy called Myofascial Release ("MFR"), a safe and noninvasive technique that provides tremendous preventative care and relief to horses.

3. The Tennessee Board of Veterinary Medical Examiners (the Board) calls this illegal. It recently enacted a regulation that defined animal massage as a form of veterinary medicine. The Board then told Laurie she can be *jailed* by continuing to practice without a veterinary license, effectively crushing her career and causing her to work under a specter of fear unless they obtain a costly and useless veterinary degree.

4. Martha and Laurie do not and have never claimed to be veterinarians. They work with vets. Martha and Laurie inform their clients that the services they provide are not an adequate substitute for veterinary medicine.

5. This an is arbitrary and irrational regulation because veterinary schools do not require students learn animal massage and because many other practices that are far more invasive and dangerous are permissible as a routine livestock management practice.

6. By jeopardizing their ability to pursue an honest calling, the Board's requirement violates both the Tennessee and United States Constitutions. It should be enjoined from punishing Martha and Laurie for practicing veterinary medicine.

II. JURISDICTION AND VENUE

7. Martha and Laurie bring this civil action under Tenn. Code Ann. §§ 4-5-225, 29-14-101, *et. seq.*, and 42 U.S.C. § 1983 (LexisNexis 2016).

8. This Court has jurisdiction over their constitutional claims pursuant to Tenn. Code Ann. §§ 4-5-225, 16-11-101, *et seq.*, 29-1-101, and 29-14-101, *et. seq.* (LexisNexis 2016).

9. Venue is proper in this Court under Tenn. Code Ann. § 4-4-104 and Tenn. Code Ann. § 4-5-225 (LexisNexis 2016).

10. This Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief with the force and effect of a final decree pursuant to Tenn. Code Ann. §§ 4-5-225, 29-1-101 *et. seq.*, 29-14-102, 29-14-103, 42 U.S.C. § 1983, and Tenn. R. Civ. P. 65, *et. seq.* (LexisNexis 2016).

11. Also, under Tenn. R. Civ. P. 65.04(7), the Court may consolidate an injunction hearing and advance it with a trial on the merits in order to promote a speedy and efficient resolution.

III. PARTIES

12. Plaintiff Martha Stowe is a United States citizen and resident of Franklin, Tennessee, where she lives on a small farm, Blazer Farm, with her family of four (4). Her husband is a war hero but she is now the primary income earner through equine massage therapy. She is privately certified in equine massage therapy and has been practicing since 2009.

13. Plaintiff Laurie Wheeler is a United States citizen and resident of Franklin, Tennessee. She too is privately certified in equine massage and has been practicing since 2011. Laurie was licensed in (human) massage therapy in February 2016. So even though she can massage people, she faces criminal and civil sanctions if she massages a horse.

14. Defendant Tennessee Board of Veterinary Medical Examiners is empowered by the laws of the State of Tennessee to enforce the Tennessee Veterinary Practice Act including rules, examinations, licenses, and policy.

15. Defendant Lisa Lampley is the director for the Board. She has enforcement authority over the laws and rules propounded by the Board. She is sued in her official capacity only. She is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

16. Martha and Laurie also sue the members of the Board in their **official capacities only**, as the agents ultimately responsible for drafting the regulations pertaining to veterinary medicine, and carrying out the enforcement of the laws and regulations. At present, the voting, non-ex officio members are: R.A. Tai Federico, Elizabeth B. Thompson, Stephen M. Ladd, Kim D. Johnson, Karen S. Walsh, Robert J. Simpson, and Beverly Ann Strong. At all times pertinent, they were and are persons within the meaning of 42 U.S.C. § 1983 who were and are at all times relevant to this complaint acting under color of state law.

IV. STATEMENT OF FACTS

Equine massage

17. Animal massage is the practice of massage therapy on animals.

18. Equine massage is the practice of massage therapy on horses.

19. Through enactment of a recent regulation in 2012, the Board included massage therapy as a branch of veterinary medicine. *See* Tenn. Comp. R. & Regs. 1730-01-02(2) (LexisNexis 2016).

