

# **BACKGROUND PAPER FOR THE California Massage Therapy Council**

**Joint Sunset Review Oversight Hearing, March 18, 2022  
Assembly Committee on Business and Professions and the  
Senate Committee on Business, Professions, and Economic Development**

## **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) was first established in 2009. Unlike the majority of regulatory bodies responsible for overseeing professions and vocations in California, CAMTC is not a state agency and does not function as part of the state's government. Instead, CAMTC is incorporated as a private nonprofit public benefit corporation with 501(c)(3) tax exempt status. Certificates granted by CAMTC are voluntary at the state level, though only certificate holders may use the terms "certified massage therapist" or any other language that implies certification by the council.

As of June 2019, there are 50,551 certified massage therapists in California. The practice of massage, also referred to as bodywork, is defined in statute as "the scientific manipulation of the soft tissues."<sup>1</sup> According to the National Institutes of Health, massage therapy has been found to provide short-term relief for several kinds of pain, and massage therapy may be helpful for anxiety and depression in people with fibromyalgia, cancer, or HIV/AIDS.<sup>2</sup>

While a number of recent studies support the promotion of massage therapy as a complementary approach to pain management, for much of the profession's history it has been treated less as a healing art and more as a potential front for illicit activities such as sex trafficking and prostitution. Through partnerships with local law enforcement, CAMTC considers efforts to combat human trafficking to be at the core of its mission and mandate from the Legislature. Local governments frequently include a requirement that all massage professionals possess a certificate from CAMTC as part of their anti-trafficking ordinances. As a result, while certification by CAMTC is technically voluntary at the state level, it is mandated in numerous jurisdictions across the state and is often framed by local government as a form of "vice" regulation rather than health care practice.

CAMTC has the authority to grant or deny applications for certification and to discipline certificate holders by denying, suspending, or placing probationary conditions on certificates. CAMTC is also responsible for approving and unapproving massage schools whose students are eligible for certification.

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<sup>1</sup> Bus. & Prof. Code, § 4601

<sup>2</sup> <https://www.nccih.nih.gov/health/providers/digest/massage-therapy-for-health>

## The Creation of CAMTC

Prior to the creation of CAMTC, massage therapy was almost exclusively regulated at the local level. Assembly Bill 3325 (McAllister, Chapter 1352, Statutes of 1976) had provided that in addition to a city or county's power to require business licenses, an ordinance could be adopted conditioning the issuance of a massage establishment license on compliance with certain standards. Requirements could include standards relating to age, education and experience, and passage of a practical examination. Cities and counties were further authorized to deny massage licenses to anyone previously convicted of crimes such as prostitution, pandering, or sales of narcotics, as well as those required to register as sex offenders.

Several bills were subsequently considered that would have established a new state-level agency tasked with regulating massage professionals. Assembly Bill 1388 (Kehoe), introduced in 2003, would have established a new entity under the Department of Consumer Affairs (DCA). However, that bill failed to advance beyond its first policy committee.

In 2005, the Joint Committee on Boards, Commissions, and Consumer Protection in the California State Legislature considered state licensure of massage therapists through the Sunrise Review process, as required by statute whenever creating a new state board or legislation creating a new category of licensed professional.<sup>3</sup> The California Chapter of the American Massage Therapist Association and the Associated Bodywork and Massage Professionals each supported shifting regulation of the profession from the local level to the state level, and each completed the Joint Committee's sunrise questionnaire.

The sunrise background paper stated that "massage has grown into the third most requested Complementary and Alternative Practice" and that "massage is used for managing stress, enhancing self-awareness, maintaining health, increasing athletic performance, rehabilitating from injuries, and as an adjunct to medical treatment for wide variety of conditions." The sunset background paper additionally estimated that up to 25,000 massage therapists were actively practicing in California and using a variety of unprotected titles and claims of national certification.

Ultimately, the Joint Committee issued a formal recommendation that the regulation of massage therapists be shifted from the local jurisdiction approach to a state-based approach to provide for more uniform standards. The recommendation cited criticisms alleging that the majority of local ordinances enacted were aimed more at curbing illicit adult services than regulating a healing arts profession. The Joint Committee's final recommendation stated:

It was argued by some that [local control of the massage profession] was enacted to deal in part with the adult-oriented sex business, but in doing so legitimate massage businesses are subject to local ordinances that inappropriately and oppressively regulate them as "adult entertainment." ... Because local jurisdictions control the regulation of massage, local ordinances can be vastly different – leaving the massage therapist with the burden of adhering to each jurisdiction's requirements. This can make movement between jurisdictions anywhere from difficult to impossible. ... Local regulation treats professionals and "massage parlors" alike and consumers have a problem knowing how to distinguish legitimate massage practitioners from "massage parlors." ... Different jurisdictions have different standards which would indicate that there is no local government agreement about what standards are necessary and sufficient. It would seem appropriate to move regulation of massage therapy to the state level to create a more uniform standard.

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<sup>3</sup> Gov. Code, §§ 9148-9148.8

Shortly after the final recommendations were published, Senate Bill 412 was amended by Senator Liz Figueroa, Chair of the Joint Committee, to create a new state-level regulator of massage professionals. The bill proposed the creation of a nonprofit entity established as the Massage Therapy Organization (MTO), which would grant certificates to qualified applicants as either massage practitioners or massage therapists depending on education and experience. The concept of the MTO as a nonprofit was modeled after the California Tax Education Council, which was similarly established through statute in 1997 in what was called a “grand experiment” in nongovernmental regulation of a profession by a nonprofit.

Under the legislation, two tiers of massage professionals would be regulated by the MTO. Certification as a “massage practitioner” would require 250 hours of education from an approved school. Certification as a “massage therapist” would require 500 hours of education from an approved school or the passage of an approved examination. Massage professionals who were already providing massage services prior to the creation of the MTO would be eligible to receive certification as a “massage practitioner” under grandfathering provisions allowing for lower qualifying hours of education in conjunction with proof of providing an identified number of hours of massage for compensation.

As originally introduced, Senate Bill 412 would have completely preempted local regulation of massage, prohibiting the enactment or enforcement of any ordinance regulating the practice of massage by individuals certified by the MTO. However, subsequent amendments to the bill were taken in response to opposition by cities and counties. The final text of the bill would have preserved the authority for local governments to adopt ordinances “governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses,” though ordinances could not place additional requirements on certificate holders. Amendments also added representatives of the California State Association of Counties and the League of California Cities to the MTO’s Board of Directors.

Senate Bill 412 was supported by the American Massage Therapy Association, California Chapter but opposed by both the California Chiropractic Association and the California Physical Therapy Association. Floor analysis for the bill summarized the opposition’s arguments against the MTO’s proposed status as a nongovernmental nonprofit and belief that “the regulation of massage practitioners and therapists, like the regulation of other health care providers, be better placed in the hands of the Department of Consumer Affairs.” The opposition also expressed concerns with the extent to which massage professionals would appear to be authorized to engage in healing arts practice despite having less training than other professionals.

Following two years of negotiations, Senate Bill 412 failed passage on the Assembly Floor by a vote of 24 to 38. The next year, Senator Jenny Oropeza introduced Senate Bill 731, which was substantially similar to the prior Figueroa bill; it maintained the MTO’s nongovernmental status, the voluntary nature of the MTO’s certificate program, and the continued role of local governments in regulating massage businesses. The first section of Senate Bill 731 began by reading:

It is the intent of this act to create a voluntary certification for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists; assure that certified massage therapists have completed sufficient training at approved schools; phase in increased education and training standards consistent with other states; assure that massage therapy can no longer be used as a subterfuge to violate [laws against prostitution]; and to provide a self-funded nonprofit oversight body to approve certification and education requirements for massage therapists.

Senate Bill 731 was signed into law in 2008 by Governor Schwarzenegger, creating at last a voluntary statewide certification of massage professionals by a nongovernmental nonprofit.<sup>4</sup>

### **Subsequent Changes to the Massage Therapy Act**

Subsequent legislation was enacted to further refine the structure and operations of the MTO. In 2010, Assembly Bill 1822 (Swanson) added representatives of law enforcement to the MTO's Board of Directors. In 2011, Assembly Bill 619 (Halderman) renamed the MTO in statute as the "California Massage Therapy Council" and prohibited local governments from charging business licensing fees to massage establishments at a higher rate than other professional service businesses. CAMTC sponsored Senate Bill 1238 (Price) to make additional changes to its governing statutes in 2012. Assembly Bill 1747 (Holden), among other provisions, would have made the records of the council open to public inspection pursuant to the California Public Records Act; however, this bill was not heard in committee.

