

BACKGROUND PAPER FOR THE CALIFORNIA MASSAGE THERAPY COUNCIL

Joint Oversight Hearing, March 10, 2014

**Senate Committee on Business, Professions and Economic
Development
and
Assembly Committee on Business, Professions and Consumer
Protection**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE CALIFORNIA MASSAGE THERAPY COUNCIL**

BRIEF OVERVIEW OF THE CALIFORNIA MASSAGE THERAPY COUNCIL

The California Massage Therapy Council (CAMTC) is a nonprofit organization responsible for the voluntary certification of massage practitioners and massage therapists. The certification law was initially enacted by SB 731(Oropeza) (Chapter 384, Statutes of 2008). Because certification is voluntary, non-certified individuals may provide massage services in accordance with local rules and regulations, while establishments with certified professionals are exempted from certain local land use and regulatory decisions, such as needing to obtain a special permit or license to practice massage, requiring additional restroom or shower facilities that are not required of other personal service professions, or other land use restrictions that are more restrictive than those applied to all other businesses. SB 731 created the governing certification entity the Massage Therapy Organization which was renamed CAMTC by AB 619 (Halderman) Chapter 162, Statutes of 2011. All further references in this background paper will be to CAMTC. This is CAMTC's first sunset review.

How the regulation of massage therapy began:

On January 6, 2005, the issue of whether California should establish state-level regulation of massage therapists from the local level to the state level and what type of regulatory oversight should be provided was submitted for review by the former Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee). This submission was part of a "sunrise review" process which provided that any new proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of practice, or create a new licensing board would be referred to specified standing committees of the Legislature. Members have not been appointed to the Joint Committee since 2006.

The Joint Committee found that massage therapy was "regulated in California by a chaotic mish-mash of local vice ordinances primarily aimed at controlling illicit 'massage parlors.' In essence, the current system seeks to regulate illegal activity in the guise of professional licensing." The Joint Committee concluded that the current system failed to serve either the public or the profession and that it would be

appropriate to regulate massage therapy at the state level in order to create a more uniform standard. On April 12, 2005, the Joint Committee issued its recommendation that the regulation of massage therapists should be shifted from local jurisdictions to a state-based approach.

The recommended regulatory regime for massage therapy was modeled after regulatory regimes for tax preparers (Business and Professions Code (BPC) Section 22250, *et seq.*) and interior designers (BPC 5800 *et seq.*) which provide for statutorily created non-profit corporations that have the authority to certify qualified individuals in their respective professions. The reasoning for selecting this model over another model, such as the more traditional board or bureau, is not known.

The Role of CAMTC:

The Massage Therapy Act implements a voluntary title act rather than a mandatory practice act. There is an important distinction between regulations which require licensure and those which protect a professional title. Statutes regulating professions in California generally fall into two categories: a "practice act," or a "title act." A "practice act" regulates the duties, responsibilities and scope of practice that a licensee can perform upon meeting specific educational, experiential or training requirements. A "title act" simply regulates the use of the title an individual may use in practice. In order to be permitted to use a title, a state may require proof that an individual has a certain level of experience or education relevant to the particular title being regulated.

BPC 4606 makes it an unfair business practice for a person to use the term "certified massage practitioner" or "certified massage therapist" or any other term, such as "licensed," "registered," "CMP," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without being certified by CAMTC.

CAMTC-certified professionals are recognized throughout California to provide massage services but may still be subject to certain local ordinances and business regulations. Current law permits cities or counties to adopt local ordinances regarding inspection authority, reasonable health and safety standards, and background checks for owners and operators owning 5% or more of a business. For individuals who are not certified by CAMTC, local jurisdictions may regulate those businesses as they wish. The law also authorizes CAMTC to deny applications and discipline certificate holders by revoking or suspending an individual's certificate.

CAMTC is currently comprised of nineteen board members (Board) who are appointed by various entities including massage trade associations, massage schools, individual bodywork and massage professionals, the League of California Cities, the Department of Consumer Affairs (DCA), the California State Association of Counties, the Association of Private Sector Colleges and Universities, the California Association of Private Postsecondary Schools and the Board itself. Currently, CAMTC has one Board member vacancy.

CAMTC's objective is to "protect the health and safety of California consumers by promoting and enforcing laws and protocols that serve the public and certified massage professionals."

CAMTC's bylaws state that "the specific purpose of the corporation is to provide certification for massage therapists and to advance public education regarding the massage therapy profession in California as a quasi-public body pursuant to the authority granted in the Code for the benefit of the public."

CAMTC's mission statement is:

To protect the public by certifying qualified massage professionals in California.

CAMTC is a private 501(c)(3) nonprofit corporation and currently does not receive any monies from the State. BPC 4600.5 provides for the certification program to be administered by CAMTC; however existing law does not provide for start-up funding, legal support or administration of the program. According to CAMTC, its genesis began when representatives of the California Chapter of the American Massage Therapy Association (AMTA-CA) and Associated Bodywork and Massage Professionals (ABMP) began meeting in October 2008, to establish the “Massage Therapy Organization.” The legislative advocates for these two associations provided the initial advisory support in order to form the organization.

Although the establishment of CAMTC and the laws pertaining to the voluntary certification of massage therapy is less than five years old, there have been numerous legislative changes pertaining to the certification process, the composition of the CAMTC Board, and the general role of CAMTC. California legislation pertaining to CAMTC and the certification of massage professionals are as follows:

SB 294 (Negrete-McLeod) Chapter 695, Statutes of 2010, changed the sunset dates on various boards, bureaus, and program within the DCA, including CAMTC, from 2016 to 2015.

SB 285 (Correa) Chapter 149, Statutes of 2011, made it a misdemeanor to provide a certificate, diploma or other document, or otherwise affirm a person has received instruction in massage therapy, knowing the person has not received training "consistent with that document or affirmation" and provided that when a person is prosecuted for a crime in connection with massage therapy, including crimes relating to prostitution, the arresting law enforcement agency may provide information to CAMTC concerning the person's massage therapy training, including the name of any school attended by the person.

AB 619 (Halderman) Chapter 162, Statutes of 2011, changed the name of the governing entity from MTO to CAMTC and made a number of clarifying, conforming and technical changes to the Massage Therapy Act regarding the approval of schools, reimbursement of costs incurred by CAMTC for denying a massage certificate or disciplining a certificate holder, the advertising and display of the massage certificate, and the granting of a conditional certificate.

SB 1238 (Price) Chapter 655, Statutes of 2012, made a number of substantive, clarifying, conforming and technical changes to the Massage Therapy Act regarding the approval of school credit hours and the examination and training requirements for purposes of certification; the grounds for suspension, denial or revocation of certification of the certificate holder; the sharing of information between local law enforcement and CAMTC; the responsibility of owner/operators of massage businesses for conduct of employees or their independent contractors and background checks of owner/operators; and, the ability for cities to restrict the operation of massage businesses involved in prior criminal activity.

AB 1147 (Gomez) of 2013 in its current form seeks to revise the qualifications for a certified massage practitioner by requiring applicants to pass a massage and bodywork competency

examination. This bill is currently pending in the Senate Business, Professions and Economic Development Committee.

CAMTC's authorizing statute called for the program to be administered by a nonprofit organization which did not exist at the time the law was enacted. The only mandate for the organization was that it needed to be a tax exempt organization under section 501(c)(3) of the Internal Revenue Code.

History of the certification process:

CAMTC currently certifies both massage practitioners and massage therapists. Up until January 1, 2012, CAMTC also offered a Conditional Certified Massage Practitioner certification. According to CAMTC, the first certifications were issued on September 15, 2009. CAMTC states that it processed 10,835 applications throughout 2009, the first year the law took effect. CAMTC subsequently processed 13,468 applications in 2010, 13,842 in 2011, and 10,792 in 2012. As reported in its Sunset Review Report 2013, CAMTC received an average of 200 new applications per week through September of 2013, and projected to process approximately 10,400 new applications by the end of 2013.

Certificates for Massage Practitioners and Massage Therapists are valid for two years, at which time certificate holders are required to apply for recertification. According to CAMTC, in September of 2011, the recertification process began for those massage professionals certified in 2009. CAMTC processed 2,403 recertification applications in 2011 and 10,962 in 2012. According to CAMTC's Sunset Review Report 2013, CAMTC projected the number of applications for recertification to be in excess of 7,000 for 2013.

CAMTC reports that since August of 2009, it has processed more than 80,000 new and recertification applications and oversees approximately 43,000 active certified massage professionals. At this time, CAMTC does not certify or regulate massage businesses, establishments or business owners, other than sole proprietors who obtain certification to practice.

In total, CAMTC states that it has certified more than 7,600 Certified Massage Practitioners, 35,000 Certified Massage Therapists, and 2,94 Conditional Certified Massage Practitioners. Each level of certification has specific education and testing requirements.

Certified Massage Therapists are required to obtain at least 500 hours of massage education. A minimum of 250 hours must be from approved schools, and the remaining 250 hours may be secured either from approved schools, or from continuing education providers. Presently, CAMTC accepts continuing education from providers approved by DCA or the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB). CAMTC retains the right to review the legitimacy and relevance of continuing education courses. An alternate pathway to become a Certified Massage Therapist requires applicants to have at least 250 hours of massage education, which shall not be online or distance learning and must include 100 hours in specified curriculum subjects and passage of an approved examination.

Certified Massage Practitioners must have at least 250 hours of massage education, including 100 hours in anatomy and physiology, contraindications, health and hygiene, and business and ethics. The education must be obtained at an approved school, and may not be online or distance learning.

CAMTC also offered a Conditional Certified Massage Practitioner (CCMP) certificate for an applicant who had not completed the required 250 hours of education. A CCMP designee is required to provide evidence of completing a minimum of 30 hours of continuing massage education each year, which cannot be online or distance learning, until the massage education totals 250 hours. Once an applicant has completed a minimum of 250 hours of massage education, the applicant may be eligible to apply for certification as a massage practitioner. Originally designed as a form of "grandfathering" to include experienced professionals already in practice, CCMP certification was no longer available as of January 2, 2012. However, for current CCMP certificate holders, recertification applications and the completion of the specified educational requirements will continue to be accepted until December 31, 2016.

In 2009, the Board approved the use of the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB); the National Certification Exam for Therapeutic Massage (NCETM); and, the Massage and Bodywork Licensing Exam (MBLEx). CAMTC may accept the passage of one of the approved examinations as a means to verify education from schools that have closed or as additional proof of adequate education. CAMTC reports that 43 states, the District of Columbia and Puerto Rico require at least one of the above examinations.

The Massage Industry:

Massage professionals treat clients by using touch to manipulate the soft-tissue and muscles of the body. Massage therapy may be used to relieve pain, rehabilitate injuries, reduce stress, increase relaxation, and enhance the general wellness of clients. Massage professionals work in a variety of settings, including private offices, spas, hospitals, fitness centers and shopping malls.

The American Massage Therapy Association's 17th annual consumer survey from October 2013 reported that 75% of a random sample of individuals surveyed claim their primary reason for receiving a massage in the past 12 months was medical (43%) or stress (32%) related. Medical reasons include pain relief, soreness, stiffness or spasms, injury recovery, migraines, prevention, and general well-being. It reported that 88% of respondents viewed massage as beneficial to overall health and wellness and believe massage can be effective in reducing pain, with 24% saying that they have used massage therapy for pain relief.

According to the Bureau of Labor Statistics, employment of massage professionals nationwide is projected to grow 23% from 2012 to 2022, which is much faster than the average growth for all occupations. According to the survey fact sheet, more people are turning to massage therapy to assist with medical conditions. The survey reported 56% of people received a massage for one or more of the following reasons: soreness, stiffness or spasms, to relieve or manage stress, for prevention or to improve quality of life, injury recovery or rehabilitation, to keep fit or healthy/ maintain wellness, or to control headaches or migraines. Additionally, 39% indicated that medical benefits would be their primary motivation for having a massage.

As of March of 2013, 44 states regulate massage therapy at the state level. 40 states require licensure for massage therapy professionals and four states (California, Colorado, Indiana and Virginia) require a certification or registration. Of those 44 states with regulatory requirements, 30 have had state oversight for over 15 years. As of March 2013, six additional states have introduced or drafted legislation to regulate massage therapy professionals. State requirements for licensure and certification vary based on hours of education, continuing education and the requirement of an examination. For

example, New York requires 1000 hours of education, 36 hours of continuing education every three years and the passage of a state examination; Nevada requires 500 hours of education, 12 hours of continuing education annually, and the passage of a specified national examination; and Arizona requires 700 hours of education, 25 hours of continuing education every two years and the passage of a specified national examination.

It should be noted that this Background Paper avoids use of the term "massage parlor," which is viewed by the massage profession as a dated and pejorative term suggesting a place associated with prostitution. The more appropriate term used here to describe a place where the profession of massage therapy is practiced is a massage business or massage establishment.

Board Membership and Committees:

The initial Board consisted of 11 members and was later expanded to 20 members in 2009. The Board currently has 19 members.