20. Prior to the change in the statute and creation of the new rule, the Board did not construe animal massage to be veterinary medicine.

Plaintiff Martha Stowe

21. MFR is a noninvasive massage therapy technique that involves the application of sustained but gentle pressure to various parts of the body.

22. MFR is performed on both animals and humans.

23. Martha learned about MFR when the technique relieved her of neck pain she had lived with since the age of seven (7).

24. Martha decided to learn the MFR technique because of the relief it provided her.

25. In June, 2007, and again, in March and August of 2011, Martha went through extensive training in MFR through a leading MFR treatment and training center, Motion for Life, that teaches MFR for humans and animals.

26. Martha had been practicing MFR on horses since approximately 2009.

27. In spring of 2009, Martha's husband, Kurt, an army reservist, was deployed for twelve (12) months to defend his country.

28. Equine MFR became her primary professional focus as she threw herself into work to distract her from worrying about her husband and make the time pass.

29. Sgt. Stowe served his country with distinction in support of Operation Iraqi Freedom, 2009-2010.

30. Since his honorable discharge, he has had sporadic employment and is now resuming his education.

31. Martha became and remains the primary source of income for the couple and their two (2) children.

32. Martha started a company, True Equine, in 2011 that offers equine related services, including massage therapy.

33. Equine massage was a significant, profitable and growing portion of Martha's livelihood and full-time occupation.

34. She advertised her businesses and services and maintains a website, www.true-equine.com, but otherwise relied on word of mouth referrals to grow her business.

35. Many of her clients come from veterinarian referrals.

36. Veterinarians make referrals to her because she can address conditions they cannot, or as an alternative before using drugs, or other more invasive procedures.

37. Martha practices MFR as preventative care and an alternative to more invasive veterinary procedures.

38. None of Martha's clients have ever complained to her or to any regulatory agency about the services she provides.

39. Neither have any of the veterinarians with whom she works.

40. In fact, the aforementioned veterinarians have stated that they do not know how to perform these procedures, never learned them in veterinarian school, and/or have no interest in learning.

41. Martha is not a licensed veterinarian.

42. Martha has never held herself out to be a licensed veterinarian.

43. Martha always notifies her clients that she is not a veterinarian.

44. Martha has and will continue to ask her clients who their veterinarians are and what care they have received from their veterinarians so as to compliment, not replace, a veterinary professional.

45. She has and will continue to refer clients to veterinarians when she believes her techniques are not adequate to address a condition.

Plaintiff Laurie Wheeler

46. Laurie was a long-time professional jazz musician.

47. Her career path took a turn when she began to care for an abandoned horse named Jazz that she found, starving and neglected, in a field.

48. She still owns and cares for Jazz.

49. Jazz had very serious medical conditions.

50. After Laurie began to board Jazz with Martha, Martha began treating Jazz with MFR.

51. Martha's technique provided tremendous relief and benefit to Jazz.

52. Excited over its potential, Laurie decided to learn MFR.

53. Laurie also went through extensive training in MFR through Motion for Life in March and August of 2011.

54. Laurie also trained under Martha at her farm.

55. Laurie was never paid for her work at Martha's farm.

56. Laurie decided to become a Licensed Massage Therapist so she could perform MFR on people and horses, and she completed the required prerequisites.

57. Laurie became a Licensed Massage Therapist on February 23, 2016.

58. None of her clients have ever complained to her about her services.

59. Laurie is not a licensed veterinarian.

60. Laurie does not believe her care is a substitute for veterinary care and would refer clients to a veterinarian if the client had a condition she could not treat.

Tennessee Statutory and Regulatory Requirements

61. The rules and regulations promulgated by the Board governing veterinarians did not include “massage therapy” within the express scope of “the practice of veterinary medicine” until the Board submitted 2012 TN Regulation Text 11261 as a proposed rule change in 2012.