The legislation creating CAMTC subjected the council to the Legislature's sunset review oversight process, with a scheduled repeal date of January 1, 2016; this was changed to a repeal date of January 1, 2015 by Senate Bill 294 (Negrete McLeod), which readjusted the sunset timeline for a number of regulatory entities. CAMTC underwent its first Joint Sunset Review hearing on March 10, 2014, which was conducted by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development (Committees).

In the background paper for CAMTC's first sunset review, the Committees considered a number of issues relating to how massage therapy was now regulated. The Committees noted that the two-tier certification system was scheduled to be repealed with the phasing out of the "massage practitioner" certificate; the Committees noted that "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." The Committees also noted that CAMTC did not have any oversight over massage establishments, and raised the possibility of creating a registration program for establishments or a certificate program for business owner/operators. Additionally, the Committees pointed out that CAMTC's approved school process consisted of unapproving schools following investigations into complaints, where it may be more sensible for the council to affirmatively approve schools.

The Committees' background paper also discussed whether the Act's preemption language was overly burdensome on local governments seeking to regulate professionals working in establishments within their jurisdictions. Representatives of cities and counties argued that because statute prohibited them from regulating certified massage therapists in any manner inconsistent with how all other professional service providers were regulated, it essentially meant they couldn't regulate them at all. The Committees recommended exploring ways that "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."

Whether it was appropriate to continue the operation of CAMTC as a nonprofit organization was also discussed in the Committees' background paper. The final issue in the paper read:

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.

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<sup>4</sup> Chapter 384, Statutes of 2008.

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.

Following CAMTC's sunset review, Assembly Bill 1147 (Bonilla) was amended to extend the council's sunset date by the recommended two years and implement a number of reforms to address issues raised in the background paper. The bill added clarification to CAMTC's role by defining a number of key terms and organizing the sections of code governing massage therapy into the Massage Practice Act, to be enforced and implemented by the council. The bill reconstituted CAMTC's Board of Directors and required at least 90 days' notice to the public of any meeting to discuss increasing certification fees. The bill also enacted language to formally wind down the "massage practitioner" certification, ending the two-tier system. CAMTC was required to develop policies, procedures, rules or bylaws governing the requirement and process for the approval and un-approval of schools. In regards to the role of local government, the bill placed additional prohibitions on ordinances but removed provisions in the law preempting land use ordinances.

While Assembly Bill 1147 preserved the voluntary nature of certification, it did require that CAMTC provide the Legislature with "a feasibility study of licensure for the massage profession." This report was prepared by an outside consulting group and delivered on December 21, 2016. The study argued that "in spite of the many benefits of regulation, and the increasing number of occupations and professions governed by such regulations, there has recently been an increasing awareness that these regulations come with a cost, both for consumers and for practitioners." It further suggested that "the certification model is likely superior to a licensure model in accomplishing the goal of distinguishing legitimate practitioners from sex workers," explaining that "the primary benefit of California's certification model as administered by CAMTC is that, because certification is voluntary, it can be revoked much more quickly and easily than can a state-granted license."

In its report, the consulting group acknowledged sunrising a new board would not be logistically challenging, stating: "The primary obstacle to licensure, then, is not logistical, but rather political. Specifically, opposition from related professions as well as some elected officials can act to slow or stop efforts to create a new category of professional license." The report concluded that continuing the regulation of massage professionals through voluntary certification by a nonprofit was "the best alternative for regulation of massage therapists in California, but continued attention to accountability and due process is needed to maintain the faith in and therefor the effectiveness of this system."

CAMTC underwent its second sunset review and was discussed in an oversight hearing held by the Committees on March 14, 2016. The Committees' background paper reviewed the progress CAMTC had made since its prior review and raised a number of additional issues relating to its structure and operations. Following the review, CAMTC's repeal date was extended by a full four years through Assembly Bill 2194 (Salas) with only modest reforms to the Massage Therapy Act, and the regulation of the massage profession through voluntary certification by a nonprofit was sustained.

## **Future of the Massage Therapy Profession**

As a nongovernmental entity, CAMTC receives no funding from the State of California and the nonprofit model is frequently described as a more efficient and responsive form of regulation than state bureaucracy. Additionally, CAMTC has placed an emphasis on its collaboration with local law enforcement to combat human trafficking, suggesting that the deletion of preemption language and restoration of local control has been successful in assisting anti-trafficking efforts. Both CAMTC itself and representatives of local government have shown support for preserving the current structure for regulating massage therapy through voluntary certification by a nonprofit.

However, advocates for the regulated industry have continued to characterize the state's massage therapy laws as enabling excessively burdensome local ordinances and continuing to cast a shadow on the profession as a "vice" industry. As 43 other states currently license massage therapists, certification has proven to be a barrier to allowing the practice to be fully accepted as a form of pain management alongside other nonpharmacological treatments and therapies. Additionally, some have criticized the council's nongovernmental status as falling short of the transparency, accountability, and due process required of government agencies. Further examination of these criticisms and arguments for and against reform of how the massage profession is regulated is discussed under "Current Issues."

## **Mission Statement**

As of September 2016, CAMTC has adopted the following mission statement:

*"California Massage Therapy Council's mission is to protect the public by certifying massage professionals in California that meet the requirements in the law and approving massage programs that meet the minimum standards for training and curriculum."*

## **Board of Directors Composition**

The Massage Therapy Act requires that CAMTC be governed by a Board of Directors, comprised of thirteen members. Ten members are each required by statute to represent a key stakeholder interest for the council; appointing authority is given to entities representing local government, institutes of higher education, anti-trafficking organizations, and the Department of Consumer Affairs. Currently, only two seats on the Board of Directors are allotted for professional members who are certified massage professionals. In addition to the ten reserved member categories, three additional members are appointed by the Board of Directors itself, which must include one licensed attorney, one representative of a massage business entity, and one individual who has "knowledge of the massage industry."<sup>5</sup> Specifically, statute allocates appointments to the Board of Directors as follows:

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<sup>5</sup> Bus. & Prof. Code, § 4602

- One representative of the League of California Cities.
- One representative of the California Police Chiefs Association.
- One representative of the California State Association of Counties.
- One representative of an “anti-human trafficking” organization to be determined by the council.
- One member appointed by the Office of the Chancellor of the California Community Colleges.
- One member of the public appointed by the Director of the Department of Consumer Affairs.
- One member appointed by the California Association of Private Postsecondary Schools.
- One member appointed by the American Massage Therapy Association, California Chapter, who shall be a California-certified massage therapist or massage practitioner who is a California resident and who has been practicing massage for at least three years.
- One public health official representing a city, county, city and county, or state health department, to be determined by the council.
- One certified massage therapist or a certified massage practitioner who is a California resident who has practiced massage for at least three years prior to the appointment, selected by a professional society, association, or other entity which membership is comprised of massage therapist professionals, and that chooses to participate in the council. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals, have been established since 2000, and shall have bylaws that require its members to comply with a code of ethics. If there is more than one professional society, association, or other entity that meets these requirements, the appointment rotates based on a four-year term between each of the qualifying entities.
- One licensed attorney, who at the time of the appointment is a city attorney, appointed by the Board.
- One representative of a massage business entity appointed by the Board.
- One individual appointed by the Board who “has knowledge of the massage industry or can bring needed expertise to the operation of the council.”

Board directors serve terms of four years; however, there is no limit to the number of terms a member may serve. A director may be removed from the Board at any time, with or without cause, by the entity that appointed the director, or by a two-thirds vote of the Board.