CAMTC’s bylaws allow for a maximum of 20 Board members, but no less than four. Currently, seven Board members are designated certified massage professionals. Eight Board members are representatives selected by four different professional associations. Three Board members are representatives selected by statewide associations of private postsecondary schools. One Board member is a representative selected by the League of California Cities, one Board member is a representative selected by the California State Association of Counties, and one Board member is a representative selected by the Director of DCA. The remaining six Board members are appointed by a two-thirds vote of the Board pursuant to CAMTC’s bylaws.

The following is a listing of the current Board members and their background as provided directly to the Committees by CAMTC:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
<p align="center">Mark W. Dixon, CMT Chair</p> <p>Mark Dixon, of Huntington Beach, is a past member of the national board of the American Massage Therapy Association (AMTA). He served on the Board of the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) where he chaired the Governmental Relations Panel. As a sports massage therapist he has served since 1992 as the LA Marathon Sports Massage Team Supervisor, was on the Olympic Games Sports Massage Teams in Atlanta (1996), Salt Lake City (2002) and Athens (2004) as well as being a member of the Sports Medicine Team of the US Olympic Committee, Colorado Springs National Training Center. He currently has a private therapeutic massage practice in Newport Beach.</p>	01/14/2010	02/19/2015	American Massage Therapy Association, California Chapter
<p align="center">Keith Eric Grant PhD. Vice Chair</p> <p>Keith Eric Grant, of Pleasanton, holds a BS in Physics (San Jose State University) and a PhD in Applied Science (UC Davis). He</p>	11/19/2009	11/19/2015	Independent Massage School Association of

<p>was employed at Lawrence Livermore National Laboratory from 1972 into 2008. He currently focuses on science writing, particularly in atmospheric science and mathematical biology. Dr. Grant has taught massage at the McKinnon Institute in Oakland from 1992 to present. He was an invited educator at the formation meetings of the Federation of State Massage Therapy Boards (FSMTB) in 2005 and has worked on committees for both the Massage Therapy Foundation and FSMTB.</p>			California (IMSAC)
<p>Robert Rolnick, CMT, LMT (HI) Secretary</p> <p>Roberta Rolnick is an experienced management professional in the luxury hospitality industry. She has managed spas in leading resorts such as the Mandalay Bay Resort & Casino, Las Vegas NV, Ojai Valley Inn & Spa, Ojai, CA and The Royal Kona Resort, Kona, HI, to name a few. Currently she is the owner of SPA 1805 Massage & Wellness, Bakersfield. Ms. Rolnick is an active member of the American Massage Therapy Association – California Chapter and of Associated Bodywork & Massage Professionals.</p>	02/19/2009	02/15/2015	CAMTC Board
<p>Michael Marylander, Treasurer</p> <p>Michael Marylander is founder and president of The Massage Place, Inc., a chain of 13 company-owned and licensed massage therapy centers. Mr. Marylander is on the Advisory Board of the Associated Bodywork and Massage Professionals and is a guest lecturer at UEI (United Education Institute) and Santa Monica School of Massage.</p>	01/14/2010	01/14/2016	CAMTC Board
<p>William Armour</p> <p>Bill Armour is currently President of Burke Williams Inc. a leading California company in the spa & massage industry. After several successful business start-ups, he founded Burke Williams in 1986. The company began with a single location in West Los Angeles and has grown to nine locations throughout the state employing over 900 CAMTC Certified Massage Therapists and over 1500 employees overall.</p>	02/11/2010	02/11/2016	CAMTC Board
<p>Mike Callagy, J.D., MPA</p> <p>Mike Callagy is the Deputy County Manager in San Mateo County. His responsibilities include coordinating Public Safety Realignment efforts in the County and organizing all criminal justice activities throughout the various county departments and law enforcement agencies. Mr. Callagy recently retired as the Deputy Chief of Police for the City of San Mateo after almost a 30 year career in Law Enforcement. As a leader in law enforcement, retired Chief Callagy represented the League of Cities and the California Police Chiefs Association on the CAMTC Board. Mr. Callagy graduated from the highly acclaimed P.O.S.T Command College and FBI National Academy. Mr. Callagy is a licensed attorney in the State of California and has a Masters' Degree in Public Administration</p>	01/07/2014	01/07/2017	CAMTC Board

from the University of Notre Dame de Namur and a Masters' Degree in Homeland Defense and Security from the Naval Postgraduate School.			
<p align="center">Judi Calvert, LMT</p> <p>Judi Calvert, of Spokane, Washington, has a long career as a massage therapist. In 1985 she co-founded and published Massage Magazine until 2005. Ms. Calvert is also the co-founder and curator of the World of Massage Museum. She is President of Hands on Trade Association.</p>	01/14/2010	01/14/2016	Hands On Trade Association (HOTA)
<p align="center">Ben Drillings</p> <p>Ben Drillings, D.C., of Chatsworth, is the founder and director of Ben Drillings Chiropractic and of A2ZHealth.net vocational schools of therapeutic massage. As Director of A2Z Health Expo he has organized eight professional conferences. Dr. Drillings studied exercise physiology at Long Island University and received his Doctor of Chiropractic degree at New York Chiropractic College, with a B.S. from Regent College in New York.</p>	02/19/2009	02/19/2015	California Massage School Association (CAMSA)
<p align="center">Guy Fuson, MPA</p> <p>Guy Fuson is the tax and License Manager for the Sacramento County Department of Finance. Mr. Fuson oversees the Sacramento County business license process, regulating businesses operating in the unincorporated areas of the County. He was one of the key people in the County's modernization of their massage ordinance in 2004. Mr. Fuson is a former City Councilman and Planning Commissioner for the Town of Loomis and holds a Master's degree in Public Policy and Public Administration.</p>	01/18/2011	02/19/2015	California State Association of Counties (CSAC)
<p align="center">Elna Leonardo CMT, CPA</p> <p>Elna Leonardo was a former Project Manager & Computer Security Consultant with PricewaterhouseCoopers who ventured into Healing Arts as a Bodywork/Massage Therapist. She found fulfillment serving a range of capacities from enhancing corporate security systems to empowering individual healing. While actualizing this 'High Tech to High Touch' career move, Ms. Leonardo has re-entered the world of Information Technology in another supportive role by way of setting up and maintaining Social Media platforms. Currently her involvement in the massage profession is as a member of the CAMTC board and the Audit committee.</p>	12/07/2011	12/17/2014	CAMTC Board
<p align="center">Chief Arthur Miller</p> <p>Arthur J. Miller is the Chief of Police for South Pasadena. He had a 35-year career with the Los Angeles Police Department (LAPD)</p>	12/03/2013	02/19/2015	League of California Cities

<p>retiring as a Captain that oversaw Special Weapons and Tactics (SWAT), Horse Mounted Unit, K-9, Underwater Dive Team, VIP/Dignitary Security and City-wide Crime Suppression Units. He is the only recipient of all three of LAPD's highest awards for bravery. Chief Miller has a Bachelor's in Business Administration and a Masters' Degree in Organizational Leadership. He is a graduate of the FBI National Academy and the United States Army West Point Leadership as well as numerous specialized training courses presented by the California Commission on Peace Officer Standards and Training (POST).</p>			
<p>Chris Christian Pezza, CMP</p> <p>Christian Pezza is the executive director of a non-profit education foundation that operated two massage schools in Southern California. He is the owner of the Tao Healing Arts Center, an integrative holistic clinic that has been serving the community in Santa Monica since 1981.</p>	02/15/2012	01/14/2016	Hands On Trade Association (HOTA)
<p>Jean Robinson</p> <p>Jean Robinson, of Denver, has served as the national government relations director for ABMP, since 2006. She collaborates with policy makers at all levels of government to inform the conversation surrounding legislative and regulatory issues impacting the profession and advocates for consistent and appropriate regulation based on data, research, and a healthy dose of common sense. Prior to her employment with ABMP, Ms. Robinson was a health care policy analyst and community organizer.</p>	02/19/2012	02/19/2015	Associated Bodywork and Massage Professionals (ABMP)
<p>Marcy Schaubeck</p> <p>Marcy Schaubeck is the owner of five Massage Envy clinics in Orange and Los Angeles Counties. She currently employs over 110 CAMTC Certified Massage Therapists. She also owns four European Wax Centers in Orange County and employs over 40 Board of Barbering and Cosmetology licensed estheticians and cosmetologists. Ms. Schaubeck served on the board for the Placentia Chamber as Vice President. She holds a Bachelors' degree from University of Nevada Las Vegas in Communication Studies and worked in the advertising industry prior to becoming a business owner.</p>	02/13/2013	02/19/2015	Associated Bodywork and Massage Professionals
<p>Michael Sinel, M.D.</p> <p>Michael Sinel, M.D. is a nationally recognized expert in the field of back pain and spinal disorders. He is board certified in Physical Medicine and Rehabilitation and serves as an Assistant Clinical Professor in the UCLA School of Medicine. Dr. Sinel has authored two books on back pain and several academic articles. He was a managing partner of a highly successful ambulatory surgery center in Beverly Hills and is a founding</p>	05/09/2013	02/19/2015	Director of DCA

partner of Samia Solutions, a National Healthcare Ancillary Marketing and distribution company. Dr. Sinel also serves on the Board of Directors of the California Coalition to Abolish Slavery and Trafficking.			
<p align="center">Joseph Smith, CMT</p> <p>Joseph Smith serves as Strategic Development Director for National Holistic Institute (NHI), California's largest and first accredited massage therapy college. Utilizing his media, sales management, and massage therapy background, Joe Bob purchased and turned around his ailing alma mater, eventually selling to NHI, where he managed the relocation and expansion of the Los Angeles campus and the creation of the Orange County branch, all the while maintaining stellar recruitment, retention, and placement numbers. Joe Bob serves as NHI's massage industry liaison.</p>	02/11/2010	02/19/2015	California Association of Private Postsecondary Schools (CAPPS)
<p align="center">Caroline Tseng, J.D.</p> <p>Caroline Tseng serves as Associate General Counsel of the American Massage Council (AMC). At AMC, she is responsible for handling massage malpractice claims as well as overseeing malpractice claims in litigation from inception to trial. Ms. Tseng received her undergraduate degree in Legal Studies from University of California at Berkeley in 1999 and received her Juris Doctorate from Loyola Law School of Los Angeles in 2005.</p>	02/13/2013	01/14/2016	American Massage Council (AMC)
<p align="center">Deborah Tuck, CMT, BCTMB, LDT1</p> <p>Deborah Tuck is an active member of the massage community, serving in various advisory committees in the public and nonprofit area including Past President of the AMTA-CA Silicon Valley Unit, AMTA Delegate for California as well as serving on numerous others. In her private practice she specializes in Oncology and Pain Management, working closely with other medical professionals. Ms. Tuck has an Associate Degree in Massage Therapy from De Anza Community College in Cupertino. She recently retired as Massage Therapy Program Assistant to the De Anza Community College Massage Therapy Program and continues to mentor new therapists. Prior to her career in massage, she worked for 20 years for high tech companies.</p>	03/15/2011	01/14/2016	American Massage Therapy Association – CA Chapter (AMTA-CA)
<p align="center">Dixie Wall, L.Ac, HHP</p> <p>Dixie Wall has been a student and practitioner of holistic health, nutrition and Asian Medicine for over ten years. She received her Holistic Health Practitioner certification from the Healing Hands School of Holistic Health in 2003, and owned a private massage practice, Massage Works, Inc. In 2005, she became a contributing editor for Massage Today, where she followed California legislation, and wrote on other Practice Management topics. Ms.</p>	01/14/2010	01/14/2016	American Massage Council (AMC)

<p>Wall is a graduate of South Baylo University with a Masters in Oriental Medicine and Acupuncture and is currently a CA state licensed acupuncturist. She was elected and served as a Director for the Federation of State Massage Therapy Boards (FSMTB) from 2012-2013 and served on the bylaws committee as well as training the Board and delegates in Roberts' Rules.</p>			
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The meetings of the Board are subject to the rules of the Bagley-Keene Open Meeting Act. (Government Code Section 11120, *et seq.*)

Current Standing Committees of the Board:

Currently, there are two standing committees of the Board, as authorized by CAMTC's bylaws.

1. **Executive Committee:** Consists of the elected officers of the Board (the Chair, Vice Chair, Secretary and Treasurer), and has the authority to review and recommend changes to the bylaws and other operating policies.
2. **Audit Committee:** Is charged with oversight of financial reporting and disclosures. The committee interfaces with the auditing firm and the Chief Executive Officer and makes recommendations to the Board regarding the approval of the annual audit report. It also reviews the organization's tax returns.

Disbanded Committees:

1. **Credentials Committee:** This committee was tasked with proposing policies for the implementation of the educational requirements for certification. The committee focused on how transcripts should be received by CAMTC; what to require of applicants with massage licenses or education from other states or countries; which national examinations should be recognized; and how to evaluate the education of applicants whose schools had closed. Meetings were held at the Sacramento office or by conference call. The committee met from March of 2009 through August of 2009.
2. **Public and Profession Outreach Committee:** This committee supported the development of communication and media protocols, Web site content, presentations, educational strategies and materials to CAMTC stakeholders. The committee name was later shortened to the Outreach Committee. This committee began on March 16, 2009 and was disbanded on March 8, 2011. The former committee Chair currently serves as Outreach Liaison between the Board and staff.
3. **Public Policy and Local Government Committee:** This committee functioned as a discussion group and advisory resource. Meetings were held by conference calls, and primary participants included city massage permit staff, city attorneys, police and a few interested massage therapists and business owners. Out of the discussions came many policies implemented to reduce the incidence of fraud and maximize the availability of information to local government staff. Calls began in April of 2009, and continued every two to three weeks until the spring of 2011. CAMTC reports that approximately twenty-five calls were held.