62. The Board pushed to redefine veterinary medicine after it lost the 2009 case, *Cady v. Tennessee Board of Veterinary Medical Examiners*, No. M2008-02551-COA-R3-CV, 2009 Tenn. App. LEXIS 597 (Tenn. Ct. App. Aug. 27, 2009), striking down part of the Board’s regulation defining veterinary medicine to include artificial insemination and pregnancy testing. The decision ruled that the Board exceeded its legislative mandate.

63. At the 2010 legislative session, legislators worked to amend the definition.

64. On March 9, 2010, Deputy Speaker McDaniel stated that the language in the proposed bill was “agreed to by the Veterinarians Association and Farm Bureau” and others.

65. Massage therapy was not mentioned at the legislative debate.

66. Megan Fraiser, a representative from the Tennessee Veterinary Medical Association, assured lawmakers that “essentially” the entire amendment focused on pregnancy testing.

67. The “[p]ractice of veterinary medicine” is now defined as follows:

(i) Diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode, including:

(a) The prescription, dispensing, administration or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical, including cosmetic, technique;

(b) The use of complementary, alternative, and integrative therapies;

(c) The use of any manual, mechanical, biological, or chemical procedure for the testing of pregnancy, or for the management or treatment of sterility or infertility;

(d) The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to subdivisions (10)(A)(i)(a)-(c); and

(e) The collection of blood or other samples for the purpose of diagnosing disease or other conditions.

T.C.A. § 63-12-103 (LexisNexis 2016).

68. Shortly thereafter, in 2012, the Board enacted a rules change that included massage therapy as a branch of veterinary medicine. *See* Tenn. Comp. R. & Regs. 1730-01-.02(2) (LexisNexis 2016).

69. The regulation defines “[m]assage,” as “[t]he systematic therapeutic friction, stroking, and kneading of the animal body for the treatment, correction, alleviation or prevention of any animal disease, illness, pain, deformity, defect, injury, or other physical or mental conditions.” Tenn. Comp. R. & Regs. 1730-01-.01(25) (LexisNexis 2016).

70. The Board treats animal massage therapy as the practice of veterinary medicine requiring a veterinary license.

71. Any person who practices veterinary medicine without a license is guilty of a Class B misdemeanor. Tenn. Code Ann. § 63-12-119 (LexisNexis 2016).

72. If the Board determines that an unlicensed person is engaging in the practice of veterinary medicine, it has the power to issue disciplinary or cease-and-desist orders, request criminal charges, seek an injunction, impose civil penalties of \$1000 per violation, and assess the costs of any disciplinary proceedings. Tenn. Code Ann. §§ 63-12-128, 130, 132 (LexisNexis 2016); Tenn. Comp. R. & Regs. 1730-01-.15 (LexisNexis 2016).

73. Employees of a veterinarian can perform “auxiliary or supporting assistance” so long as that person is under the “responsible supervision” of a licensed veterinarian. Tenn. Code Ann. § 63-12-133(a)(6) (LexisNexis 2016).

74. The Board does not consider “responsible supervision” as requiring the supervising veterinarian be physically present on the premises and actually overseeing an unlicensed person while services are being performed.

75. Operations such as castration and dehorning are not regarded as practicing veterinary medicine and may be performed by an unlicensed person. *See* Tenn. Code Ann. § 63-12-133(b) (LexisNexis 2016).

76. Artificial insemination is an accepted livestock management practice and not the practice of veterinary medicine. *See* Tenn. Code Ann. § 63-12-133(c); Tenn. Comp. R. & Regs. 1730-01-.03(1)(c) (LexisNexis 2016).

77. The removal of an embryo from livestock or companion animal for the purpose of transplanting it into another animal or for the purpose of cryopreservation is not the practice of veterinarian medicine. *See* Tenn. Code Ann. § 63-12-103(10)(A)(i)(e)(2) (LexisNexis 2016).