The current composition of the Board of Directors is as follows:

Name and Bio	Original Appointment	Expiration of Current Term	Appointing Authority
<p align="center"><b>Jeff Forman (Chair)</b></p> <p>Jeff Forman, Ph.D., was appointed by the Chancellor's Office for the California Community College system. Dr. Forman recently retired as a full time Professor and Director of the Massage Therapy program at DeAnza College in Cupertino, where he developed the first Community College Massage Therapy degree and certificate programs in the State.</p>	09/30/2014	09/14/2019	California Community Colleges Chancellor's Office
<p align="center"><b>Ronald Bates (Vice Chair)</b></p> <p>Ronald Bates, Ph.D., was appointed to the Board by the League of California Cities. Dr. Bates is a Senior Advisor to the League and the International City/County Management Association. He is a Council Member and a former Mayor in Los Alamitos. Dr. Bates was also a former City Manager in Buena Park, South Gate, Pico Rivera, La Habra Heights and Assistant City Manager in Anaheim.</p>	09/15/2015	09/14/2023	League of California Cities
<p align="center"><b>Michael Marylander (Treasurer)</b></p> <p>Michael Marylander was appointed by the CAMTC Board to represent a Massage Business Entity. Mr. Marylander owns The Massage Place, a chain of massage therapy clinics.</p>	01/14/2010	09/14/2023	Appointed by Board of Directors – Massage Business Owner
<p align="center"><b>Allison Budlong (Secretary)</b></p> <p>Allison Budlong was appointed by the California Association of Private Postsecondary Schools. Ms. Budlong is the past Director of Education Programs and Compliance at the National Holistic Institute (NHI) "A College of Massage Therapy" — supporting student and alumni services and school compliance.</p>	12/11/2014	09/14/2023	California Association of Private Postsecondary Schools
<p align="center"><b>Michael Callagy</b></p> <p>Michael Callagy was appointed by the California State Association of Counties (CSAC). He is Deputy County Manager for San Mateo County.</p>	03/15/2011	09/14/2023	California State Association of Counties
<p align="center"><b>Mark Dixon</b></p> <p>Mark Dixon was appointed by the CAMTC Board of Directors to fill a statutorily-mandated seat. Mr. Dixon is a CAMTC Certified Massage Therapist, and is board certified by the NCBTMB.</p>	01/14/2010	09/14/2023	Appointed by Board of Directors – Knowledge of Massage Industry

<p style="text-align: center;"><b>Shana Faber</b></p> <p>Shana Faber is a Municipal Law Attorney and was appointed as a board member by the CAMTC Board of Directors. Ms. Faber has served as the Assistant City Attorney for the City of Vacaville since 2002, and works closely with local law enforcement in closing down illicit massage parlors. Following the passage of the Massage Therapy Act in 2009, Ms. Faber drafted one of the first ordinances in the State of California that required massage therapists be CAMTC Certified.</p>	09/15/2015	09/14/2019	Appointed by Board of Directors – Attorney
<p style="text-align: center;"><b>Heather Forshey</b></p> <p>Heather Forshey, MS, REHS, was appointed by the San Mateo County Health System. The CAMTC Board had invited this public health department to appoint a member. Ms. Forshey serves the county as Director of Environmental Health and is directly responsible for permit and inspection oversight of massage establishments.</p>	09/15/2015	09/14/2023	Public Health Official Representing a City, County, City and County, or State Health Department
<p style="text-align: center;"><b>John Lambert</b></p> <p>John Lambert was appointed by the American Massage Therapy Association, California Chapter, where he currently serves as Government Relations Chair.</p>	09/15/2019	09/14/2023	American Massage Therapy Association, California Chapter
<p style="text-align: center;"><b>Bernadette Murray</b></p> <p>Bernadette Murray was appointed by the Associated Bodywork &amp; Massage Professionals.</p>	09/11/2019	09/14/2023	Certified Massage Therapist Appointed by Professional Association
<p style="text-align: center;"><b>Stephanie Powell</b></p> <p>Stephany Powell, Ph.D., was appointed by Journey Out, an Anti-Human Trafficking organization, which was selected by the CAMTC Board to fill this seat. Dr. Powell is the Director of Law Enforcement Training and Survivor Services National Center on Sexual Exploitation.</p>	11/11/2015	09/14/2023	Anti-Trafficking Organization
<p style="text-align: center;"><b>Sean Thuilliez</b></p> <p>Sean Thuilliez was appointed by the California Police Chiefs Association. He serves as Police Chief of Beaumont CA Police Department.</p>	03/09/2017	09/14/2023	California Police Chiefs Association

CAMTC's bylaws authorize the Board of Directors to create committees of the Board consisting of only directors, or advisory committees which may contain non-directors, and to appoint committee chairs. The Board has a standing Executive Committee consisting of the Board's elected officers, as well as several advisory committees. The current committees are as follows:

- **Executive Committee:** This committee consists of the elected officers of the BOD and has the authority to review and recommend changes to the bylaws and to other operating policies to the Board of Directors.
- **Audit Committee:** This committee is charged with oversight of financial reporting and disclosures. The committee interfaces with the auditing firm, the Chief Financial Officer, and the Chief Executive Officer, and makes recommendations to the BOD as to the approval of the annual audit report. It also oversees the filing of the organization's tax returns. This committee is currently comprised of two Board directors.
- **School Advisory Committee:** This committee makes recommendations to the Board of Directors as to issues affecting CAMTC approved schools and their students. This committee is currently chaired by a Board member and is comprised of one other Board member and five other individuals who are either owners or administrators of CAMTC Approved Schools. This committee recommends changes to the Policies and Procedures for Approval of Schools and other school related policies, many of which have been adopted by the Board.

Board meetings are required to comply with the Bagley-Keene Open Meeting Act. The Board of Directors holds one annual meeting for purposes of organization, election of officers, and transaction of other business. The Board may additionally meet throughout the year for any purpose during a special meeting. CAMTC is required to provide at least 90 days' notice of any meeting to vote upon a proposal to increase certification fees, including posting a notice on the council's website.

## Staff

Statute authorizes CAMTC to hire staff as necessary to carry out its responsibilities.<sup>6</sup> The council employs a Chief Executive Officer (CEO); a Director of Government Affairs/Anti-Human Trafficking; a Director of Law Enforcement Relations; a Director of Educational Standards; and an Outreach Director along with other employees who provide assistance to the CEO and the department heads. CAMTC also retains a contract management firm, an outside auditing firm, a Chief Financial Officer, an outside general counsel, and an outside special counsel, along with various other contractors for special projects.

CAMTC's current CEO is Ahmos Netanel, himself a trained massage professional. Mr. Netanel was first appointed as a director on the council's Board of Directors in 2009 when CAMTC was first established. In 2010, Mr. Netanel resigned from the Board and was hired as the CEO. In 2018, CAMTC convened a CEO Compensation Committee; subsequently, the Board voted to contract with an independent consulting group to obtain a study on comparable compensation packages. The following year, the consulting group provided a report in which compensation for CAMTC's CEO was compared to leadership at other nonprofits such as the California Medical Association and the California Chamber of Commerce, finding that compensation for CAMTC's CEO was estimated not to exceed the fiftieth percentile. At that time, Mr. Netanel received base compensation of \$267,706 and other benefit allowances of \$78,905. The Board has discretion to increase that amount annually by up to 8 percent.

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<sup>6</sup> Bus. & Prof. Code, § 4602

Following an organizational restructuring in 2019, the prior Professional Standards Division (PSD) was rearranged into several new departments engaged in the investigation and review of applicants and certificate holders. These departments consist of Investigations and Background Review, which report directly to the CEO; Hearing Officers, which are now part of Legal; and the Director of Law Enforcement Relations, who was previously the Director of PSD. Existing staff responsibilities remain the same as they were under the PSD, but CAMTC believes efficiencies were achieved by rehousing employees within distinct departments more specific to their duties.

Many of CAMTC’s day-to-day operations, including certificate application processing and customer service, are performed by a contract management firm, Advocacy Management Group (AMG). Approximately half of CAMTC’s current workforce is comprised of individuals employed by AMG. One of AMG’s employees function as CAMTC’s Director of Operations. In 2018, AMG was paid approximately \$1.27 million for its administrative services.

CAMTC contracts out for other services as well. The council’s General Counsel is Jill S. England, Attorney at Law, whose firm is retained by CAMTC. The council’s Special Counsel is Alison R. Siegel, whose firm is also retained by CAMTC. CAMTC utilizes an auditing firm—Damore, Hamric, & Schneider, Inc., CPAs—for independent auditing services. Additionally, J.S. Financial Group provides Chief Financial Officer services for the council.

**Fiscal and Fund Analysis**

As a nongovernmental, nonprofit organization, CAMTC does not receive any appropriation from the State of California and is entirely self-funded through fees. Although there is no statutorily mandated reserve level for CAMTC, it has proactively established a three-month reserve goal for its operating expenses. While revenue has remained relatively stable since its previous sunset review, CAMTC’s expenditures rose noticeably in 2018, leading to a substantial decline in its fund’s months in reserve.

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 (Jan-June)</b>
Beginning Balance	\$3,654,523	\$3,489,112	\$3,169,548	\$2,200,230
Revenue	\$4,066,294	\$4,385,072	\$4,597,505	\$3,028,740
Expenditures	\$4,231,705	\$4,704,636	\$5,566,823	\$2,979,741
Fund Balance	\$3,489,112	\$3,169,548	\$2,200,230	\$2,249,229
<b>Months in Reserve</b>	10	8	5	5

In order to address the increase in operating expenses, CAMTC increased its fees, with its initial application and recertification fees raised from \$150 per biennium to \$200 in 2019. Late fees are assessed based on age of delinquency, charged at \$50 for recertification applications received 1-10 days after expiration; \$80 charged for recertification applications received 11-29 days after expiration; and \$180 for applications received 30-179 days after expiration. These fees make up nearly all of CAMTC’s total revenue.