Disbanded Advisory Committees: Three other advisory committees were formed for special purposes and dissolved upon fulfilling their charge:

1. **CEO Search Committee:** In January of 2010 the Board approved a job description, scope of work, and budget for a newly created Chief Executive Office position. Five Board members and CAMTC's General Counsel served on the committee. The position was filled in April of 2010. The committee was dissolved upon fulfilling its mandate.
2. **Denial and Disciplinary Committee:** This committee functioned from November of 2009 to June of 2010. It was given decision-making authority to approve or propose denial of applications with education, criminal or other background issues. The committee was comprised of two individuals who were also Board members. This committee reviewed applications, DOJ/FBI and local government reports, school transcripts, other relevant information, and had authority under the initial Procedures for Denial of Certification or Discipline/Revocation (approved by the Board on October 22, 2009) to approve or propose denial of applicants, as well as to authorize investigations and request court records. All meetings were held by teleconference and the Committee was disbanded in June of 2010.
3. **Schools Committee:** This committee was created on November 5, 2012, and disbanded on February 13, 2013. It consisted of three Board members with staff serving in an advisory capacity. The committee held two teleconference meetings on December 14, 2012, and on January 22, 2013. On February 13, 2013, the Board dissolved this committee and revised the Procedures for un-approval of Schools to reflect the shift of authority for making final decisions on the proposed un-approval of schools from the committee to the full Board.

Staffing Levels:

Currently, CAMTC reports that it has 39 staff members. CAMTC contracts for administrative services with Advocacy and Management Group (AMG) based in Sacramento, which provides 20 of those 39 staff. AMG provides the administrative services for CAMTC, which include assisting CAMTC in budgetary review, implementing fiscal objectives, implementing policies and procedures to uphold standards for certification, database operations, application processing, certificate and card issuance, serving as CAMTC headquarters, and housing the blank certificate paper.

According to the AMG Web site, "The goal of AMG is to assist each client organization in fulfilling its unique mission. AMG offers a full range of professional association management services, and takes an active role in the affairs of each client, ensuring that client goals are met in a professional, timely, and cost-effective manner. AMG is committed to: Managing the day-to-day operations of your association in accordance with its organizational mission and strategic goals; Assisting your board in budgetary review, making recommendations consistent with projected revenue, and implementing fiscal objectives; Overseeing policies and procedures to uphold bylaws and standards for accreditation; Advocating your needs and interests to the appropriate governmental and/or regulatory bodies; Projecting your association's public image and appropriately promoting its programs, services, and message to key audiences; Working with executive staff to accomplish administrative functions and priority goals."

AMG maintains CAMTC's database and processes applications for certification and renewal. If an application contains educational, background or conduct issues in need of additional review, AMG

staff flag those applications and send them to the Professional Standards Division, administered by CAMTC, for further evaluation. If AMG does not identify disciplinary or educational issues with an application, it will issue the certificate.

AMG is also responsible for the issuance of certificates. This means that AMG is responsible for the blank certificate paper and identification cards. AMG states that the certificate paper and identification cards are kept under lock-and-key and video monitoring. Prior to January 2013, the printing and mailing of certificates were done at an undisclosed, private printing facility which was charged with the security of the blank certificate paper and identification card processing. Those services have since been moved in-house to AMG which now has the sole responsibility for the integrity and safety of certificates.

AMG currently has 20 staff members working on CAMTC issues who are employed directly by AMG, 19 of which are full-time. These staff members are solely dedicated to the administrative needs of CAMTC. Eighteen staff members are dedicated to application processing, one is dedicated to accounting, and the remaining staff member is the designated operations manager.

The additional 19 staff members are employed directly by CAMTC. 17 personnel are devoted to the Professional Standards Division, including one director, one chief investigator, a senior investigator, four investigators, one school investigator, three hearing officers, two staff attorneys, and four paralegals. The remaining two staff positions are CEO and Government Affairs/Special Projects Liaison.

CAMTC provided the following compensation range for its staff members:

<i>CAMTC Compensation Range</i>				
<i>Employee Type</i>				
	Monthly Salary or Hourly Rate			
<i>Executives</i>				
Chief Executive Director	\$ 15,833	---	\$ 17,775	monthly
Chief Operating Officer	\$ 12,500	---	\$ -	monthly
Director Government Relations	\$ 6,667	---	\$ 7,211	monthly
<i>Professional Standards Division</i>				
Director	\$ 50	hourly	\$ 7,500	monthly
Senior Investigator	\$ 28	hourly	\$ 6,760	monthly
Senior Background Investigator	\$ 28	hourly	\$ 6,039	monthly
Investigator	\$ 25	---	\$ 28	hourly
Hearing Officer	\$ 23	---	\$ 26	hourly
Paralegal	\$ 25	---	\$ 30	hourly

The current CEO was appointed by the Board and began serving on April 1, 2010. The CEO has multiple concurrent duties which include serving as the COO, Director of Outreach and Marketing, IT Manager and Director of Human Resources. According to CAMTC's 2012 federal 990 tax form, the

CEO received \$260,000 in annual compensation. The CEO does not receive separate health or retirement benefits.

CAMTC's 2012 federal taxes also show that AMG received \$830,238 for its administrative and application processing services. The pay scale for AMG's employees was not provided to the Committee.

Fiscal and Fund Analysis:

CAMTC is supported solely by certification and recertification fees. It does not receive any General Fund or special fund monies from the State of California. CAMTC has not made or received any loan to or from the General Fund.

The certification and recertification fee for massage practitioner and massage therapist is currently \$150 every two years. The certification fee has not been raised since the program's inception. BPC 4600.5(c) authorizes the Board to establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees are to be established by the Board annually.

CAMTC charges a late application fee between \$25 and \$90 depending on the lapse for applications not received before the date of expiration listed on a current ID card. Once the certificate has expired an individual will not be able to recertify online, and they will need to contact CAMTC for a late fee amount. Total payment along with the application for recertification must be received in order to process the recertification request. In January of 2011, the Board approved a provision whereby an individual seeking recertification after 180 days or more of the expired certificate will be required to re-apply as a new applicant, meaning they must meet current requirements for certification. The Board currently utilizes a sliding scale for late payments as follows:

- 1-10 days after expiration: \$25
- 11-29 days after expiration: \$40
- 30-180 days after expiration: \$90

The Board established a fee for oral hearings and consideration of written statements for applicants who have been denied a certificate or have been disciplined. The initial fee for an oral hearing was \$95 and the fee for consideration of a written statement was \$65. Those fees were raised on September 13, 2013 to \$135 and \$90, respectively. CAMTC states that it provides a fee waiver for indigent individuals who are able to prove that they were unable to pay the hearing or consideration fees. In 2012 and 2013, CAMTC granted a total of 51 fee waivers.

CAMTC does not have cite and fine authority or the legal authority to engage in cost recovery or restitution against applicants or certificate holders.

CAMTC reports that at the end of 2012, it had a cash reserve balance of \$1,643,701 or approximately 6.8 months of operating cash. Estimates by CAMTC anticipate \$1,940,000 or 6.2 months of operating cash at the end of 2013.

Fund Condition

Table 2. Fund Condition					
(Dollars in Thousands)	2009	2010	2011	2012	2013
Beginning Balance	\$ -	\$ 1,076	\$ 990	\$ 732	\$ 1,624
Revenues	\$ 1,617	\$ 2,051	\$ 2,261	\$ 3,687	\$ 3,365
Start-Up Loans	\$ 106	\$ -			
Total Revenue	\$ 1,723	\$ 2,051	\$ 2,261	\$ 3,687	\$ 3,365
Approved Budget	\$ 631	\$ 1,969	\$ 2,854	\$ 2,920	\$ 3,356
Expenditures	\$ 540	\$ 2,137	\$ 2,520	\$ 2,794	\$ 3,277
Loan Repayment	\$ -	\$ 106	\$ -	\$ -	\$ -
Fund Balance	\$ 1,076	\$ 990	\$ 732	\$ 1,624	\$ 1,712
Months of Operating Cash	8.4	6.2	3.2	6.8	6.2

The table below reflects expenditures by program component. CAMTC reported that on average, during the last four years, the enforcement program accounted for 37% of expenditures, the certification program accounted for 41% of expenditures, and administration, legal, outreach, and other expenses accounted for 22% of expenditures.

Expenditures by Program Component

Table 3. Expenditures by Program Component										
(Dollars in Thousands)	2009		2010		2011		2012		2013	
	Personnel	OE&E	Personnel	OE&E	Personnel	OE&E	Personnel	OE&E	Personnel	OE&E
Enforcement	\$ -	\$ 11	\$ 182	\$ 363	\$ 416	\$ 565	\$ 431	\$ 714	\$ 716	\$ 799
Certification	\$ 301	\$ 60	\$ 623	\$ 226	\$ 685	\$ 310	\$ 830	\$ 357	\$ 919	\$ 300
Administration	\$ -	\$ 56	\$ 275	\$ 109	\$ 295	\$ 83	\$ 250	\$ 103	\$ 276	\$ 116
Legal/ Outreach/ Marketing/ Other	\$ -	\$ 127	\$ -	\$ 359	\$ -	\$ 166	\$ 0	\$ 109	\$ 0	\$ 151
TOTALS	\$ 301	\$ 254	\$ 1,080	\$ 1,057	\$ 1,396	\$ 1,124	\$ 1,511	\$ 1,283	\$ 1,911	\$ 1,366

*Administration includes costs for executive staff (CEO/COO), BOD, administrative support, and audit.

There is no mandated reserve level for the Board.

As a 501(c)(3) exempt organization, CAMTC’s federal 990 tax returns are open to public inspection and can be reviewed at https://bulk.resource.org/irs.gov/eo/2013_04_EO/26-4437635_990_201212.pdf.

Certification:

The certification program attempts to provide public protection by ensuring certification is issued only to applicants who have met the minimum requirements in current statute and CAMTC bylaws, and who have not committed acts that would otherwise be grounds for denial, suspension or revocation.

At completion and issuance of the Sunset Review Report 2013 on November 1, 2013, the total certified population in California was 49,392 active and inactive massage professionals. Between September 15, 2009 and September 28, 2013, an estimated 20,358 individuals have been recertified.

When a complete application is received and the appropriate education and background requirements have been met by the applicant, CAMTC estimates the current processing time to take between seven and fourteen days. During the years 2009 and 2010, the application process was taking an estimated 65 days. According to CAMTC, approximately 16% of applications require further review by the Professional Standards Division.

Applications with educational issues that require additional verification are flagged by AMG processing staff and transferred to the Professional Standards Division for further review and assessment. Those applications are sent on a monthly or bi-monthly basis, and applicants may be provided with additional time to submit the necessary information (approximately 90 days) with a hearing date set at approximately 120 days from the date a proposed denial letter was issued.

Applicants with criminal histories or background-check issues trigger further investigation by the Professional Standards Division. According to CAMTC, it takes approximately 94 days to process an application with background issues.

Because CAMTC does not automatically renew certificates, certificate holders must reapply for recertification and complete a separate recertification application in which background issues are reassessed. The Board requires primary source documentation for any educational transcripts, experience records, and license or certification verification.

Certification Population for 2009 through September 2013

Table 6. Certification Population						
		2009*	2010	2011	2012	2013**
CMT	Active	2,314	14,903	23,997	29,516	35,907
	Inactive	0	8	259	3711	5,095
CMP	Active	229	1,701	3,011	5,092	6,846
	Inactive	0	0	41	789	790
CCMP	Active	63	1,311	1,249	718	294
	Inactive	0	0	188	373	460
*The first certificates were issued 9/15/09						
**2013 data is through 9/30/2013						

Total Certification Data

Table 7. Total Certification Data				
	Application Type	Received	Approved	Denied
2009*	CMT Certification	9,269	2,314	5
	CMP Certification	697	229	
	CCMP Certification	869	63	
2010	CMT Certification	11,074	12,423	2,498
	CMP Certification	1,070	1,211	
	CCMP Certification	1,206	1,683	
2011	CMT Certification	10,837	8,297	1,093
	CMT Recertification	2,284	2,262	
	CMP Certification	1,459	1,110	
	CMP Recertification	217	217	
	CCMP Certification	1,546	1,415	
	CCMP Recertification	59	59	
2012	CMT Certification	8,193	8,347	838
	CMT Recertification	9,832	9,818	
	CMP Certification	2,599	2,670	
	CMP Recertification	1,490	1,486	
	CCMP Certification	0	437	
	CCMP Recertification	26	26	
2013**	CMT Certification	6,425	6,593	325
	CMT Recertification	5,066	5,063	
	CMP Certification	2,230	2,578	
	CMP Recertification	1,370	1,370	
	CCMP Certification	0	22	
	CCMP Recertification	57	57	
Total Applications Received to Date				77,875
Total Applications Closed (Approved/Denied) to Date				74,509
Total Applications Purged to Date***				759
Total Applications Pending to Date				2,607
Of Pending Total Application incomplete to Date				2,153
Of Pending Total Applications in Process to Date				454
<p>*First certificates issued 9/15/09. **2013 data is through 9/30/2013. ***Incomplete applications are purged after one year. Please note, for purposes of this chart, denials are noted in the year that the proposed denial letter was sent.</p>				

As part of the certification process, CAMTC requires all applicants to comply with fingerprinting requirements. Since fingerprint records provided by the Department of Justice and the Federal Bureau of Investigation contain only criminal issues and do not include administrative or civil actions related to local massage regulation, CAMTC states that it also contacts local authorities in either the cities or counties where the applicant has worked in the past 10 years to obtain additional information about the applicant's background. CAMTC is not aware of any certificate holders who have not been fingerprinted.