78. Administering an over-the-counter drug, medicine, or biologic is an accepted livestock management practice and not the practice of veterinarian medicine. *See* Tenn. Comp. R. & Regs. 1730-01.03(1)(a) (LexisNexis 2016).

79. Upon information and belief, shoeing a horse is an accepted livestock management practice and not considered to be the practice of veterinarian medicine.

80. Implanting a frozen embryo into livestock other than equines is an accepted livestock management practice and not the practice of veterinary medicine. *See* Tenn. Comp. R. & Regs. 1730-01.03(2)(c) (LexisNexis 2016).

81. Clipping needle teeth of livestock other than equines is an accepted livestock management practice and not the practice of veterinary medicine. *See* Tenn. Comp. R. & Regs. 1730-01.03(2)(f) (LexisNexis 2016).

82. The above-listed practices, like animal massage, do not require a veterinary license to be safely and competently provided, even if they do require specialized instruction and training.

83. In Tennessee, individuals do not have to be licensed as medical doctors to practice massage therapy on humans.

84. Tennessee requires individuals to obtain Massage Therapist Licenses before practicing massage therapy on humans.

Tennessee's Veterinary License.

85. To obtain a veterinary license in Tennessee, an applicant must graduate from a Board-approved veterinary school, pass both national and state licensing exams, and pay a non-refundable fee. *See* Tenn. Code Ann. § 63-12-112(b); Tenn. Comp. R. & Regs. 1730-01-.06 (LexisNexis 2016).

86. The American Veterinary Medical Association (AVMA) is the principal accrediting body for veterinary schools in the United States.

87. The AVMA's website lists only approximately thirty (30) schools in the United States with accreditation status, meaning that they meet AVMA standards.¹

88. AVMA-accredited veterinary schools require that students be taught over a minimum period of four (4) academic years.

89. The AVMA's accreditation standards require neither mandatory nor elective courses in animal massage.

¹https://www.avma.org/ProfessionalDevelopment/Education/Accreditation/Colleges/Documents/colleges_accredited.pdf (last viewed Mar. 6, 2017).

90. The AVMA's accreditation standards do not require graduates of AVMA-accredited veterinary schools to demonstrate knowledge of, or proficiency in, animal massage.

91. Only two schools in Tennessee offer Board-approved programs where one may obtain a Doctorate of Veterinary Medicine: University of Tennessee, Knoxville, and Lincoln Memorial University.

92. Neither the University of Tennessee nor Lincoln Memorial University appear to require students learn massage therapy.

93. The University of Tennessee states on its website that tuition and fees for the 2014-2015 academic year totaled \$25,240.

94. The University of Tennessee states on its website that it admits approximately eighty-five (85) applicants to their four (4) year program.

95. Lincoln Memorial University estimates on their website that the total cost of attendance for a 1st year student for the 2016-2017 year was \$69,953.

96. The veterinarians with whom Martha works have told her that they did not learn animal massage techniques in veterinary school and would not know how to perform equine massage therapy.

**The Board Requires Laurie and Martha
Obtain a Veterinary License**

Laurie Wheeler

97. Before she could apply for a license to practice massage therapy on people, Laurie had to submit a letter of recommendation to the Board of Massage Licensure.

98. The veterinarian who recommended Laurie said he had witnessed the care and commitment she demonstrated to the horses she treated.

99. On February 18, 2016, personnel at the Board of Massage Licensure told Laurie that a complaint had been filed for practicing veterinary medicine without a license because of the letter of recommendation.

100. Concerned, that same day Laurie spoke with Lisa Lampley, Director of the Board, who confirmed a complaint had been filed with the Board's Office of Investigation.

101. Ms. Lampley told her the complaint was "confidential" and denied Laurie a copy for her to inspect.

102. Laurie explained that she had been a volunteer, and had never worked for pay.

103. Ms. Lampley then replied that the complaint had not yet been filed.

104. On April 25, 2016, the Board of Veterinary Medical Examiners sent Laurie a letter informing her that she had been practicing veterinary medicine without a license by massaging horses.