School application fees are \$3,000 over two years and school reapproval fees are \$6,000 over four years, plus an \$82 school background check cost that is paid directly to the vendor. CAMTC also charges fees for schools who request a hearing to challenge a proposed denial, discipline, or revocation of a school approval. As of 2018, the fee is \$1,800 for an oral telephonic hearing and \$1,400 for consideration of a written statement. These fees were raised significantly since CAMTC began approving schools in 2016. CAMTC states that the above fees still do not off-set the costs of its school approval program.

## Certification

CAMTC’s population of individual certificate holders is primarily comprised of Certified Massage Therapists; approximately nine percent consists of the small number of remaining Certified Massage Practitioners who were grandfathered in prior to 2015 when that tier was eliminated. Over the past four years the number of active certificate holders has remained relatively stable, as demonstrated in the below chart, which was last updated on June 30, 2019:

<b>Certificate Holders</b>			
<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 (Jan-June)</b>
46,801	51,038	49,698	50,551

This equilibrium is attributable in part to a consistent number of certificate holders seeking recertification each year, with the number of new certifications fluctuating only mildly:

<b>New Certificates Issued</b>			
<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 (Jan-June)</b>
3,162	2,663	2,360	3,584
<b>Recertifications Issued</b>			
<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 (Jan-June)</b>
20,148	19,491	23,258	10,168

On average, applications for new certifications have taken approximately ten days from the date the file is complete for applicants with no background or education issues. The average is six days for recertifications with no issues. For new applicants who have either education or background issues, the average is forty-three days, and thirty-six for recertifications.

Pursuant to the Massage Therapy Act, every applicant for a certificate is required to submit their fingerprints for a criminal history background check through the California Department of Justice and the Federal Bureau of Investigation. Applications for certification may be denied by CAMTC if the applicant has engaged in specified misconduct. Applicants may also be denied if they have been “convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder,” or “committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.”<sup>7</sup>

A total of 89,592 applications for certification or recertification were received by CAMTC between January 1, 2016 and June 30, 2019. During that time period, CAMTC denied 1,548 applications.

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 (Jan-June)</b>
Applications Denied	338	588	428	194

<sup>7</sup> Bus. & Prof. Code, § 4609

## Education

Applicants for certification as a massage therapist must demonstrate that they have completed a minimum of 500 hours of education from one or more approved schools. Beginning on July 1, 2016, all open massage schools must be affirmatively approved by CAMTC for graduates to be eligible to use their hours of education for certification. For a school to be approved by CAMTC, it must meet minimum standards for training and curriculum in massage, as determined by the Massage Therapy Act and the council, and must be one of the following:

- 1) Approved by the Bureau for Private Postsecondary Education (BPPE);
- 2) Approved by the Department of Consumer Affairs;
- 3) Accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (WASC) that is either a public, nonprofit, or for-profit institution;
- 4) A college or university of the state higher education system; or
- 5) A school requiring equal or greater training than what is required by the Massage Therapy Act and is recognized by the corresponding agency in another state, or is accredited by an agency recognized by the federal Department of Education.<sup>8</sup>

Statute requires CAMTC to “develop policies, procedures, rules, or bylaws governing the requirements and process for approving, denying approval of, imposing corrective action on, or unapproving schools.” These policies and procedures must “address topics including, but not limited to, what constitutes an acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance.”<sup>9</sup> CAMTC has published Policies and Procedures for Approval of Schools in response to this requirement.

To become a CAMTC-approved massage school, an application must be completed with an initial application fee of \$3,000. CAMTC will notify applicants whether their application is complete within thirty days of receiving it, and schools have sixty days to complete the application upon being notified that it is incomplete, or it will be purged. Schools with purged applications must wait 180 days to reapply. CAMTC may approve a school, propose to deny it, or notify the school that corrective action is needed. CAMTC requires that all school owners and massage program staff who are not CAMTC-certified undergo a background check. CAMTC also receives information from other parties such as BPPE, accreditors, local governments, and other states.

Schools that enroll students while still pending approval must notify all students that they are not approved and receive signed confirmation of that notice. Schools host a scheduled site visit from CAMTC, who verifies the information in the application; unscheduled visits may also occur. New massage schools and programs with no students enrolled may receive provisional approval, in which case two site visits occur: one at the initial review stage and another at a later time when students are enrolled.

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<sup>8</sup> Bus. & Prof. Code, § 4601

<sup>9</sup> Bus. & Prof. Code, § 4615

For massage schools outside of California, CAMTC considers whether to accept an applicant's education on a case-by-case basis. Per statute, CAMTC will evaluate whether the applicant's education was received from a "school requiring equal or greater training" than required in California and that is also either accepted by another state's massage regulator or accredited by an agency recognized by the federal Department of Education. Because CAMTC is not aware of any schools outside the United States that meet these requirements, aside from one, it does not accept international massage school education with the exception of one international school.

Initial approvals are valid for two years unless approval is revoked by CAMTC, and re-approvals are valid for four years with payment of a \$6,000 re-approval fee. From July 1, 2016 when CAMTC's school approval process began, through August 1, 2019, CAMTC has approved 100 massage school campuses, denied six schools, and re-approved 61 campuses. As of August 1, 2019, there were 71 approved massage school campuses in California and five provisionally approved campuses. CAMTC provides a list of approved schools on its website, as well as an interactive map.<sup>10</sup>

CAMTC is additionally empowered to revoke the approval of or discipline schools in accordance with its Policies and Procedures for Approval of Schools. If the Educational Standards Division determines that there are potential grounds for discipline or revocation, the school is immediately placed under investigation. Any students who have submitted applications for certification with transcripts from the school are placed on hold. Within 60 days, the school is notified if the investigation will continue. If the investigation continues, the hold on the students is released, but they must pass an education hearing in order to be certified. When an investigation is completed, if CAMTC decides to propose revocation or discipline against the approved school, they are sent a letter which identifies the factual and legal basis for the proposed revocation or discipline and supporting evidence. Schools are given the opportunity to be heard either through telephonic conference or in writing at least five days from the proposed effective date of the denial, revocation, or discipline, with a fee charged for that hearing. Decisions may be appealed through either a twenty-minute oral presentation or written statement to the Board of Directors, and schools have up to 90 days from the effective date of the revocation or discipline to file an action in superior court challenging the decision.

There is no continuing education requirement for massage therapists in California.

## **Examination**

The Massage Therapy Act has historically required each applicant for certification to have "passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards and that is approved by the council."<sup>11</sup> The following exams have been approved by CAMTC:

- The Massage and Bodywork Licensing Examination ("MBLEx");
- The National Certification Examination for Therapeutic Massage and Bodywork, if taken prior to February of 2015;
- The National Certification Examination for Therapeutic Massage, if taken prior to February of 2015;
- The New York State Massage Therapy Exam;
- The Board Certification Examination for Therapeutic Massage and Bodywork.

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<sup>10</sup> <https://www.camtc.org/schools-info-find-a-school>

<sup>11</sup> Bus. & Prof. Code, § 4604

Currently in order to take the MBLEx, an individual is required to complete 500 hours of education, which is the certification requirement in California; the Board Certification Exam in Therapeutic Massage and Bodywork requires 750 hours of education. The New York State Massage Therapy Examination is only available if an individual meets specified educational requirements from New York. Therefore, for applicants for certification who have studied in California and have met the state's minimum education requirements, the MBLEx is the only exam that can be taken to achieve certification.

To be eligible to take the MBLEx exam, a candidate must have attended a massage therapy school approved or recognized by the state board or agency authorized to regulate massage therapy. In California, CAMTC is the body recognized by the Federation of State Massage Therapy Board (provider of the MBLEx). In recent years, there have been a number of issues where massage students completed their 500 hours in a massage school with an application for CAMTC approval pending, only to be rejected by MBLEx because the school was subsequently closed, or denied CAMTC school approval.

To ensure that students who completed their studies at a school with an application for CAMTC school approval pending, the Legislature suspended the examination requirement in 2018 through Senate Bill 1480 (Hill). This suspension was extended for an additional year through Senate Bill 1474 (Committee on Business, Professions, and Economic Development). Beginning January 1, 2019, the passage of the MBLEx or any other examination is not a requirement for certification. This suspension will expire on January 1, 2022 unless extended or made permanent by the Legislature.