Continuing Education:

Currently, CAMTC does not require continuing education for certificate holders.

Enforcement:

As a non-governmental certifying organization, CAMTC is not statutorily required to adhere to or provide strict enforcement data and reporting guidelines, unlike other Boards, Bureaus and Committees under the jurisdiction of DCA. Because of this, CAMTC does not have a specified timeline for the completion of enforcement actions nor do they set internal guidelines.

CAMTC's enforcement program is administered by its Professional Standards Division and its legal department. CAMTC contends that its enforcement measures apply both to applicants and certificate holders through the denial of certification. CAMTC states that the majority of cases pertain to applicant denial, with certificate holder discipline comprising of a small percentage of the total disciplinary cases. To date, CAMTC has revoked approximately 100 certificates, disciplined 11 certificate holders, suspended 169 certificate holders, and has denied over 4,700 certification and recertification applications.

CAMTC states that cases where serious issues are raised (such as evidence of rape, sexual assault, or sexual battery by certificate holders) are addressed in approximately three to six months.

The table below shows the volume over the last four years of disciplinary cases.

CAMTC has seen a significant increase in disciplinary action in proportion to the increase in certificate holders, although total numbers remain low. In 2011, CAMTC sent 22 letters to certificate holders proposing revocation or discipline. In 2012, that number increased to 49 letters, and in 2013 (through September), CAMTC had sent 42 letters to certificate holders proposing revocation or discipline of their certificates.

Table 9a. Enforcement Statistics - Initial Applicant/Recertification								
		Sent to PSD for Review (includes Certificate Holders)	Cleared by PSD (includes Certificate Holders)	Background Issue Proposed Denial (letter sent in noted year)	Education Proposed Denial (letter sent in noted year)	Approved (final outcome)	Denied (final outcome)	Pending
2009*	Initial Applicant***	209	204	5	0	0	5	0
2010	Initial Applicant***	4,503	700	229	3,551	1,276	2,498	6
2011	Initial Applicant/Recertification	2,199	536	245	1,340	492	1,093	0

2012	Initial Applicant/Recertification	2,114	781	117	1,216	475	838	20
2013**	Initial Applicant/Recertification	1,161	548	249	180	97	325	7
<p>* First review took place 11/2009</p> <p>**2013 is through 9/30/2013</p> <p>***Recertification applications were not processed in 2009 or 2010</p> <p>Please note, applicants sent proposed denial letters in one year may have their outcomes become final and effective in a later year, but for purposes of this chart their outcomes are noted in the year that their proposed denial letter was sent.</p> <p>Tables 9a and 9b - Columns for "Sent to PSD for Review" and "Cleared by PSD" numbers represent combined data for Applicants, Recertification, and Certificate Holders.</p>								

Table 9b. Enforcement Statistics - Certificate Holder									
		Sent to PSD for Review (includes App. and Recert.)	Cleared by PSD (includes App. and Recert.)	Proposed Revocation/Discipline	Proposed Nullification	No Action After Oral Hearing or Written Stmt	Discipline Imposed	Revoked	Automatic Suspension
2009*	Certificate Holder	209	204	-	-	-	-	-	-
2010	Certificate Holder	4,503	700	9	-	1	-	8	28
2011	Certificate Holder	2,199	536	22	4	1	-	17	34
2012	Certificate Holder	2,114	781	49	-	2	1	46	52
2013*	Certificate Holder	1,161	548	42	1	2	10	29	55
<p>* First review took place in 11/2009</p> <p>**2013 is through 9/30/2013</p> <p>Tables 9a and 9b - Columns for "Sent to PSD for Review" and "Cleared by PSD" numbers represent combined data for Applicants, Recertification, and Certificate Holders.</p>									

Case Prioritization:

Since CAMTC is not a state agency *per se*, it is not subject to DCA's *Complaint Prioritization Guidelines for Health Care Agencies*. CAMTC states that it handles a larger volume of cases than most California State licensing boards. Cases based on background issues (not including education) are initially prioritized based on certification status (certificate holders, expired certificate holders, and applicants). Cases against certificate holders and expired certificate holders requesting recertification are then prioritized within those classifications based on the severity of the alleged conduct and threat to public harm, and then prioritized based on date (oldest first) within those classifications. For applicants, cases are generally prioritized by date (oldest first) but all new cases are reviewed upon receipt. Low risk cases are identified based on criminal conviction. Typically, CAMTC does not propose denial of an applicant or discipline of a certificate holder because of convictions that are not related to the qualifications, functions, or duties of a certificate holder. Those that can be quickly cleared are, while the remaining cases needing further investigation are placed back in line based on date.

Instances of certificate holder discipline take priority, with issues related to recertification of expired certificate holders taking second priority, and denials of applicants taking third priority. The reason for this prioritization is that certificate holders are practicing pursuant to a CAMTC certificate and determining whether they are a threat to public safety, and removing certification if they are determined to be a threat, is top priority. Complaints received alleging rape, sexual assault, or sexual battery by certificate holders are given highest priority and expedited through the disciplinary system.

Expired certificate holders who are requesting recertification are the second priority since they have practiced their profession pursuant to a CAMTC certificate and are waiting to continue practicing pursuant to a new certificate.

New applicants are the third priority since they have not yet attained certification and therefore are less of a direct threat to public safety. Currently, CAMTC is not subject to any mandatory reporting requirements. CAMTC does not operate within a statute of limitations, and there is no Board policy on statute of limitations. CAMTC reports that no cases have been lost due to statute of limitations issues.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

This is CAMTC's first sunset review; therefore there are no prior issues to address.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA MASSAGE THERAPY COUNCIL

The following are issues pertaining to CAMTC and other areas of concern for these Committees to consider, along with background information concerning the particular issues. There are also recommendations made by the Assembly Business, Professions and Consumer Protection Committee and the Senate Business, Professions and Economic Development Committee staff regarding specific issues or problems which the Committees may wish to address. CAMTC and other interested parties, including representatives of the profession itself, have been provided with advance copies of this Background Paper and may respond to the issues and staff recommendations made herein.

BUDGET ISSUES

ISSUE #1: (RESERVES: LONG TERM FUND CONDITION.) Should CAMTC be statutorily required to maintain a specific reserve?

Background: CAMTC reports that it ended 2012 with a cash reserve balance of \$1,643,701, or approximately 6.8 months of operating cash. Estimates provided by CAMTC anticipate \$1,940,000 or 6.2 months of operating cash at the end of 2013. Because CAMTC is a voluntary nonprofit rather than a board, there is no mandated reserve level for CAMTC. However, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund of approximately three months. Maintaining an adequate reserve provides CAMTC with a reasonable contingency fund so that it has the fiscal resources in the future to absorb any unforeseen costs, such as major enforcement actions or other unexpected client services costs.

Staff Recommendation: *While there is no current indication of financial difficulty, the Committees may wish to discuss whether or not CAMTC should be required by statute to maintain a minimum*

operating fund reserve, such as 3 or 6 months, similar to other Boards, Bureaus and Committees under the jurisdiction of the DCA.

ISSUE #2: (LIMITS ON FEES.) Should the application and recertification fees be capped in statute?

Background: According to current CAMTC projections, it will remain financially solvent for the foreseeable future. Both the \$150 certification and recertification fee have not been increased since CAMTC's inception, and it has no immediate plans to increase or reduce fees.

According to BPC 4600.5(c) and its own bylaws, the Board is permitted to establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees are determined by the Board annually. It is unclear what the current process is for the Board or the designated committees to review and set the fees for initial certification and renewal.

Many of the regulated entities under the jurisdiction of DCA are subject to a statutory fee cap which can only be raised by an action of the Legislature. For example, BPC 2688 pertaining to the practice of acupuncture specifies that the fees for initial application, licensure and renewal for a licensed acupuncturist are capped by statute at \$75 and \$325, respectively.

Staff Recommendation: *The Committees may wish to discuss whether or not a statutory cap on certification and recertification fees would help provide greater fee certainty for the profession in the future. In addition, CAMTC should update the Committees as to its standards, processes, and its calculation of the reasonable costs of certification and recertification in order to ensure that fees are as low as is reasonably possible.*

ISSUE #3: (FEE WAIVERS FOR ORAL HEARINGS.) Should CAMTC continue the practice of granting indigent fee waivers for oral hearings?

Background: According to BPC 4600.5 (c), the Board is permitted to establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Under its own interpretation of this provision, the Board established a fee for oral hearings and for consideration of written statements for applicants who have been denied or certificate holders who have been disciplined. The initial fee for an oral hearing was set at \$95 and the fee for consideration of a written statement was \$65. Those fees were raised on September 13, 2013, to \$135 and \$90 respectively.

CAMTC states that it provides a fee waiver for "indigent" individuals who have been able to prove his or her inability to pay the fee. Those individuals seeking a fee waiver are required to submit the "Waiver of a Filing Fee" form found on CAMTC's Web site. Since fee waivers were initially offered in January 2012, 57 individuals have been granted a fee waiver.

Staff Recommendation: *The Committees may wish to discuss whether or not charging a fee for due process procedures is appropriate, and if so, how the fee amounts compare with other Boards and Bureaus under DCA.*

CERTIFICATION ISSUES

ISSUE #4: (CERTIFICATION TIERS.) Should CAMTC phase out the Massage Practitioner Certification Tier? Should all applicants for certification be required to obtain 500 hours of education at one or more approved schools in addition to the passage of an examination? Is there a need to reinstate a 'grandfathering' provision for those already in practice?

Background: Massage professionals in California can obtain one of two certification levels: Certified Massage Practitioners are required to complete at least 250 hours of education and training, while Certified Massage Therapists are required to complete at least 500 hours of education and training, or complete 250 hours of education and training and pass an examination.

BPC 4601 specifies that of the 250 hours of educational requirements for a Certified Massage Practitioner, 100 hours must be in the instruction of anatomy and physiology, contraindications, health and hygiene, and business ethics. The current law permitting the certification of a Certified Massage Practitioner is scheduled to repeal on December 31, 2015. Those individuals who hold Certified Massage Practitioner certifications will continue to be eligible to apply for recertification without meeting any additional educational requirements or needing the passage of an examination.

Currently, recognition as a Certified Massage Therapist requires 500 hours of education, while only 250 of those hours need to be obtained from a CAMTC approved school. The remaining 250 hours of education needed for certification may be obtained from any approved school or from a continuing education provider approved by DCA. This certification pathway was implemented as a grandfathering provision to provide schools with the opportunity to revise and update their massage therapy programs to meet a 500-hour program (the minimum level required by many states). After December 31, 2015, applicants seeking certification as a massage therapist will be required to obtain all educational hours from CAMTC-approved schools. The opportunity to obtain 250 hours of education needed for certification from continuing education providers will no longer be permitted. According to CAMTC, the rationale for closing this pathway to certification is to help assure that applicants receive a well-rounded educational foundation before entry into the massage profession. Because CAMTC does not regulate or approve continuing education providers or courses as it approves massage therapy programs, this transition ensures that all applicants are meeting the necessary educational requirements needed for certification.

Additionally, the educational requirements for Certified Massage Therapists do not require instruction in specified core competency areas such as physiology and anatomy, or contraindications as is required of Certified Massage Practitioners. As stated by CAMTC, this may have been an oversight and should be addressed.

AB 1147 (Gomez) of 2013 would require an applicant to become a Certified Massage Practitioner to pass a massage and bodywork competency examination approved CAMTC. The effect of this measure would require applicants seeking certification to fulfill the same educational and examination standards that are currently required for certification as a Certified Massage Therapist. This bill passed the Assembly Business, Professions and Consumer Protection Committee on January 21, 2014, (11-0) and passed out of the Assembly on January 27, 2014 (68-1). This measure is currently pending in the Senate Business, Professions and Economic Development Committee.

It is unclear at this time if local governments differentiate in their regulations between the two levels of certification (practitioner or therapist). Because massage practitioners and massage therapists are permitted to provide the same services, it is unclear if the different practice titles provide any meaningful information to consumers.

Staff Recommendation: *The Committees may wish to discuss the possibility of requiring a Certified Massage Therapist to obtain 100 hours of instruction in anatomy and physiology, contraindications, health and hygiene, and business ethics within the currently required 500 hours, as is currently required for Certified Massage Practitioners.*

The Committees may also wish to consider removing the second-tier pathway for certification as a Certified Massage Practitioner beginning January 1, 2015, and instead require all applicants for certification to complete 500 hours of Board-approved education and training, in addition to the completion of a Board-approved national examination.