105. Laurie filed a formal public records request with the Board, asking to see the complaint filed against her.

106. Her request was denied on June 7, 2016. The attorney for the Board maintained, "this information was confidential under T.C.A. § 63-1-117(f) and is not available for public inspection."

107. Laurie emailed again, asking if the Board would consider allowing her to petition to change the rules because she thought the restriction seemed unconstitutional. She also asked what the consequences were for massaging without a license.

108. On July 18, 2016, the Board attorney replied:

It is the Board of Veterinary Medical Examiners' opinion that under the Veterinary Practice Act, T.C.A. 63-12-101 et seq., only veterinarians and persons working under the responsible supervision of veterinarians can massage animals. It is a Class B misdemeanor to engage in the unlicensed practice of veterinary medicine. It wouldn't help to petition the Board, as the definition of 'practice of veterinary medicine' and the prohibition against unlicensed practice are statutory.

109. On October 25, 2016, Laurie emailed the Board attorney again. She notified him that all her work under Martha went uncompensated, and she wanted to know if it would still be illegal.

110. That same day, the Board attorney told her that there were "no exceptions," even for uncompensated care, and that it had "never come up."

Martha Stowe

111. On April 25, 2016, the Board also sent Martha a letter notifying her that it viewed her as illegally practicing veterinary medicine by massaging horses and advertising services on her website, www.true-equine.com.

112. By April 25, 2016, equine MFR constituted a large and growing portion of True Equine's business.

113. Martha disabled her website after receiving the April 25, 2016 letter.

Injuries to Martha and Laurie

114. For months after they received the letter, Martha and Laurie ceased performing equine massage therapy.

115. When the financial pressure became too great, they quietly resumed with a limited clientele.

116. Each day Martha and Laurie provide animal massage services, each is under the threat of imposition of criminal and civil penalties, as well as the threat to have their work enjoined, because of the Board's power to impose such penalties against individuals engaging in the unlicensed practice of veterinary medicine.

117. Martha and Laurie are proficient in animal massage, and both have devoted substantial time and effort into cultivating their skills.

118. Martha and Laurie have not the inclination, money, time, or ability to become licensed veterinarians.

119. To get a license, Martha and Laurie would have to get accepted to one of the few schools offering a veterinary degree, move, pay over a hundred thousand dollars, stop working for at least four (4) years, suffer the loss of regular income, pass the necessary examinations, and pay fees.

120. Martha and Laurie do not wish to become employees of a veterinarian and share the proceeds with someone who will not contribute to their ability to provide a quality service. They do not wish to submit to the business control of another. And working as an employee of a particular veterinarian would limit their clientele because not all of their clients wish to use the same veterinarian.

121. The current regulatory environment limits entry into the animal massage occupation to those who can spend years of their lives and hundreds of thousands of dollars on classes and exams that do not teach massage. Animal massage therapists, like Martha and Laurie, are thus forced to take classes in material they do not wish to learn in order to employ a skill that they already know.

122. No Tennessee license is rationally related to the specialized work done by animal massage therapists, as there are with human massage. Limiting animal massage to licensed veterinarians is akin to requiring a medical degree to massage a person.

123. The primary effect of the Board's animal massage regulation is to arbitrarily restrict entry into a safe occupation and exclude competition.

124. The inability to practice has taken a significant financial toll on Martha and Laurie and deprived the equine community of a valuable service that addresses the suffering of animals.

125. Equine massage therapy is a growth market.

126. Equine massage therapy is very much a word of mouth business. The loss of opportunity to enrich their reputations is an ongoing harm that could well be irreparable the longer Martha and Laurie are unable to participate as the market becomes more and more competitive.