## **Enforcement**

Statute authorizes CAMTC to discipline certificate holders in a number of ways, including placing the certificate holder on probation, suspending their certificate for a period of up to a year, or revoking the certificate. CAMTC is also broadly authorized to take other disciplinary actions pursuant to its bylaws.<sup>12</sup>

The Massage Therapy Act lists a number of potential causes for discipline by CAMTC against a certificate holder. Failure to comply with various statutory requirements, such as displaying an original CAMTC certificate at the therapist's place of practice or notifying CAMTC of a change of email address, may result in discipline. More serious unprofessional conduct by an active certificate holder is defined as including, but not limited to, the following:

- (A) Engaging in sexually suggestive advertising related to massage services.
- (B) Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence.
- (C) Engaging in sexual activity while providing massage services for compensation.
- (D) Practicing massage on a suspended certificate or practicing outside of the conditions of a restricted certificate.
- (E) Providing massage of the genitals or anal region.
- (F) Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

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<sup>12</sup> Bus. & Prof. Code, § 4610

In addition to the above codified examples of unprofessional conduct, the Massage Therapy Act additionally makes dressing in any of the following manners while providing massage as cause for discipline, intended to prohibit massage services of an intentionally sexual or prurient nature:

- (A) Attire that is transparent, see-through, or substantially exposes the certificate holder's undergarments.
- (B) Swim attire, if not providing a water-based massage modality approved by the council.
- (C) A manner that exposes the certificate holder's breasts, buttocks, or genitals.
- (D) A manner that constitutes a violation of Section 314 of the Penal Code [Indecent Exposure].
- (E) A manner that is otherwise deemed by the council to constitute unprofessional attire based on the custom and practice of the profession in California.

CAMTC is also authorized to discipline a certificate holder for "being convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder." Another cause for discipline is "committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder" or any act punishable as a sexually related crime.<sup>13</sup>

In many cases, discipline imposed by CAMTC is in conjunction with a local law enforcement action against a massage establishment offering illicit sexual services. The council is required to immediately suspend the certificate of any individual who is arrested and has criminal charges filed for prostitution or any act punishable as a sexually related crime. CAMTC is also authorized to suspend the certificate of any individual for whom they have received a written statement signed under penalty of perjury stating that the individual engaged in an act punishable as a sexually related crime or a felony absent an arrest, with requirements for notice and appeal.

Statute requires that any disciplinary action "shall be decided upon and imposed in good faith and in a fair and reasonable manner," and specifically requires that the following procedure be followed:

- (1) Denial or discipline shall be based on a preponderance of the evidence. In determining the basis for the denial or discipline and making a final decision that denial or discipline shall be imposed, the council may consider all written documents or statements as evidence, but shall weigh the reliability of those documents or statements. A final decision to deny or impose discipline may be based solely on a written statement or declaration made under penalty of perjury and the individual providing the written statement or declaration made under penalty of perjury shall not be required to appear at an oral hearing or provide additional documents or information beyond the written statement or declaration made under penalty of perjury that was already provided.
- (2) The provisions of the procedure are publicly available on the council's Internet Web site.
- (3) The council provides 15 calendar days prior notice of the denial or discipline and the reasons for the denial or discipline.

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<sup>13</sup> Bus. & Prof. Code, § 4609

- (4) The council provides an opportunity for the applicant or certificate holder, to be heard, orally or in writing, not less than five days before the effective date of the denial or discipline, by a person or body authorized to decide whether the proposed denial or discipline should go into effect.<sup>14</sup>

Disciplinary actions initiated by CAMTC are carried out by two or more employees of the council's Background Review Department (BRD).<sup>15</sup> If CAMTC staff decide that there may be cause for discipline, the information is provided by the Investigations Department to BRD for review. The BRD reviews all available evidence and makes a recommendation for discipline. Certificate holders are provided at least fifteen days' notice of the proposed discipline in the form of a "Proposed Revocation/Discipline Letter" (PRL) and an opportunity for either a telephonic or written hearing at least five days prior to the proposed effective date. CAMTC charges certificate holders a \$270 fee for telephonic hearings and a \$180 fee for written hearings.

Hearings are then held by a minimum of two Hearing Officers, which are also employees of CAMTC. These Hearing Officers are charged with reviewing all the evidence submitted, including evidence provided by the certificate holder, and deciding whether to uphold, reject, or modify the proposed decision to take action. The decision of the Hearing Officers is final. Certificate holders wishing to further contest a disciplinary action following the decision of the Hearing Officers may file suit against CAMTC in superior court within ninety days of the effective date of the discipline.

In the 2016 licensure feasibility study provided to CAMTC, the consultant group made the following observation about the benefits of voluntary certification by a nonprofit in regards to enforcement:

Perhaps most importantly, however, certification offers the ability to respond more quickly and nimbly relative to a licensure approach. Because certificate holders have made a voluntary choice to pursue certification, they have also agreed to have their certification revoked if they violate the terms set out by the not-for-profit entity setting the standards (i.e. CAMTC). As a result, certification can be revoked much more quickly and easily relative to a licensure revocation process, which can often take months or years to resolve complaints against licensed professionals. ... While DCA has the ability to respond quickly in the case of certain exigent circumstances, the data ... clearly show that CAMTC is able to respond to complaints much more quickly relative to the DCA entities shown as a result of the more extensive due process requirements inherent in the DCA-based licensure process.

Data provided by CAMTC appears to confirm this argument, as the council consistently outperforms its own disciplinary performance targets, which it believes are already more aggressive than is standard among the boards and bureaus under the Department of Consumer Affairs. CAMTC compared its performance targets to the aggregate averages for these boards and bureaus in 2017. For complaint intake, CAMTC had a target of four days versus an average of eight days for the boards, with an actual average of 0 days for the 3rd quarter of 2019; for intake and investigation, CAMTC had a target of 90 days versus 165 days for the boards, with an actual average of 14 days for the 3rd quarter of 2019; and for imposition of formal discipline, CAMTC had a target of 240 days versus 741 days for the boards, with an actual average of 83 days for the 3<sup>rd</sup> quarter of 2019.

The following chart provides an overview of the disciplinary actions taken against certificate holders by CAMTC between 2016 and June 30, 2019:

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<sup>14</sup> Bus. & Prof. Code, § 4610

<sup>15</sup> As previously discussed, in 2019 the BRD assumed work previously conducted by the Professional Standards Division.

	<b>Cases Sent to PSD/BRD for Review</b>	<b>Discipline Proposed (PRLs Sent)</b>	<b>Hearings (Oral / Written)</b>	<b>Certificate Revocations</b>	<b>Probations/ Suspensions (all)</b>
<b>2016</b>	757	137	19 / 33	98	211
<b>2017</b>	684	134	27 / 32	93	220
<b>2018</b>	818	139	33 / 16	123	237
<b>2019 (Jan-June)</b>	516	51	9 / 15	32	129

Many cases are initiated by complaints against certificate holders, both from the public and from local law enforcement agencies. Complaints are received and reviewed by BRD. In the first half of 2019, CAMTC averaged 26 complaints against certificate holders per month from the public, and ten complaints against certificate holders submitted by law enforcement agencies. These statistics were consistent with numbers provided over the prior three years, with approximately 1,156 complaints against certificate holders received between 2016 and June 30, 2019. Additionally, cases may be initiated proactively by CAMTC during background reviews upon recertification, or following a subsequent arrest notification.

CAMTC prioritizes disciplinary investigations and reviews involving sexual assault, and cases involving allegations against certificate holders, as opposed to applicants, are the highest priority. The Investigations Department aims to provide BRD with enough evidence to take action against certificate holders as quickly as possible, as authorized by the Massage Therapy Act. While entities under the Department of Consumer Affairs typically must seek an interim suspension order against a licensee when criminal charges are pending, CAMTC is authorized to unilaterally suspend a certificate once criminal charges have been filed against the individual for acts punishable as a sexually related crime, including prostitution, or when they have received a written statement signed under penalty of perjury attesting that a certificate holder has engaged in such acts or has committed a substantially related felony.

### **Public Information Policies**

CAMTC maintains a website where it provides information to certificate holders, applicants, and the public. A “Verify Certification” page enables consumers to confirm whether a massage therapist is certified by the council. Searches can be conducted using the name, location, or certificate number of the massage therapist. CAMTC also produces flyers, pamphlets, and brochures. These print materials are made available to various stakeholders including consumers, massage therapists, and local governments. CAMTC has also produced materials specific to issues relating to human trafficking.

Pursuant to the Bagley-Keene Open Meeting Act, CAMTC also posts notifications of upcoming Board of Directors meetings, including agendas, at least ten days in advance for most meetings. Board packets and audio recordings of meetings are also posted on the website and maintained indefinitely. Meetings are not traditionally webcast, due to CAMTC believing that doing so would be prohibitively expensive.