Additionally, CAMTC should update the Committees on any need to continue or reinstate a grandfathering provision for those massage therapists who have already been in practice but did not obtain certification prior to 2013.

ISSUE #5: (NATIONAL PRACTITIONER DATA BANK.) Should CAMTC be required to seek out additional background information on certification applicants?

Background: An issue raised in CAMTC's Sunset Review Report 2013 is that CAMTC does not report to or query the National Practitioner Data Bank (NPDB) to verify past disciplinary actions reported in other states.

Many of the healing arts boards under the jurisdiction of DCA currently utilize the NPDB to report disciplinary actions against licensees. In addition, many of those boards query the system before issuing a license to determine if an applicant has had any disciplinary action taken against them in another state. The NPDB "is primarily an alert or flagging system intended to facilitate a comprehensive review of the professional credentials of health care practitioners, health care entities, providers, and suppliers; the information from the Data Bank should be used in conjunction with, not in replacement of, information from other sources." Because numerous other states have licensure requirements and state regulations for the massage therapy profession, there is a high probability that massage regulators in other states report disciplinary actions to the NPDB. Currently, CAMTC does not utilize NPDB to seek out or report disciplinary actions.

CAMTC states that a separate national massage practitioner database is currently in beta testing and is scheduled to be operational by early 2014. The proposed database is a project of the Federation of State Massage Therapy Boards (FSMTB). According to CAMTC, this new database will be available only to state certification and licensing boards with jurisdiction over massage professions. Although it is separate from the NPDB, once available, the massage practitioner database should be able to help determine if there are unreported criminal records or administrative disciplinary actions in other states, and may also help identify problems with schools if their graduates produce a disproportionate number of disciplinary cases.

According to the FSMTB, "In 2012, FSMTB began initial development of a Massage Therapy

Licensing Database (MTLD). The purpose of the database is to provide licensee information in a uniform system to assist member boards and agencies in their role of public protection. The MTLD was conceptualized to assist FSMTB member boards with their regulatory mission and will include current and accurate licensing information on licensed massage therapists. The database is designed to provide license information specific to each participating FSMTB member board and their licensees and will potentially be a central repository of massage therapy licensees, establishments and schools. MTLD will also have the ability to provide primary source verifications to another state or jurisdiction to validate training and credentials of massage therapy practitioners, as well as confirm details of any public disciplinary actions that have been initiated and/or taken. The following types of licensee identifying and examination information are being considered for the massage therapy licensing database: Licensee Identifying Information; Examination Information; License Information; Licensure Verifications; and, Disciplinary Action Record."

Staff Recommendation: *The Committees may wish to discuss requiring CAMTC to query the NPDB as part of its vetting of applicants for certification. In addition, when the national MTLD is operational, the Committees may wish to consider requiring CAMTC to query the MTLD for applicants for certification as well.*

ISSUE #6: (BUSINESS REGISTRATION.) Should CAMTC certify or regulate massage businesses or establishments?

Background: Currently, CAMTC does not certify or regulate massage businesses. According to statute, businesses claiming to use only certified massage professionals are exempt from certain local regulation, but are not otherwise regulated by CAMTC because CAMTC only certifies the individual and not the business. In practice, this means that local jurisdictions and CAMTC have less oversight of or information regarding massage businesses than the individual practitioner.

Many local governments have expressed concern over what they perceive as the growing number of massage businesses within their local jurisdictions, in part because they feel they are restricted in their ability to regulate certain massage businesses that utilize only CAMTC certified individuals. In addition, local governments have also expressed concern that, in conjunction with the growth of massage businesses, some of those businesses may be fronts for illicit activity, including prostitution and human trafficking.

According to information from the League of California Cities, "[a]nother problematic issue for cities is that certification only follows the individual employee and not the owner of the business itself. If law enforcement executes a raid on a business that is using a certified massage therapist that participates in an illicit activity, then CAMTC has the authority to revoke the certification of the individual. Unfortunately, the business itself can continue to operate. The League contends that certification requirements should include the business itself. Establishment owners share the responsibility to ensure that all aspects of the business are legitimate. Several jurisdictions require massage establishments to register the business in order to obtain a business license. After that, cities spend an inordinate amount of time, money and resources to establish a track record of compliance associated with massage establishments. By the time these jurisdictions move to revoke the business license, the owner of the less than legitimate business changes ownership of the massage establishment, requiring the jurisdiction to start over from square one."

As city regulations vary greatly by jurisdiction there is limited statewide data available to identify the number of massage businesses in each local jurisdiction that are providing massage services. Because there is no comprehensive statewide data, it is difficult to determine what types of massage businesses are increasing, i.e. sole proprietors, family-owned, massage schools, cosmetologist or esthetician offices, physical therapy or chiropractor's office (all of these businesses are permitted to perform some form of massage therapy as part of their scope of practice). Because CAMTC only regulates the certificate holder and not the businesses, no one entity can provide an accurate estimate of massage businesses in California.

CAMTC claims that many jurisdictions that initially resisted the new law now recognize that CAMTC does a better job at evaluating applicants at a cost savings to the city or county. They also contend that there are increasing requests from city attorneys, police, and code enforcement officers for CAMTC to regulate establishments in addition to the individual practitioners. As with the certification of individuals, CAMTC might identify indications of illegal activity that an individual jurisdiction might miss, such as when an owner has had action taken against a business in another city or county. It also has more latitude in denying applications and imposing discipline than would a local government.

If CAMTC were permitted to certify or register a business, it would offer local jurisdictions and local law enforcement professionals the opportunity to more easily identify businesses or establishments that have undergone some type of formal review process by CAMTC, particularly those eligible for statutory preemption from certain land use authorities because they employ only CAMTC certified professionals. Additionally, a business or establishment registration or certification would be eligible for denial, suspension or revocation for specified unprofessional conduct and other reasons as to be determined by CAMTC and other stakeholders, making it more difficult for improperly managed businesses to remain in operation.

Staff Recommendation: *The Committees may wish to discuss the merits of registering massage businesses themselves, and may wish to inquire of CAMTC how it might implement a business registry, and what additional level of resources it might require, including fees for registrants.*

ISSUE #7: (BUSINESS OWNER AND OPERATOR REGISTRATION.) Should CAMTC certify or regulate massage business owners and/or operators?

Background: As noted above, CAMTC certification only applies to the individual employee of a massage business, not the business itself or its owner or manager. BPC 4612(c) states that an owner or operator of a massage business or establishment who is certified is responsible for the conduct of all employees or independent contractors working on the premises of the business. Failure to comply with those provisions may result in revocation of the owner's or operator's certificate. However, if that owner or operator does not provide massage services, then any revocation would not affect that business' preemption from certain local government land use authorities under BPC 4612(b), and the business could continue to operate with the non-certificated owner/operator and still enjoy the preemption as before.

Additionally, BPC 4612(e) specifies that a city, county, or city and county can require a background check of an owner or operator of a massage establishment who owns 5% or more of a massage business or massage establishment and who is not certified.

The background check may include a criminal background check; submission of fingerprints for a state and federal criminal background check; an application that requires the applicant to include information about the applicant's business, occupation, and employment history for the 10 years preceding the date of the application; the inclusive dates of the same; and the name and address of any massage business or other like establishment owned or operated by any person who is subject to the background check requirement.

If a noncertified owner's or operator's background check results in a finding that the city, county, or city and county determines is relevant to owning or operating a massage establishment, the local jurisdiction may regulate that establishment in any manner it deems proper that is in accordance with the law. While many cities may be utilizing the background check provisions for owners, they are unable to require a similar background check for operators, because most operators do not meet the 5% threshold of business ownership that appears to be required by existing law. If a certificate holder has engaged in unprofessional conduct, CAMTC can take the appropriate action against their certificate, but if a non-certified operator (i.e., a manager who does not perform massage services) has engaged in unprofessional conduct, CAMTC does not have enforcement authority to penalize that individual or the business, and the business may retain its preemption.

Expressly authorizing CAMTC to provide an owner or operator certification, and requiring owner/operator certification as a precondition to the land use authority preemption, would provide consumers and local jurisdictions with an increased layer of protection from unscrupulous owners or operators. In practice, owners and operators could be required to meet certain standards for registration, such as hours of education on specified topics and passage of a background check, or other requirements as determined by CAMTC and the appropriate authorities.

Staff Recommendation: *The Committees may wish to consider establishing a certificate program for an owner or operator of a massage business, and requiring a certificated owner/operator at the establishment as a prerequisite for preemption. The Committees may also wish to inquire of CAMTC what level of education and training might be appropriate for an owner/operator certificate. Finally, the Committees may wish to clarify the ownership requirements related to the background check so that they apply to all non-owner operators.*

ISSUE #8: (CERTIFICATE FRAUD). **How does CAMTC prevent the creation of fraudulent certificates? What steps does CAMTC take to ensure the integrity of legitimate certificates and identification cards?**

Background: CAMTC reports that AMG is the responsible entity for administrative services and serves as CAMTC's corporate headquarters. AMG is responsible for the processing and distribution of CAMTC certificates. According to CAMTC, in January 2013 AMG began printing certificates in-house (meaning at the AMG office location), with the certificates and identification cards being secured behind two locked doors and a locked cabinet, with a video camera that records all those who enter the office. Prior to 2013, certificates were housed and printed at an undisclosed facility with unknown security measures.

The integrity of certificates is an important element of fraud prevention for CAMTC, local law enforcement and local jurisdictions to ensure that those individuals with a certificate have met the appropriate background and educational requirements. According to information provided by CAMTC

legal counsel, CAMTC is aware of only one documented case of an altered CAMTC certificate. The altered certificate was readily apparent and the certificate was confiscated by the potential employer and turned over to CAMTC. Although the individual was not certified by CAMTC at the time of the incident, when the individual later applied for certification, CAMTC was able to deny the application based on the fraudulent conduct pursuant to BPC 4603(b), which explicitly authorizes CAMTC to deny certification to an applicant who has procured a certificate by fraud, misrepresentation or mistake.

CAMTC has been told by local law enforcement that in a few instances they have seen altered identification cards. However, according to AMG "no one has ever forged a certificate and identification cards that has come close to the quality or secure features we add to our certificate and cards and thus forged documents can be easily spotted. "

Staff Recommendation: *CAMTC should update the Committees as to how it ensures the safety and integrity of the certification process and the certification material, including identification cards. In addition, the Committees may wish to inquire of CAMTC as to whether or not current penalties for forgery or fraud are sufficient to deter wrongdoing.*

ISSUE #9: (APPLICANTS WITH BACKGROUND ISSUES.) What is the current processing time for applicants with criminal records or background check issues? How does CAMTC ensure that applicants with background issues are qualified for certification?

Background: CAMTC reports that for applicants with criminal histories or background issues, an investigation must be performed: evidence must be gathered, compiled, and reviewed before a decision to propose a certificate denial can be made. Individual are notified of certification denial by a mailed letter of proposed denial. CAMTC states that these investigations can be resource intensive and can take a significant amount of time to complete, especially when CAMTC needs to receive information and evidence from third parties such as cities and law enforcement agencies.

CAMTC reports that the processing time for applications without any background or educational discrepancies is approximately seven days. Applications with educational issues only that require additional review by the Professional Standards Division are sent on a monthly or bi-monthly basis, and applicants may be provided with additional time to submit supplemental information (approximately 90 days) with a hearing date scheduled approximately 120 days after the issuance of the letter. According to CAMTC, applicants with background issues that are not based merely on education (such as criminal convictions or potential instances of unprofessional conduct) are identified by AMG and sent to the Professional Standards Division for review and further investigation on a weekly basis. CAMTC reports that the processing times for applications requiring additional review is approximately 94 days.

Because CAMTC may ultimately issue certifications to individuals with some form of background issue (such as financial difficulties or unrelated criminal histories), it is necessary to understand the process for reviewing applicants who have been flagged by application processing staff and are sent to the Professional Standards Division for additional verification procedures.

In its Sunset Review Report 2013, CAMTC states that it has implemented new procedures and protocols, brought investigations in-house and added additional staff to shorten investigation and waiting times. According to CAMTC's written procedures for denial of certification or

discipline/revocation, if an applicant has been convicted of a felony or misdemeanor, whether expunged or not, CAMTC will conduct an investigation and review all prior convictions substantially related to the qualifications, functions, or duties of a massage professional. Each case will be evaluated on a case by case basis. While CAMTC clearly states the reasons for denial, it is unclear what the internal operational protocols and procedures are for the Professional Standards Division's evaluation process. CAMTC reports that of these 17 staff members, one is the Division Director, one is the Senior Investigator, one is the Chief Investigator/Hearing Officer, four are Investigators, four are Hearing Officers, one is both an Investigator and a Hearing Officer, four are Paralegals, and two are Staff Attorneys. The Division Director, the Senior Investigator, the Chief Investigator, and the five Investigators members meet by telephone conference call (approximately six times a month) to review applicants and certificate holders, report on ongoing investigations, and propose denial or discipline.