Injury to Martha

127. Martha invested significant resources into her business, True Equine.

128. Martha has a family with children to provide for financially.

129. She is the primary caregiver.

130. She is a business owner who is losing the economic and opportunity value of developing her business.

131. Martha is unable to advertise her services online to a broader clientele.

132. Many people, including former clients and veterinarians, have contacted her about obtaining therapy.

133. For months, she turned them down.

134. Now, she limits her clientele to ones she trusts but lives in fear that the Board will find out.

Harm to Laurie

135. Laurie is entering a second career later in life so she needs to make up ground.

136. Laurie invested a great deal of money on her education that she now cannot recoup through income.

137. She is currently fielding many inquiries for her services.

138. For months, she turned away all the prospective clients.

139. Now she limits her clientele to ones she trusts but lives in fear of the Board finding out.

V. CLAIMS

A. Count One - Tennessee Constitution, Article I, Section 8 – Law of the Land Clause (Right to Earn a Living)

140. Martha and Laurie incorporate and re-allege the allegations in this complaint as though set forth in this section

141. Article I, Section 8 of the Tennessee Constitution provides that “no man shall be . . . disseized of his freehold, liberties or privileges . . . or in any manner destroyed or deprived of his life, liberty or property, but by judgment of his peers, or the law of the land.”

142. The right to earn an honest living is protected by this constitutional provision. So important is it that the Tennessee Supreme

Court has described it as a fundamental right. *See Livesay v. Tenn. Bd. of Examiners in Watchmaking*, 322 S.W.2d 209 (Tenn. 1959).

Equine massage is too innocuous to license

143. Animal massage therapy presents no significant health and safety risk to the animal or practitioner.

144. Animal massage therapy presents no more risk than rubbing a pet on the couch.

145. Equine massage therapy presents no more risk than other sorts of innocuous occupations surrounding horse maintenance, such as a groom, farrier, or hostler.

146. The public was not harmed when animal massage was not subject to licensure, as was the case until the recent enactment of animal massage regulation.

147. The Board indicated that it had no knowledge of ever taking a board action regarding animal massage at its meeting on December 1, 2016,.

148. The informed opinions of relevant professionals are that equine massage is harmless to both animal and practitioner, because, done incompetently, it cannot physically harm the animal, public, or practitioner.

149. Neither the lawmaking nor rulemaking process reflected any consumer-driven or evidence-based safety concern.

The animal massage regulation is not rationally related to any legitimate interest

150. Animal massage is distinct from veterinary medicine and the rules and laws surrounding veterinary medicine do not have anything to do with animal massage.

151. Requiring Martha and Laurie to move, spend four years and \$100,000 (or more) obtaining veterinary licenses and enrolling in classes (only a tiny fraction of which could in any way be relevant to animal massage) while failing to require any instruction or training in the practice of animal massage does not rationally advance any legitimate public health and safety concerns.

152. The license requirement serves the actual purpose of providing a valuable economic benefit to licensed veterinarians in this potentially lucrative field.

153. By allowing Martha and Laurie to practice equine massage under the “responsible supervision” of a vet, even when the vet is not present or actively supervising them, or even has no training in massage therapy, the licensure scheme only awards economic benefits to veterinarians who are providing no actual benefit.

154. With no actual safety concern that prompted the animal massage regulation, the actual purpose of the regulation was protectionism.

155. The legislative record shows that veterinary trade groups drafted and lobbied for the bill.

156. Protectionism is not a legitimate governmental interest.

Effect of the regulation as a whole

157. Even assuming, *arguendo*, that the requirement that a person obtain a veterinary license to practice equine massage has any tendency to further a legitimate state interest, the effect of the requirement as a whole is so unreasonably burdensome that it becomes oppressive in relation to the underlying governmental interest.

158. The vast majority, if not the entirety, of the required veterinary educational program and the Board's testing for veterinarians has little if anything to do with animal massage.

159. Whatever benefit the public derives is grossly out of proportion with burdens placed on Martha and Laurie.

B. Count Two-U.S. Constitution, Fourteenth Amendment (Due Process; Privileges and Immunities)

160. Martha and Laurie incorporate and re-allege the allegations in this complaint as though set forth in this section.

Due Process

161. Under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, states cannot deprive individuals of "life, liberty, or property, without due process of law."