### **Workforce Development and Job Creation**

CAMTC has developed a system to allow employers to send employment offers to certificate holders located within a specific geographic area without CAMTC disclosing personal identifying information. Employment offers are sent by CAMTC upon request through postcards paid for by the employer once reviewed by CAMTC, and may be targeted by zip code. Certificate holders may opt out of this system.

## **PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

CAMTC last underwent a sunset review by the Legislature in 2016. During the prior sunset review, committee staff raised a number of issues provided recommendations. Below is a summary of actions which have been taken over the last review cycle to address these issues. Previous issues that were not completely addressed or may otherwise still be of concern they are further discussed under “Current Sunset Review Issues.”

**Prior Issue #1: Budgets.** The committees asked how CAMTC prepares its annual budgets. CAMTC responded by explaining that it prepares its annual budget based on a calendar year, which involves a three-step process. First, the Board of Directors adopts a list of strategic priorities for the following year during its September meeting. Then, staff develops and presents a preliminary budget at the board’s November meeting. Finally, the board adopts the final budget for the year during its February meeting.

**Prior Issue #2: Administrative Contracts.** The committees requested information on CAMTC’s contingency plan for if problems were to arise with its contract with AMG. CAMTC replied that it has a strong relationship with AMG. However, CAMTC insisted that it owns all its data, database, and computer systems, and that these could be transferred to another management firm.

**Prior Issue #3: Decreasing Applicants.** The committees expressed concern that the number of new applicants for certification were decreasing. CAMTC states that this is not currently the case, and that with the elimination of the MBLEx requirement in 2019, CAMTC received a large influx of new applications. CAMTC says that the decrease in applications rebounded quickly since its prior sunset review.

**Prior Issue #4: Human Trafficking.** CAMTC was asked about the role it plays in the fight against human trafficking. CAMTC responded with an explanation of how it works with local law enforcement agencies to combat human trafficking using a two-pronged approach. CAMTC approves only legitimate massage schools to provide massage education for certificate-holders, which it believes helps prevent illegitimate service providers. Additionally, CAMTC responds quickly to suspend the certificate of any therapist who is found by local law enforcement to be engaged in illicit sexual services, ensuring that those activities may be immediately shut down.

**Prior Issue #5: Information Sharing.** The committees asked CAMTC to advise as to the problems it has had with obtaining timely enforcement-related data from local jurisdictions. CAMTC responded by stressing that it has made having strong working relationships with local law enforcement agencies and governments a priority, and that it has engaged in significant outreach efforts. CAMTC believes this has been working, and stated that it would continue to engage in outreach, including by providing trainings to local, state, and federal law enforcement agencies.

**Prior Issue #6: Bylaws.** The committees asked why CAMTC amended its bylaws and articles of incorporation in 2015. CAMTC pointed to a response it previously provided, which explained that the updates were necessary to comply with Assembly Bill 1147.

**Prior Issue #7: Bagley-Keene.** CAMTC was asked how it ensures its Board of Directors members are adequately trained on the Bagley-Keene Open Meeting Act. CAMTC responded that it does fully comply with Bagley-Keene and that new directors receive a copy of the act. CAMTC states that it has historically provided training to new board members.

**Prior Issue #8: Feasibility Study.** The committees inquired about the status of the required feasibility study for massage licensure. CAMTC confirmed that the feasibility study was completed and submitted to the committees.

**Prior Issue #9: Public Members.** CAMTC was asked whether there should be more clarification about the meaning of “member of the public” in the Massage Therapy Act. The council responded that this definition was worked out with the Legislature and already provides appropriate clarification.

**Prior Issue #10: School Approval.** The committees asked for an overview of what criteria CAMTC uses for school approval and whether a fee cap would be appropriate. CAMTC responded that it does not feel that a fee cap is necessary and that it needs the flexibility to take action against fraudulent schools.

**Prior Issue #11: MOU with BPPE.** The committees asked CAMTC when it anticipated signing an MOU with BPPE. CAMTC replied that this MOU was recently signed related to information sharing and that the two entities work well together.

**Prior Issue #12: Relationship with Local Law Enforcement and Local Governments.** CAMTC was asked for an overview of its relationship with local governments and local law enforcement in regards to information sharing. CAMTC described its relationship as “viable, productive, and growing stronger and more collaborative each year.” CAMTC explained that it has staff specifically employed to maintain relationships with locals and that it maintains a local government database that provides secure information about certificate holders to local law enforcement.

**Prior Issue #13: Local Regulation.** The committees asked how local governments have changed the way they regulate the massage industry. CAMTC responded that the landscape overall has improved and that there has been an easing of restrictive local regulations targeted at massage businesses. CAMTC did state that it continues to receive reports of certificate holders who have to deal with challenging local regulations, and that CAMTC continues to work with local governments to improve their ordinances.

**Prior Issue #14: Clean-up.** The committees asked if there were any minor or non-substantive changes needed to the Massage Therapy Act. CAMTC did provide a number of small recommended changes in 2015, which it believes adequately addressed the issues.

**Prior Issue #15: SB 1193 Posting Requirements.** CAMTC was asked to explain how it has communicated with stakeholder groups regarding changes in the law and why massage professionals should be exempt from the posting requirement. CAMTC responded that massage professionals are not exempt, and that while businesses exclusively employing certificate holders were originally exempt, that language was invalidated by subsequent changes to the law.

**Prior Issue #16: Continued Regulation by CAMTC.** The committees asked whether CAMTC could continue to fulfill its mission of certifying massage therapists and recommended a four-year extension of its authorization. CAMTC responded that it was very proud of its successes and requested a six-year continuation.

# CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA MASSAGE THERAPY COUNCIL

## ADMINISTRATIVE ISSUES

**ISSUE #1:** *Board of Directors Composition. Does the current membership on CAMTC's Board of Directors provide sufficient expertise from representatives of the profession?*

**Background:** The Massage Therapy Act dictates that “the council shall be governed by a board of directors comprised of 13 members,” with specific designations for how each member is appointed and which stakeholder interests they are intended to represent. Four members are required to be representatives of local governments, including both local law enforcement and public health agencies. Two members represent massage schools, with one allocated to the Community Colleges Chancellor and one to the California Association of Private Postsecondary Schools. One member is reserved for an anti-human trafficking organization, and one member is appointed by the Department of Consumer Affairs. Only two members are specifically reserved for representatives of the profession, with the American Massage Therapy Association (AMTA) appointing one member and the other appointment going to a certificate holder selected by professional associations meeting certain requirements that rotate every four years. Three additional members are appointed by the Board of Directors, which are required to include an attorney, a massage establishment owner, and an individual deemed by the Board of Directors to possess “knowledge of the massage industry” (currently, this appointee is also a certificate holder).

To the extent that the Board of Directors is charged with directing the activities of the council and overseeing its effectuation of identified policy objectives, CAMTC's Board of Directors is relatively analogous to licensing boards under the Department of Consumer Affairs. Meetings of the Board of Directors also must similarly comply with the Bagley-Keene Open Meeting Act. However, there are a number of distinctions when it comes to member composition.

For state licensing boards, members are generally divided into two categories: public members and professional members. Public members are broadly defined as persons without any vested interest in the regulated profession—in other words, they do not hold a license to practice any activities regulated by the board. Correspondingly, professional members reflect the perspectives of the regulated profession and offer expertise relevant to decisions being made by the board.

While statutes dictating board memberships vary, most regulatory boards are roughly split equally between public and professional members, with one classification often retaining a slight majority. For example, the California Architects Board is evenly split at five professional members, five public. The Medical Board of California has a professional majority with eight physician members versus five public members. The Board of Vocational Nursing and Psychiatric Technicians has a slight public majority with six public members and five licensed members.

Prior to 2014, CAMTC's Board of Directors was much larger, with nineteen total members. The membership composition also had substantially more professional representatives, with two member appointments allotted to each qualified professional association—seven professional members in total. Following the council's sunset review, the Board of Directors was reconstituted and generally reduced in overall size to its current form through the enactment of Assembly Bill 1147. The bill substantially lowered the number of professional members, in part by clarifying that only California-based associations were eligible for an appointment.

CAMTC's Board of Directors does not expressly distinguish between professional and public members; most of its membership categories are comprised of appointing authorities, and only one member is expressly required to be "a member of the public," which is the member appointed by the Director of Consumer Affairs. There is otherwise nothing prohibiting other members of the Board of Directors from being active certificate-holders. Meanwhile, only two members are expressly required to be massage professionals—the AMTA representative and the professional association appointee.