Staff Recommendation: *CAMTC should clarify for the Committees its policies and procedures for reviewing criminal and background cases and clearly identify the criteria for granting, denying or revoking certification for individuals with background and criminal issues. In addition, CAMTC should update the Committees as to where the Professional Standards Division is physically located and how it conducts its operations.*

ISSUE #10: (APPLICATION PROCESSING AND LOCAL GOVERNMENT PARTICIPATION.) CAMTC relies on background reports and notifications from local law enforcement and local government agencies as part of the application process. Is CAMTC receiving the necessary information in a timely manner? Is there an undue delay in application processing times? How can information sharing be improved?

Background: California law authorizes certain government and private organizations to conduct criminal background checks to help determine the suitability of an individual applying for different types of licensure, employment, or in CAMTC's case, certification. CAMTC requires all applicants to be fingerprinted as part of the background check process. The California Department of Justice (DOJ) provides an automated service for criminal history background checks. Applicant fingerprint submissions are transmitted electronically; most commonly through "Live Scan" technology. CAMTC is unaware of any certificate holder who has not been fingerprinted. Fingerprint reports are sent directly to CAMTC by DOJ and subsequent arrest notifications are received and reviewed.

In addition to the fingerprint background checks, once an application is received by CAMTC processing staff, an email notice is sent to each government entity in charge of massage regulation in the cities and counties where the applicant has reported that they have lived or worked within the past ten years. A minimum of two weeks is provided for local law enforcement and local government staff to submit information related to each applicant.

CAMTC believes that the receipt of this information from the local agencies is critical to their operations. However, CAMTC reports that it does not track the response rate or communications between itself and local governments, and there is some evidence to believe that the response rate to CAMTC's inquiries is low, and that not all responses are useful. For example, depending on the jurisdiction, a city or a police department may simply not respond, or they may respond with information that is not relevant to the application process, or they may state that they do not have a person responsible or available to provide such information. The California DOJ and Federal Bureau of Investigation reports primarily include criminal convictions, arrests, detentions, and do not always

include administrative citations or civil actions. Additionally, local municipal code violations are not always available from DOJ reports, because many of these violations don't require fingerprinting which may result in no report. As a result, the information relevant to a proper background check is often fragmentary.

CAMTC stated in its Sunset Review Report 2013 that it relies on local jurisdictions for assistance in processing certifications. CAMTC states that it works closely with local jurisdictions and that in some cases an application may trigger contacts with multiple jurisdictions. However, CAMTC states that the lack of uniformity and consistent standards and protocols from one jurisdiction to another further complicates and, at times, impedes the review process.

Because there is no statutory requirement that local governments or local law enforcement entities provide any background information to CAMTC, cooperation can be incomplete. It may be that two weeks is simply not enough time for local governments and law enforcement to respond to the applicant information query, and even then, the response may be different in format or content than that provided by other localities.

BPC 4602.5(b) specifies that any request made by CAMTC of law enforcement or any other representative of local government with the responsibility of regulating or administering a local ordinance relating to massage or massage business is authorized to provide information to CAMTC regarding an applicant or certificate holder including information about the current status of any application or local permit, any history of disciplinary actions, criminal activity or unprofessional conduct allegedly engaged in an applicant or certificate holder including police reports and declarations of conduct and any other information in their possession that is relevant to the certification and standards of the massage therapy law.

According to CAMTC, while a growing number of jurisdictions are highly cooperative with CAMTC, others are still struggling to fully adopt integrated protocols and ordinances that recognize CAMTC's existence. CAMTC contends that it makes substantial efforts at outreach, providing information and assisting local officials and law enforcement when called upon.

Staff Recommendation: *The Committees may wish to inquire of CAMTC as to what efforts it has made to improve its information collection from local governments. CAMTC should update the Committees about its procedures for tracking its effectiveness in communications with local government, and explain its plans, if any, to collect better data on the effectiveness of those communications. It should also address which local entities with large numbers of applicants have been the most, and the least, responsive to its inquiries. The Committees may also wish to inquire of representatives from local government and law enforcement as to the effect of CAMTC's outreach efforts, and what kinds of information local jurisdictions need most from CAMTC. Finally, the Committees may wish to inquire of all parties how information sharing between CAMTC and local agencies can be improved.*

ENFORCEMENT ISSUES

ISSUE #11: (CERTIFICATE REOVCATION, SUSPENSION OR DENIAL.) CAMTC has broad authority to deny an applicant and revoke or suspend a certificate. What is CAMTC's process for denying, suspending or revoking an application or certification of someone who has received serious administrative or civil violations? Why are the Board's enforcement timeframes increasing? Should CAMTC have a goal to complete the enforcement process? Does CAMTC have reason to believe there are substantial numbers of certificate holders with unknown or unidentified background issues?

Background: According to data from CAMTC, as of September 30, 2013, it has denied more than 4,700 applicants for certification and has revoked 100 certificates, disciplined 11 certificate holders, and suspended 169 certificate holders.

In its Sunset Review Report 2013, CAMTC states that it is a voluntary non-profit certifying entity, and is therefore not required to adhere to strict enforcement data and reporting guidelines as are other entities under the jurisdiction of DCA. Because of this, CAMTC does not have a specific timeline for completion of enforcement actions.

According to CAMTC's procedures for discipline, revocation or denial, a certification may be denied or revoked for reasons reasonably related to protecting the public safety, including the following:

- a. Failure to meet and/or maintain the criteria for certification;
- b. Failure to obtain a positive fitness determination after fingerprinting;
- c. Unprofessional conduct, including denial of licensure, revocation, suspension, restriction, or any other disciplinary action against an applicant or certificate holder by another state, by any other government agency, or by another California health care professional licensing board;
- d. Procuring or attempting to procure a certificate by fraud, misrepresentation, or mistake.
- e. Violating or attempting to violate any provision of law or any rule or bylaw adopted by CAMTC;
- f. Conviction of any felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action that is substantially related to the qualifications, functions, or duties of a certificate holder;
- g. Impersonating an applicant or acting as a proxy for an applicant in any examination;
- h. Impersonating a certified practitioner or therapist, or allowing an uncertified person to use a certificate;
- i. Committing any fraudulent or corrupt act that is substantially related to the qualifications or duties of a certificate holder; and,
- j. Committing any act punishable as a sexually related crime.

It should be noted that, according to stakeholders, there are other potential indicia of unprofessional conduct and illicit activity that CAMTC could use as a basis to discipline certificate holders. For example, gender discrimination in the offering of massage services or advertising in "adult media" or sexually explicit forums could be viewed as unprofessional, or even an indication of illicit activity. However, these behaviors are not specifically addressed under the current definition of unprofessional conduct.

Additionally, because it is not a governmental agency, CAMTC contends that it is not required to comply with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*. As a result, CAMTC's denial or disciplinary process does not result in the creation of accusations, and

therefore nothing is posted on its Web site. CAMTC does draft proposed denial and discipline letters, which state the basis of the proposed denial or discipline and are mailed to the applicant or certificate holder. However, those letters are not posted on CAMTC's Web site. If an applicant or certificate holder is ultimately denied certification or disciplined, a detailed "Notice of Decision" letter is mailed to the applicant or certificate holder identifying the basis for the denial and discipline and the reasons why the proposed action is being upheld. This document is not published on the Web site. However, CAMTC does publish the name, certification number, certificate type, effective date, expiration date, city, and status of a certificate holder who has had their certificate revoked, suspended, or otherwise acted against on its "verify certification" link accessible on its Web site. However, identifying information related to a specific certificate holder must be known in order to access this information.

Because CAMTC relies on a civil standard of evidence rather than criminal (i.e., beyond a reasonable doubt vs. clear and convincing evidence), it contends that it has greater discretion to deny, suspend, or revoke a certificate.

Enforcement protocols and procedures in practice:

When CAMTC receives a non-anonymous complaint related to a certificate holder, either by Web site link, email, letter or phone, the complaining party is notified that their complaint has been received and is under review. The Professional Standards Division reviews and considers every complaint. The decision on how to proceed in relation to any specific complaint is at the sole discretion of the Professional Standards Division. If the Professional Standards Division determines that the complaint is regarding a matter within CAMTC's jurisdiction, is credible, has actionable information, and meets other relevant criteria, it will be investigated. Many complaints received do not meet these criteria. For example, the complaint may be against a massage professional that cannot be identified, is not CAMTC certified, or may be related to a matter outside of CAMTC's jurisdiction, such as a contract dispute or an employment matter.

As previously stated, BPC 4602.5(b) authorizes local law enforcement and other local entities to provide CAMTC with pertinent criminal information pertaining to a certificate holder or an applicant. With this information, CAMTC may deny applications or discipline a certificate holder based on unprofessional conduct attested to in sworn declarations made under penalty of perjury by a member of law enforcement (or other city or county official). Declarations may be used to: deny an applicant certification when it provides evidence that the applicant has engaged in unprofessional conduct; discipline a certificate holder through the imposition of conditions on a certificate, or suspension or revocation of the certificate when there is evidence that the certificate holder has engaged in unprofessional conduct; immediately suspend the certificate of a certificate holder when the declaration provides clear and convincing evidence that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder. Additionally, if CAMTC receives notice that a certificate holder has been arrested, and charges have been filed for prostitution or an act punishable as a sexually related crime, CAMTC is authorized per BPC 4603 to immediately suspend the certificate of that certificate holder. City notification of certificate holder arrests with charges filed for prostitution or acts punishable as sexually related crimes allow CAMTC to act quickly without having to wait for notification via "subsequent arrest notices" from the Department of Justice.

Since accepting sworn declarations, CAMTC states that it has seen an increase in local law enforcement's participation in providing information that can assist in the applicant denial and

certificate discipline and revocation process. In December of 2010, CAMTC received seven sworn declarations and revoked 8 certificates. Since that time, the numbers of both sworn declarations received and revocations issued have steadily increased. In 2011, CAMTC received 33 sworn declarations, and revoked 17 certificates. In 2012, 138 sworn declarations were received and 46 certificates revoked. And in 2013, 240 sworn declarations were received and 29 certificates revoked. As of February 10, 2014 CAMTC has received 62 and is projected to receive approximately 480 by the end of 2014.

In addition, CAMTC reports that the number of proposed certificate holder revocations has also increased. In 2010, CAMTC proposed to revoke nine certificates, in 2011 that number jumped to 22, in 2012 it increased to 49, and in 2013 it was 42 over only a nine month period. It is estimated that the total number of proposed revocations for 2013 is 53.

Although the number of sworn declarations provided to CAMTC has increased, some local jurisdictions may still believe they do not have full legal authority to provide the pertinent arrest information or sworn declarations to CAMTC.

California law authorizes certain governmental and private organizations to conduct criminal offender record information background checks to help determine the suitability of a person applying for a license or certification, employment, or a volunteer position working with children, the elderly, or the disabled. In order to be authorized to collect fingerprint information, an agency or organization such as CAMTC, must apply with the DOJ to become an authorized applicant agency unless already designated by law. Pursuant to BPC 4601.3(b)-(d), CAMTC is authorized to receive state summary criminal history information pertaining to applicants for certification as a massage practitioner or therapists and subsequent arrest notifications.

In addition to obtaining criminal information during the initial fingerprint submission and inquiry, applicant agencies may also acquire subsequent arrest notification information for individuals for whom criminal background checks were requested. For purposes of CAMTC, they receive criminal history information prior to certification, and later if a certificate holder has been arrested. CAMTC will receive a notification from DOJ about a certificate holder's recent arrest. This subsequent arrest information affords CAMTC with an opportunity to take disciplinary action against a certificate holder if the criminal action merits it.

However, because DOJ may send summary arrest information without the disposition of the arrest, CAMTC may not immediately be notified of the outcome of the arresting event, which is necessary for some disciplinary actions. One way that CAMTC attempts to address this issue is the request of "sworn declarations" from law enforcement as soon as an arrest has occurred, as opposed to waiting for notifications from DOJ. Although the number of sworn declarations that CAMTC receives from law enforcement is increasing, there are still some local law enforcement entities that do not release such information to CAMTC.

For example, a January 16, 2014, letter from the Los Angeles Police Department to CAMTC stated that per Department policy, "the department is not compelled to release arrest reports unless mandated by the [DOJ's] Authorized Agency List." As a result, CAMTC is not immediately notified of certificate holders who are arrested in that jurisdiction - which may result in a slower response to disciplinary issues. This is despite the fact that CAMTC is an authorized agency by DOJ and is eligible, per BPC 4602.5(b), to receive summary arrest information from local law enforcement.

Staff Recommendation: *The Committees may wish to inquire of stakeholders how best to expand the legal authorization for local government and law enforcement, including the addition of CAMTC to the CADOJ's Authorized Agency list if need be, to share arrest information or declarations of misconduct by certificate holders or applicants in order to expedite CAMTC's disciplinary and review process.*

The Committees may also wish to discuss expanding the definition of unprofessional conduct to include behaviors such as gender discrimination in accepting clients and advertising in "adult" media or sexually explicit forums.

The Committees may also wish to explore requiring CAMTC to abide by a designated timeframe for completing enforcement actions.

TECHNOLOGY ISSUES

ISSUE #12: (WEB SITE CONTENT.) How can CAMTC provide more information to practitioners and the public via its Web site?