162. Economic measures must be rationally related to a legitimate governmental interest.

163. Requiring Martha and Laurie to attend veterinary school and enroll in classes (only a tiny fraction of which could in any way be relevant to animal massage) while failing to require any instruction or training in the practice of animal massage does not rationally advance any legitimate public health and safety concerns.

164. As explained above, the regulation provides economic benefits to licensed veterinarians but fails to address any actual legitimate governmental interest.

165. The actual interest advanced is protectionism.

Privileges or Immunities

166. The Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.” U.S. CONST. amend. XIV § 2. This clause protects the right to earn a living in the occupation of a person’s choice subject only to reasonable government regulation.

167. The regulation defining animal massage as veterinary medicine arbitrarily and unreasonably impairs Martha and Laurie’ ability to pursue their chosen livelihood by forcing them to obtain a license that is unrelated to their occupation and subjecting them to fines and penalties, thus threatening their existence, profitability, and the potential growth of their business in

violation of the privileges or immunities guarantee of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

C. Count Three-Violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution and the Fourteenth Amendment to the U.S. Constitution (Equal Protection).

168. Martha and Laurie incorporate and re-allege the allegations in this complaint as though set forth in this section.

169. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV § 1 Tennessee’s constitutional guarantees of equal protection are found in two different clauses of the state constitution. The first is found in Article I, Section 8. The second is found in Article XI, Section 8.

170. By unreasonably and arbitrarily including animal massage within the definition of veterinary medicine, Defendants have subjected Martha and Laurie to the expensive and difficult requirement of becoming fully licensed veterinarians while exempting other routine animal health and maintenance practices from similar licensing requirements.

171. Because they all engage in activities requiring specialized education and hands-on knowledge, but do not require the full panoply of veterinary licensing requirements in order to provide the services safely, animal massage therapists are similarly situated to those engaging in:

- A. castration,
- B. dehorning,

- C. manually or mechanically artificially inseminating animals,
- D. removing or transplanting embryos,
- E. administering over-the-counter drugs/medicines/biologics,
- F. horseshoeing,
- G. implanting embryos in non-equines, like mules and,
- H. clipping needle teeth of non-equines like mules.

172. Equine massage therapists are treated differently than those engaged in these routine livestock management practices outlined above in that only they are required to obtain the costly and time-consuming veterinary license.

173. Defendants' regulation defining veterinary medicine as including animal massage treats animal massage as though it were veterinary medicine, when animal massage is in fact a distinct practice.

174. Laurie has been deprived of the protection of the Equal Protection Clause because although she is permitted to practice massage therapy on people, she may not do so on horses — a distinction that is without any legitimate justification.

175. The requirement that Martha and Laurie be Board-licensed veterinarians before practicing massage techniques on horses, while failing to require that a person become a licensed veterinarian before engaging in any of the above-listed practices, deprives Martha and Laurie of the equal protection of laws because it bears no rational relationship to any legitimate state interest to treat their practice differently from these others.

176. The only governmental interest is to licensed veterinarians from competition in a growing and potentially lucrative trade, an illegitimate interest.

VI. Request for Relief

177. Martha and Laurie request of this Court the following relief:

A. The entry of a declaratory judgment that deems the inclusion of massage therapy in Tenn. Comp. R. & Regs. 1730-01-.02(2) unconstitutional under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 8 of the Tennessee Constitution;

B. An order permanently enjoining the Board, their agents, and their employees from enforcing Tenn. Comp. R. & Regs. 1730-01-.02(2);

C. Award attorneys' fees and costs in this action pursuant to 42 U.S.C. § 1988, and;

D. Such other relief as the Court deems just, equitable, necessary and proper.

Dated: March 9, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Counsel	Counsel for	Via
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Dated: March 9, 2016.

Respectfully submitted,



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