There are potential downsides to increasing professional representation on a regulatory board. In 2015, the United States Supreme Court ruled in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* ("NC Dental") that when a state regulatory board features a majority share of active market participants, any allegedly anticompetitive decision-making may not be subject to Parker antitrust litigation immunity unless there is "active state supervision" to ensure that all delegated authority is being executed in the interest of the public and not the private commercial interests of the members. This has led many to believe that boards are better served by having a public member majority.

Nevertheless, clear delineations of public and professional board memberships offer a number of benefits. A relatively equal division of the categories provides for a balance of perspectives. While members of the public are presumably more independent and are more likely to prioritize the interests of the consumer in their decision-making, professional members offer more expertise and can often provide valuable insight into questions of whether a licensee's actions were reasonable or appropriate. CAMTC's Board of Directors may then benefit from having more of its members specifically reserved for representatives of the profession, as well as having more board positions expressly reserved for disinterested members of the public.

**Staff Recommendation:** *The council should provide the Committees with information regarding how its Board of Directions currently functions and whether it believes any changes to member composition would better empower its governance, particularly in regards to clearer designation of public and professional memberships.*

**ISSUE #2:** *Director Term Limits. Should members of the Board of Directors be authorized to serve indefinitely?*

**Background:** Statute provides that "board member terms shall be four years" for CAMTC's Board of Directors. However, it does not place any limitation on the number of terms that a member may serve. Additionally, it is not clearly stated that a board member must vacate their position following the completion of their term unless reappointed, nor is there any specific grace period provided. Instead, CAMTC appears to have interpreted the four year term language to refer to when appointing authorities should be expected to either reappoint their representative or identify a replacement.

Meanwhile, some members have persisted beyond their four-year terms without express reappointment. CAMTC states that this is authorized not specifically by the Massage Therapy Act but through provisions in the Corporations Code generally governing board memberships for nonprofit benefit corporations. Corporations Code § 5220 states that "unless otherwise provided in the articles or bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office." This would appear to allow members to remain on the board indefinitely as long as a new member is not identified after four years, even without any formal reappointment.

A limit to the number of terms that a member of CAMTC’s Board of Directors may serve would align the Massage Therapy Act with other boards under the Department of Consumer Affairs, and potentially allow for fresher and more diverse perspectives on the board, where many have served for a decade or more. However, there is also an argument to be made that institutional memory has served CAMTC valuably, and that there is no compelling reason to require members to step down. Nevertheless, it may still be reasonable to expressly require reappointment of a member when their term of four years has expired, while potentially allowing for a statutory grace period.

***Staff Recommendation:*** *The council should provide its perspective on whether statute should more clearly restrict the terms of members of the Board of Directors.*

***ISSUE #3: Staff Compensation. Is the financial compensation for CAMTC’s Chief Executive Officer inappropriately high compared to leadership at other regulatory entities?***

***Background:*** As a private nonprofit corporation, CAMTC’s employees are not subject to civil service requirements and the Board of Directors has broad discretion to make hiring decisions and set compensation. It has been previously pointed out that CAMTC’s CEO receives a substantial salary. The issue was first raised in CAMTC’s 2014 sunset review background paper, which pointed to 2012 when the council’s CEO had earned \$260,000 per year. In 2019, CAMTC’s CEO was paid \$369,000, and an additional 8 percent annual raise was recently discussed for approval by the Board of Directors.

While nonprofit corporations are generally authorized to grant compensation to its executives deemed “reasonable” by the Internal Revenue Service (IRS), the question of whether salaries provided by CAMTC are excessively generous is meaningful given that the entirety of the council’s budget is derived by fees, included those collected from certificate holders. In response to the ongoing inquiry, CAMTC commissioned a “CEO Compensation Study” in 2019. This study found that the \$369,000 salary drawn by CAMTC’s CEO was only just over the 25<sup>th</sup> percentile when compared to similar nonprofit executives. As a result, CAMTC’s Board of Directors adopted a new compensation policy in 2019 to prohibit the CEO’s total compensation package from exceeding the 75<sup>th</sup> percentile for peer groups identified by the study over the course of the agreement or eroding the council’s three-month reserve.

However, further examination of the study reveals what could be considered major flaws in its comparative analysis. The study identified a number of nonprofit organizations as “peer groups” to whom CAMTC should be compared in terms of executive compensation; however, virtually none of these organizations could be considered regulatory entities, but are instead primarily professional and trade associations such as the California Chamber of Commerce, the California Medical Association, and the California Restaurant Association. Using these organizations as peer groups resulted in the study determining that the cited 75<sup>th</sup> percentile mark would be approximately \$705,000 per year.

As a more direct comparison, the Department of Consumer Affairs also commissioned a salary study in 2019 to analyze compensation trends among regulatory board Executive Officers (EOs). That study found that the median salary for an EO is approximately \$107,000 per year, with the highest paid EO at the time making \$146,000 per year. If the CEO of CAMTC is more accurately compared to the EO of a regulatory board than a trade association, then the council’s executive compensation is well over three times the median salary of its peers.

***Staff Recommendation:*** *The council should explain why it believes its executive compensation represents a reasonable expenditure of certificate fee revenue.*

**ISSUE #4: Public Records Act. Should CAMTC be required to comply with the requirements of the California Public Records Act?**

**Background:** While the Massage Therapy Act is clearly intended to provide CAMTC with regulatory responsibilities analogous to a state government body, it is established in statute as a private nonprofit and is therefore not necessarily required to comply with various laws aimed at ensuring transparency and accountability within state bureaucracy. This was arguably in part the legislative intent of the nonprofit model, as it allows for more flexibility and efficiency. Statute *does* provide that meetings of CAMTC’s Board of Directors must comply with the provisions of the Bagley-Keene Open Meeting Act. However, many other similar laws and public oversight mechanisms do not necessarily apply to the council’s operations.

The California Public Records Act (CPRA) generally provides that “public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record.”<sup>16</sup> The CPRA defines “state agency” for purposes of the Act as “every state office, officer, department, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.” This language is significantly less broad than the definition of “state body” provided in the Bagley-Keene Open Meeting Act and almost certainly does not include a private nonprofit like CAMTC. This is supported by caselaw; in *California State University v. Superior Court* (2011), the court found that CSU auxiliary organizations, which are private nonprofit corporations operating pursuant to statute, are not state agencies subject to the CPRA.

The fact that the Massage Therapy Act additionally requires that CAMTC comply with the Bagley-Keene Open Meeting Act and authorizes it to “adopt additional policies and procedures that provide greater transparency” additionally indicates that the CPRA does not apply, but it could be made to apply through statutory change. Doing so would no doubt create inefficiencies in CAMTC’s operations, as it currently does not need to engage in public inspection of its documents, which are largely under the management of AMG. This could potentially disrupt the purpose of establishing CAMTC as a nonprofit by allowing for less flexibility. However, given interest by members of the public in understanding the process by which CAMTC engages in regulatory activities, there may nevertheless be a compelling reason to consider expanding the CPRA to the council.

**Staff Recommendation:** *The council should provide an overview of what efforts it makes to be transparent to the public despite the lack of applicability of the CPRA and provide any perspective on what requiring compliance with public records laws would do to its current operations.*

**ISSUE #5: Whistleblower Protections. Should various state laws providing whistleblower protections to employees be expressly applied to CAMTC?**

**Background:** There are three statutes that generally provide whistleblower protections to California employees. This includes the California Whistleblower Protection Act, the Whistleblower Protection Act, and whistleblower provisions within the Labor Code. Each of these laws is intended to ensure that any corrupt or inappropriate activities by entities empowered by the public trust are accountable and may be revealed to oversight entities without risk of reprisal.

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<sup>16</sup> Gov. § 6253

The California Whistleblower Protection Act provides protections to employees of state agencies “to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution.”<sup>17</sup> This Act is enforced by the California State Auditor. The Act’s protections specifically apply to employees of state agencies, which are defined under Section 11000 of the Government Code. Section 11000 defines “state agency” as “every state office, officer, department, division, bureau, board, and commission or other state body or agency,” with exceptions. (Essentially the same definition as the one within the CPRA.) It is likely that these provisions do not therefore cover CAMTC.

Similarly, the Whistleblower Protection Act prohibits an employee from directly or indirectly using or attempting to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to do any of the above, for the purpose of interfering with the right of that person to disclose to a legislative committee improper governmental activities. This Act applies to employees of state agencies defined under Section 11000, as well as “public entities,” defined as including the state, the University of California Regents, and local governments. While this is more expansive applicability than the California Whistleblower Protection Act, it still does not cover private nonprofits.

Finally, the Labor Code prohibits an employer from having a policy that prevents an employee from engaging in political activities or from threatening discharge or loss of employment for engaging in political action or activity. These provisions apply both to private employers and to those employed by the state and local governments. As a nonprofit corporation authorized to hire staff, CAMTC would likely be considered a private employer subject to these provisions.