Background: Communication with certificate holders, law enforcement, stakeholders and industry representatives is vital to facilitating a robust certification and enforcement program. According to CAMTC, its Internet Web site was created in 2009. The site features links to CAMTC's bylaws, protocols, denial and disciplinary procedures, school review procedures, criteria for rehabilitation, forms and publications, online certification verification, agendas, approved minutes from Board meetings, CAMTC activity in the community, announcements and links to related content. The Web site allows viewers to file a written complaint against a CAMTC certificate holder and to enroll in a subscriber list, which provides an e-mail notification to subscribers when new information is added to the Web site.

Consumers can access specific information about a certificate holder on CAMTC's Web site using the Certification Verification tool. Entering the certificate holder's name, certificate number, or city or county allows a user to see certain information. A record appears with the certificate holder's name, certification number, and status (active, suspended, revoked, or expired), effective date and expiration date, the city listed as the home address, and the certification level achieved.

CAMTC's Web site is also a vital tool for local government and local law enforcement. CAMTC's Web site allows individuals who regulate massage therapy in local jurisdictions to assign a designated contact to receive information about those who are applying for, or who have received, certification in their area. Once registered those individuals are given access to all pertinent data and receive updates from CAMTC about new applicants.

Because the Web site is a vital resource, it is important that it contain updated and relevant information. It appears that, based on inspection by Committee staff, there are areas that need improvement regarding Web site maintenance and updates that could and should be made by CAMTC. For example, the Web site states that approved exams are the MBLEx and NCBTMB exams. However, on page 67 of the [Sunset Review Report 2013](#), it more clearly identifies the specific examinations that CAMTC will accept for certification. The Web site should be updated to reflect

important information and changes that are relevant to the oversight and the voluntary certification of massage professionals.

Furthermore, although the Web site does contain some meeting minutes, not all minutes are available. Minutes are missing from several of the last Board teleconference meetings. Meeting minutes provide an important opportunity for interested parties and stakeholders to review recent Board actions, ensure transparency and provide a general summary of the meeting's proceeding. Accurate and up-to-date minutes should be available and accessible on its Web site. In addition, CAMTC lists its current Board members on the Web site however, it does not provide the specific biographical information, appointment date, or the appointing entity of each member. CAMTC's Web site also does not include other important information such as its most recent audit, an employee organizational chart, or any type of annual report.

Staff Recommendation: *CAMTC should immediately update its list of approved examinations and past meeting minutes on its Web site. Additionally, CAMTC should add biographical and appointment related data for its Board members to its Web site, or explain to the Committees why it does not. CAMTC should also post online a fuller explanation of its operational procedures.*

ISSUE #13: (WEBCASTING BOARD MEETINGS.) Should CAMTC make its Board meetings available on the Internet?

Background: CAMTC is subject to the requirements of the Bagley-Keene Open Meeting Act (Bagley-Keene Act). The Bagley-Keene Act generally requires all state boards and commissions to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized under by the Bagley-Keene Act to meet in closed session. The public meeting requirement applies to board and subcommittee meetings alike. A meeting is considered a "gathering" of a majority of the board or a majority of a committee of three or more persons where board business will be discussed. This includes telephone and email communications.

In 2013, CAMTC held four board meetings, three in Los Angeles and one in Santa Monica. Three additional teleconference meetings were held. While agendas are posted on-line in accordance with the requirements of the Bagley-Keene Act, the meetings are not currently recorded or Webcast, updated meeting minutes are not available and there appears to be limited, if any, additional information related to agenda items distributed to the general public or made available on its Web site.

Staff Recommendation: *The Committees may wish to explore requiring CAMTC to record or webcast its meetings to increase transparency and ensure that stakeholders, schools, law enforcement, and local government entities across the State are able to view and participate in Board meetings. All approved meeting minutes should be posted to CAMTC's Web site to ensure that all recorded votes and meeting information is accessible and identifiable to the general public.*

ADMINISTRATIVE ISSUES

ISSUE #14: (CUSTOMER SATISFACTION SURVEYS.) What are CAMTC's plans for an effective customer satisfaction survey?

Background: Currently CAMTC is conducting a pilot test for performance measures and three customer satisfaction surveys (general, certification, and enforcement) which have been sent to certain complaining parties and certificate holders. The pilot test is still being conducted, therefore it is too early to compile and assess the data. However, CAMTC states that it is planning to implement quarterly customer satisfaction surveys starting in 2014. Surveys of consumer satisfaction for CAMTC's handling of complaints will be sent to the complaining party via e-mail, or postcard if no e-mail is available, upon closing of the complaint.

Staff Recommendation: *CAMTC should update the Committees on its plan to utilize customer satisfaction surveys beyond 2014 and explain how the survey will be conducted and how the outcomes will be assessed. More importantly, CAMTC should explain to the Committees its understanding of who their "customers" are, and discuss whether stakeholders such as local governments or law enforcement would be included in those surveys.*

ISSUE #15: (SALARY STANDARDS.) **What are CAMTC's salary standards for staff? How does CAMTC's salary standards compare to other boards, bureaus and committees under the purview of the DCA? How can CAMTC's salary standards be more transparent?**

Background: The IRS does not have formal salary standards for a non-profit entity. However, various sources report that the salaries should be "just and reasonable."

CAMTC states that the current CEO has combined duties which include serving as the COO, Director of Outreach and Marketing, IT Manager and Director of Human Resources. It is not clear if the CEO is serving temporarily in those other capacities because of vacancies, or if those functions are in fact part of the ongoing role of CEO. The Sunset Report 2013 contained mentioned "incentives to attract and retain qualified staff" and included an organizational chart, but did not provide complete salary and bonus information for executive, administrative or legal staff. CAMTC provided the following breakdown of staff the salary ranges and salary brackets for each position:

<i>CAMTC Compensation Range</i>				
<i>Employee Type</i>				
	Monthly Salary or Hourly Rate			
<i>Executives</i>				
Chief Executive Director	\$ 15,833	---	\$ 17,775	monthly
Chief Operating Officer	\$ 12,500	---	\$ -	monthly
Director Government Relations	\$ 6,667	---	\$ 7,211	monthly
<i>Professional Standards Division</i>				
Director	\$ 50	hourly	\$ 7,500	monthly
Senior Investigator	\$ 28	hourly	\$ 6,760	monthly
Senior Background Investigator	\$ 28	hourly	\$ 6,039	monthly
Investigator	\$ 25	---	\$ 28	hourly
Hearing Officer	\$ 23	---	\$ 26	hourly
Paralegal	\$ 25	---	\$ 30	hourly

Executive Officers and Bureau Chiefs operating under the jurisdiction of DCA must follow salary setting guidelines as established by the California Department of Human Resources (CalHR). CalHR has the responsibility for all issues related to salaries and benefits, job classifications, civil rights, training, exams, recruiting, and retaining. For most state employees, many of these matters are determined through the collective bargaining process. The salary setting standards for Executive Officers and Bureau Chiefs under DCA are not 'one-size fits all' pay scales. Determination for pay is based upon numerous factors including the number of licensees' overseen, authorized positions at the board or bureau, complexity of the program, civil service appointment level, exempt status, career executive assignment and many other considerations. Because of this, it is difficult to compare with precision the current salary of the Chief Executive Officer of CAMTC with that of other Executive Officers or Bureau Chiefs with similar levels of programmatic responsibility.

As noted in its 2012 federal tax forms, CAMTC paid its CEO a total of \$260,000 during 2012. The CEO does not receive separate health or retirement benefits.

In addition, legal fees were also a substantial part of CAMTC's budget. The federal 990 tax form indicated that CAMTC paid \$557,483 for legal services.

Staff Recommendation: *CAMTC should provide aggregate compensation totals (salary and bonuses) for its entire staff, as well as breakdowns for benefits including health care and retirement, and explain its guidelines for awarding bonuses. CAMTC should explain why it has a COO position listed but not filled, and how that situation impacts the work of the CEO. It should also provide a more detailed accounting of its payments for legal fees and contracting with AMG.*

ISSUE #16: (SCHOOL APPROVAL.) Should CAMTC more thoroughly investigate schools prior to granting approval, and if so, what standards should it use? Is CAMTC fully using its existing authority to approve schools, or does its authority need to be expanded or clarified?

Background: According to CAMTC, it does not proactively approve schools, but rather disapproves a school if it finds that a school engages in inappropriate behavior or does not meet the minimum standards for training and curriculum. Schools may be disapproved for selling or offering to sell transcripts, failing to require students to attend the classes listed on the transcript, failure to require students to attend all of the hours listed on the transcript, or engaging in fraudulent practices.

Currently, CAMTC may issue certificates to applicants who have completed at least 250 hours of education at “approved” school(s). BPC 4600 specifies that, “[a]pproved school’ or ‘approved massage school’ means a school approved by [CAMTC] that meets minimum standards for training and curriculum in massage and related subjects” and that is approved by at least one other specified entities. The list of other agencies includes the Bureau of Private Postsecondary Education (BPPE), DCA, the organizations that accredit junior and community colleges, and corresponding agencies in other states. California State University and University of California schools also meet the definition of an “approved school.”

For the majority of massage schools in California, the additional State certifying agency is BPPE. If a California school does not have a massage program approved by BPPE or a massage program approved by another one of the certifying agencies listed in BPC 4600(a), CAMTC cannot accept the education transcripts from that school. CAMTC reports that it does not accept education from four specific schools because they are not approved by BPPE. Those schools are listed on CAMTC's Web site.

While CAMTC may unapprove a school for a number of reasons, the most common reason is transcript discrepancies, meaning the transcript does not accurately reflect the education actually received by the applicant. According to CAMTC, the reasons for transcript discrepancies range from inaccurate record keeping to fraud, such as the sale of transcripts. CAMTC is responsible for determining that schools meet the specified requirements necessary for certification. In addition, CAMTC has broad authority to investigate whether an applicant actually received the education claimed on an application or provided through a transcript. CAMTC reports that it has unapproved approximately 46 schools and placed seven on its "inadequate education list," which means that applicants who have taken courses at those schools must submit additional proof of education beyond a transcript and diploma.

The California Private Postsecondary Education Act (The Act) requires all *unaccredited* colleges in California to be approved by BPPE and all *nationally accredited* colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors, and, most importantly, it gives BPPE an array of enforcement tools to ensure that colleges comply with the law. The Act establishes a robust fee structure to ensure BPPE's operational effectiveness, including an application fee and an annual institution fee.

BPPE's school approval process is separate from CAMTC's and currently, there is no formal relationship between the two entities. BPPE is charged with student protection and ensuring financial solvency of a school, while CAMTC's statutory responsibility is to determine whether the school meets minimum standards for training and curriculum and is limited to approving the school in relation to CAMTC certification. This means schools can be unapproved by CAMTC and still operate massage

programs, but students from those schools may not use educational units for CAMTC certification. Currently, there are 46 unapproved schools by CAMTC, and all 46 of those are listed as "approved" by BPPE. This disjointed relationship between the two entities impacts both BPPE's and CAMTC's ability to ensure that approved massage programs are operating properly and that students are not being harmed or misled as to the value of their education.

Staff Recommendation: *The Committees may wish to inquire of CAMTC as to why it has chosen to engage in a complaint-driven form of school review rather than a proactive and more complete approval process. If CAMTC were given more explicit direction to proactively review and approve massage schools, it should provide a forecast of the additional time and staff requirements needed to develop more robust standards and inspect all relevant schools.*

Additionally, CAMTC should update the Committees on its current working relationship with BPPE and any active efforts to improve coordination. The Committees may wish to explore amending current statute to clarify that the approval of a school by BPPE is contingent upon approval of a program by CAMTC.

ISSUE #17: (BOARD MEMBER COMPOSITION AND STANDING COMMITTEES.)

Should CAMTC change the composition or structure of its Board, or impose additional requirements on members?

Background: The Boards, Bureaus and Committees under the jurisdiction of DCA typically contain both representatives of the professional industry along with public members who are not affiliated with the regulated industry. These appointments are generally controlled by the Governor, the Speaker of the Assembly, the Speaker Pro Tempore of the Senate or the Senate Rules Committee. For example, the Physical Therapy Board is comprised of seven members: the Governor appoints four professional members and one public member, the Speaker of the Assembly appoints one public member and the Senate Rules Committee appoints one public member. Members are usually appointed to serve a four-year term plus a one-year grace period, and members cannot exceed two full terms.

CAMTC is unique in that its Board members are appointed by a mixed group of industry, massage school, and local government association representatives. CAMTC's bylaws allow for a maximum of twenty board members, but no less than four. By comparison, the California Medical Board has only fifteen members. CAMTC currently has 19 members with one vacancy. Seven members are certified massage professionals; eight members are representatives selected by four different professional associations; three members are representatives selected by statewide associations of private postsecondary schools; one member is representative appointed by the League of California Cities; one member is a representative selected by the California State Association of Counties; one is a representative selected by DCA; and the remaining six members are appointed by a two-thirds vote of the Board as provided in CAMTC's bylaws. The only CAMTC Board appointments with government oversight are those controlled by DCA and the Chancellor of the California Community Colleges. As stated in BPC 4600.5 (b)(D)-(E), those entities may even choose not to exercise the right of selection and leave their seats unfilled. Additionally, at least two members of the Board do not reside in California. While this may be common practice for non-profit boards, it is not customary for boards under the jurisdiction of DCA.

The Board currently has two standing committees under it. The Executive Committee consists of the elected officers of the Board and has the authority to review and recommend changes to the bylaws and to other operating policies to the Board. The Executive Committee also has any authority expressly delegated to it by the Board. CAMTC states that "because all CAMTC Board members are so committed and enthusiastic, the Executive Committee does not currently play a strong role in the governance of the organization – i.e. most decisions are made by the full Board." Separately, the Audit Committee is charged with oversight of financial reporting and disclosures. The committee interfaces with the auditing firm (Damore, Hamric & Schneider, Inc.) and the CEO, and makes recommendations to the Board regarding the approval of the annual audit report. It also reviews the organization's tax returns. There is no statutory requirement for the Board to have any specific committees.

Current state law requires board members of entities within DCA to complete Board Member Orientation Training in several important areas, including ethics, conflict of interest laws and sexual harassment prevention. CAMTC Board members are not required to complete a Board member training, nor does CAMTC offer a standard training. Currently, CAMTC legal counsel provides new board members with materials regarding the Bagley-Keene Open Meeting Act, public benefit organizations, CAMTC bylaws, meeting minutes, and various other policy documents related to CAMTC for them to read.

By way of comparison, California recognizes other non-profit models of professional regulation: tax preparers and interior designers. The California Tax Education Council (CTEC) was established by the Legislature to promote competent tax preparation. CTEC is a non-profit corporation founded under the authority contained in BPC 22250-22259. The Board of Directors for CTEC is comprised of fifteen, unpaid volunteers appointed by certain qualified organizations. CTEC's day-to-day operations are carried out by an administrator under a contract awarded by its Board of Directors. Currently, CTEC utilizes Avocation Strategies as its administrator. CTEC has registered approximately 38,481 tax preparers.

The California Council for Interior Design Certification (CCIDC), also a non-profit entity, administers a voluntary certification program for interior designers. Under the current bylaws of CCIDC, the Board is composed of eleven members, five of whom are members of designated national professional interior design associations; one member is a professional member who is not affiliated with any organization and one who is an "independent" or non-affiliated interior designer. One member is an interior design educator, and there are four public members, none of whom are associated with the interior design profession. All CCIDC Board members must be residents of California.

Staff Recommendation: *The Committees may wish to discuss the merits of restructuring CAMTC's Board to more closely reflect other healing arts boards under the jurisdiction of DCA in the following ways: reducing the total number of Board members to 15 or less; placing the appointment powers with the Governor, the Speaker of the Assembly, the Speaker Pro Tempore or the Senate Rules Committee; requiring a substantial number or even a majority of public members; instituting rigorous Board member training; requiring local government and law enforcement representatives among the Board members; and imposing a California residency requirement on all Board members.*

In addition, given the high level of interest from local governments and law enforcement in the regulation of the massage therapy industry, as well as questions about the effectiveness of communications between CAMTC and those stakeholders, the Committees may wish to consider

requiring the creation of a local government or law enforcement advisory committee to help ensure proper communications between the Board and stakeholders.

ISSUE #18: (Metrics and Data Collection.) How can CAMTC improve its performance measures for data collection and reporting?

Background: As noted elsewhere in this Background Paper, there are multiple kinds of data that, if collected, would enhance CAMTC's ability to maintain important quality control measures. For example, in addition to tracking the number of certificate holders, it would be valuable for CAMTC to maintain records pertaining to the local government outreach and response rates, including the total number of arrests or complaints received regarding certificate holders from local governments and the number of revocations based on those communications. CAMTC should maintain accurate records detailing the number of certificate-holder complaints received and the disposition of those complaints. In addition, the collection and distribution of additional information about school complaints and programmatic issues will help better determine the needs and functions of a school inspection program.

Staff Recommendation: *CAMTC should update the Committees on how it intends to develop and maintain better performance metrics for the collection and dissemination of information about applicants and certificate holders, and its communications with key stakeholders such as local governments.*

GENERAL

ISSUE #19: (PREEMPTION & PRACTICE RIGHTS.) Should the preemption of local control granted in statute to massage businesses using only CAMTC-certified professionals be revised in order to strike a better balance between the needs of the massage profession for fairness and certainty, and the needs of local governments for autonomy and effective tools to fight crime?

Background: The original intent of the SB 731 (Oropeza) (Chapter 384, Statutes of 2008) was to create uniform standards regarding education, training and background investigation for massage practitioners to help professionalize the massage industry in California and provide more distance from an unfortunate association with the sex trade.

According to the American Massage Therapy Association's 2014 Industry fact sheet, massage professionals work in a variety of work environments, sole practitioners account for 62% of practicing therapists, many of whom practice in multiple settings. 65% of those sole practitioners work at least part of their time at a client's home, business, or corporate setting, 38% at their office, 35% at their home, 26% in a healthcare setting, and 26% work in a spa setting. Because so many massage professionals are sole practitioners who work from their home, travel to a client's homes, or contract with spas in various cities and counties, the concept of statewide certification was designed to help alleviate practitioners from being required to meet multiple duplicative and often restrictive practice standards which would vary city by city. From a consumer protection standpoint, certification meant that a "certified professional" has met specified educational, training, and background standards, thereby giving consumers some reassurance that the practitioner was properly educated and trained.

According to CAMTC, for many years "the perception of massage as a vice resulted in many cities requiring expensive conditional use permits. [Some] [r]estricted massage businesses from opening within 1,000 feet of schools, churches, or residences effectively zoned massage out of many small cities. As reported by CAMTC, zoning massage as "adult entertainment," cities force[d] massage clients to seek healing and restorative services in unsafe, outlying and industrial areas, adjacent to adult bookstores and nude dancing establishments. Many cities still have local ordinances that presume massage clients will be engaging in sexual intercourse with the massage providers. For example, Los Angeles requires that a poster be posted in public areas informing massage clients that it is illegal to have condoms on the premises." Additionally, the proponents of state regulation argued in discussions around SB 731 that in the past, local regulation treated professionals and illicit massage businesses alike and consumers may have had a problem knowing how to distinguish legitimate massage practitioners from illicit massage businesses.

In crafting a voluntary, statewide certification program in California, proponents of statewide regulation recognized a need to eliminate restrictive and duplicative local registrations and certifications. SB 731 included a specific provision in BPC 4612(a)(4) which created a specific exemption (known as the 'preemption') for certified massage professional from certain restrictive business regulations. The statute specifically states "Nothing in this section shall prohibit a city, county, or city and county from enacting ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, or zoning requirements applicable to an individual certified pursuant to this chapter or to a massage establishment or business that uses only individuals who are certified pursuant to this chapter to provide massage for compensation, provided that, unless otherwise exempted by this chapter, these ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, and zoning requirements shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code.

Preemption clauses are included numerous massage therapy practice acts across the country. Currently, 22 other states include some form of preemption in their massage therapy statutes. Preemption clauses vary state by state and may or may not dictate land use controls in addition to licensing standards for massage professionals. The American Massage Therapy Association Web site provides suggested guidelines for a state-wide regulatory scheme for massage therapy, and recommends that any massage therapy practice act should include preemption of local regulations that would treat massage therapy differently in any way from local regulation of other healthcare professions. However, those guidelines do not include model language.

A number of local governments throughout California argue that the preemption as written severely hampers their authority to legitimately regulate massage businesses.

According to the League of California Cities, "While [existing law] specifies that jurisdictions can regulate businesses that provide massage services through independent contractors or employees to provide massage if they are not certified by CAMTC, [it] precludes the ability of jurisdictions to regulate certified massage therapists and businesses that employ certified massage therapists. Specifically, jurisdictions can only regulate massage establishments using CAMTC-certified massage professionals if jurisdictions apply the regulations to other professional services in a uniform matter. In addition, the legislation provides that certified massage therapists have the right to practice massage without any other license, permit, or other authorization.

In addition, if a business indicates that they only hire certified employees, cities and counties can't regulate the business. That's right — cities and counties can regulate big box stores, fast food restaurants, marijuana dispensaries, doctors' offices, and pretty much every other business in the local jurisdiction. The problem is a provision in SB 731 states that unless the jurisdiction regulates massage establishments no differently than the requirements that are uniformly applied to other professional services, the jurisdiction cannot regulate the massage industry.

Cities and counties do not regulate every professional business the same way. Governments place regulations on businesses to address particular issues specific to that business. For example, parking requirements for a doctor's office may not be the same as a big box store. A jurisdiction may limit the hours of operation for an adult store but not a nail salon."

Conversely, the American Massage Therapy Association contends that state certification and recognition is important because it "protects the public in other ways as well. It establishes a consistent standard of practice which is enforceable by a professional code of ethics. In addition, it establishes a formal grievance process for consumers that helps prevent unethical and/or non-compliant massage therapists from continuing to practice."

Based on a review of the legislative history of SB 731, it does not appear that the intent of the preemption clause was to dismantle a local jurisdiction's ability to regulate massage businesses, as it would any other business. Instead, it appears to have been an attempt, however flawed, to achieve two ends: to standardize the requirements of the profession so that professionals only need meet one set of state standards, and also to ensure that local land use decisions are made in a manner that does not unduly discriminate against massage professionals. Standardization is a useful tool for local jurisdictions because it allows them to efficiently recognize an individual's' certification in massage therapy having to create and administer their own duplicative certification system. The bulk of the contention over preemption does not appear to be with the imposition of a single state standard; rather, the majority of the discontent appears to stem from the perceived overbroad reach of the 'protective' provisions that restrict local government's ability to utilize its full land use authorities when a massage business uses only CAMTC-certified professionals.

Staff Recommendation: *The Committees may wish to discuss how the preemption language might be revised in order to return a greater degree of control to local governments in regulating massage businesses while maintaining the integrity of the statewide certification process and ensuring that massage professionals do not face undue burdens or discrimination in their practices.*

CONTINUED REGULATION OF THE MASSAGE PROFESSION BY CAMTC

ISSUE #20: (CONTINUED REGULATION BY CAMTC.) Can CAMTC continue to effectively fulfill its mission of certifying massage professionals in California? Will CAMTC be able to fulfill its mission if new requirements, such as more frequent or thorough school inspections, are imposed? Given the previously noted suggestions for reform, should CAMTC be dissolved and the industry deregulated, should its responsibilities be transferred to a new board or bureau

created under the purview of the DCA, or should CAMTC be permitted to continue operating in its current form?

Background: As intended by SB 731, the health, safety and welfare of consumers would be protected through a voluntary certification of massage professionals, ensuring greater consistency and quality amongst professionals while giving local governments the tools to more easily identify trustworthy practitioners. The current regulatory scheme combines education, training, and background standards into a systematic formal review process whereby only those individuals who have met those standards can dutifully represent themselves as massage therapists or massage practitioners. That system would be overseen by a regulating entity with a mission "to protect the public through the administration of a successful certification process." That mission is worthy of continuation.

Nevertheless, CAMTC faces many challenges to its ability to fulfill its mission: the need for greater oversight of educational institutions; a need for establishment and business inspections; a need for better administrative controls; questions regarding board composition; and a strong desire from local governments to regain some measure of land use authority over establishments using certified professionals. CAMTC will need to be proactive in addressing these issues in order to fulfill its mandate and earn the trust of its many stakeholders. In addition, CAMTC will need to enhance its communications with local government and law enforcement entities to help stop individuals and businesses engaged in illegal activity from masquerading as legitimate healing arts practitioners and damaging the reputation of the massage therapy profession.

A strong argument can be made for the continuation of some form of professional regulation: statewide regulation is more efficient, consistent, and the norm across the majority of states. Without any regulation, consumers would lose any hope of making distinctions in quality between massage practitioners, practitioners would be again subject to a patchwork of licensing regimes, and local governments would be forced to develop new regulatory processes from scratch.

However, the question remains as to the form that regulatory oversight should ideally take. Should the non-profit model represented by CAMTC, perhaps with some changes, continue for another four years? Should CAMTC be allowed to sunset, and have its responsibilities taken over by a newly created board or bureau under the jurisdiction of DCA? Transition to a board/bureau model would certainly entail transition costs, including setting up the physical office, hiring staff, and shifting over the database and certificate production processes. Conversely, a board or bureau would provide greater consistency in administrative practices, greater transparency to the public, and perhaps confer greater enforcement powers as well. Of course, such a change would also represent a shift in control over regulation from the industry to the public sector as well.

If the Committee decides to retain CAMTC in its current form, staff recommends that it be granted only a two-year sunset extension in order to ensure that any outstanding issues are dealt with quickly and to the satisfaction of the Committees.

Staff Recommendation: *The Committees may wish to discuss the relative merits of continuing the non-profit model of regulation, deregulating the industry completely, or transitioning to a board or bureau overseen by DCA. Of course, the creation of a new board or bureau should be done only with the agreement of the Governor's Administration. If it is determined that the current non-profit model remains desirable, CAMTC should be continued with a two-year extension of its sunset date*

so that the Legislature may review its progress in addressing the identified issues of concern.

The Committees may also wish to request that CAMTC provide it with an updated briefing to explain how it might implement the above recommendations, including expanded school inspection and approval, including estimates of both additional cost and time.

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