Therefore, of the three statutes providing whistleblower protections, CAMTC only likely has to comply with those under the Labor Code. It is worth considering whether, given the regulatory responsibility provided to the council, the public interest would be served by providing clearer protections to any of its employees wishing to provide information regarding malfeasance to the State Auditor or the Legislature.

***Staff Recommendation:*** *The council should discuss the benefit of whistleblower protection laws with the committee and speak to what policies it has in place to promote transparency.*

***ISSUE #6: Administrative Procedures Act. Should CAMTC’s adoption of bylaws and enforcement activities be subjected to the Administrative Procedure Act or similar requirements?***

**Background:** The Administrative Procedures Act (APA) establishes a series of basic minimum procedural requirements for the adoption of regulations, the conduct of administrative hearings, and for administrative adjudication. The APA ensures that agency rulemaking and administrative hearings conform to a full public process. Chapter 3.5, which establishes the public process for establishing administrative regulations, is expressly applied only to a state agency as defined under Section 11000, rendering it presumably inapplicable to the CAMTC. This definition is also used for provisions governing administrative hearings.

In regards to administrative adjudication, “agency” is more broadly defined to include not only state agencies, but adjudicative proceedings conducted by a “quasi-public entity.” This is defined as “an entity, other than a governmental agency, whether characterized by statute as a public corporation, public instrumentality, or otherwise, that is expressly created by statute for the purpose of administration of a state function.” This definition would appear to apply to CAMTC as established.

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<sup>17</sup> Gov. § 8547.1

However, these statutes provide only that conflicting laws specifically outlining adjudication procedures for an entity preempt those generally provided for under the APA. Because the Massage Therapy Act does provide for a basic procedure for adjudications conducted by the council, it is likely that these adjudications do not have to comply with the standard provisions of the APA. Instead, CAMTC must only comply with any APA procedures not in conflict with its own governing statutes.

While the provisions of the APA provide for some of the strongest policies for ensuring public access, participation, and due process in government, they are also arguably among the most burdensome. If there remains an incentive to ensure that CAMTC be more responsive and flexible than state agencies, it may not be practical to expect that they comply with APA's provisions governing rulemaking or administrative hearings. However, there may still be opportunities for improving public access and due process in CAMTC's current operations.

***Staff Recommendation:*** *The council should explain what policies it follows in lieu of provisions of the APA and whether it believes existing law provides for an appropriate degree of transparency.*

***ISSUE #7: Department of Finance Investigations. Regardless of whether CAMTC receives funds from the state, should the Department of Finance possess the right to audit or investigate CAMTC's financial records?***

***Background:*** The Department of Finance (DOF) has “general powers of supervision over all matters concerning the financial and business policies of the State and whenever it deems it necessary, or at the instance of the Governor, shall institute or cause the institution of such investigations and proceedings as it deems proper to conserve the rights and interests of the State.”<sup>18</sup> This includes investigations of state agencies, which allows for the examination of financial records. These provisions apply to “each agency of the state” and refer specifically to “the handling of public money or its equivalent.”

CAMTC is funded through certificate fees in essentially the same manner that state boards are funded through license fees deposited in special funds. However, CAMTC is not a state agency, and its finances are not part of the state's budget. Therefore, it is unlikely that DOF has any authority to inspect or examine CAMTC's finances. It is furthermore uncertain that the intention behind DOF's investigatory authority is applicable to CAMTC, as it is not part of the state budget process.

***Staff Recommendation:*** *The Board should provide the Committees with information regarding how it ensures fiscal transparency despite an inapplicability of DOF's investigatory authority.*

***ISSUE #8: California State Auditor. Does the State Auditor have sufficient authority to audit CAMTC if called upon by the Legislature?***

***Background:*** The State Auditor is required to conduct financial and performance audits as directed by statute and may “conduct these audits of any state agency as defined by Section 11000 ... or any publicly created entity.” In the case of CAMTC, the council was established in statute and its authority is the product of legislation. Therefore, it is likely that the State Auditor does have jurisdiction to audit CAMTC under appropriate circumstances.

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<sup>18</sup> Gov. § 13070

**Staff Recommendation:** *CAMTC should inform the Committees of whether it disagrees that it is subject to the State Auditor’s jurisdiction and how it has instituted its own internal audit policies.*

**ISSUE #9:** *Conflicts of Interest. Do provisions of the Political Reform Act of 1974 governing conflicts of interest appropriately include CAMTC’s Board of Directors and employees?*

**Background:** The conflict-of-interest provisions of the Political Reform Act prohibit a “public official” at any level of state or local government from making, participating in making, or in any way influencing a governmental decision in which they have a financial interest. Here, “public official” is defined as every member, officer, employee, or consultant of a state or local government agency. It is not entirely clear whether “state agency” would include CAMTC for these purposes, as there is no express definition or citation of Section 11000.

In an opinion issued by the Fair Political Practices Commission (FPPC), four criteria were established for determining whether an entity is an agency subject to conflict-of-interest provisions: (1) the impetus for formation of the entity originates with a government entity; (2) the entity is substantially funded by a government agency; (3) the principal purpose of the entity is to provide services or undertake obligations that public agencies traditionally perform; and (4) the entity is treated as a public entity by other statutory provisions. CAMTC arguably meets the third criterion; in a relevant decision, the FPPC determined that the Ocean Science Trust, a nonprofit corporation, met this standard because it pursued public policies established by the Legislature.

However, CAMTC does not likely meet the criterion that it receive substantial funding from a government agency. Therefore, it is uncertain that the FPPC would find that the conflict-of-interest provisions would apply to CAMTC. An additional opinion or decision from the FPPC would be required to determine full applicability.

**Staff Recommendation:** *The council should inform the Committees of any internal policies it has established to avoid real or perceived conflicts of interest and whether it thinks any further safeguards would be appropriate.*

**ISSUE #10:** *Lobbying Activity. Does CAMTC’s retention of a lobbying firm potentially jeopardize its statutorily required 501(c)(3) status?*

**Background:** CAMTC is required by the Massage Therapy Act to be incorporated as a 501(c)(3) nonprofit. According to guidance from the IRS, “no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.”

The IRS provides two tests to determine whether a nonprofit’s lobbying activities would likely rise to a level where its 501(c)(3) status would be jeopardized. The first is the “substantial part test.” Under this test, attempting to influence legislation may not constitute a “substantial part” of the activities of an organization exempt under Section 501(c)(3). What constitutes a “substantial part” is not entirely clear but is within the discretion of the IRS to determine. The second test is referred to as the “expenditure test,” which measures lobbying activity by comparing the organization’s exempt purpose expenditures to its lobbying expenditures. With revenue falling within the \$1.5 million to \$17 million range, CAMTC would be limited to expenditures of \$225,000 plus five percent of expenditures over \$1.5 million.

Since early 2020, CAMTC has retained a private lobbying firm, presumably to represent its interests before the Legislature as measures amending its authorizing statutes have the potential to be considered. So far, CAMTC has spent comparatively little on this lobbying contract, with approximately \$78,000 in general lobbying expenditures between the fifth and eighth quarter of the 2019-2020 session. However, as the new legislative session commences and the potential for high-impact legislation relating to the council grows greater, CAMTC should take care not to exceed what the IRS would consider an acceptable amount of lobbying activity or risk jeopardizing the 501(c)(3) status required by law.

**Staff Recommendation:** *CAMTC should speak to how it intends to ensure that its lobbying activity is limited to such an extent that the IRS is not likely to take action against its current exempt status.*

### **FISCAL ISSUES**

**ISSUE #11:** *Fee Levels. Are CAMTC's fees appropriately balanced given its indication that fees charged for specific services do not sufficiently cover those activities?*

**Background:** Currently, CAMTC's certificate fees are set at \$200, which was raised from \$150 in 2019. CAMTC also charges a variety of other fees relating to school approval, certification, and the disciplinary process. These fees are intended to fund related activities and ensure that fee-payers are receiving corresponding services. However, throughout CAMTC's sunset report, it references fees associated with various operations as being insufficient to cover the cost of those activities.

For example, in the council's report it is stated that "CAMTC has historically levied fees for schools well below the actual cost of providing the service. Currently, the application fee for schools equates to \$1,500 per year or \$125 per month, if approved. This fee is well below similar fees charged by other approval and accrediting entities. The application fee is meant to cover, in part, the costs of processing applications, conducting in-person site visits, reviewing school and student records, and monitoring approved schools, as well as investigations, denials, revocations, and other disciplinary actions necessary to ensure that approved schools meet and continue to meet the minimum standards for training and curriculum. The fees charged do not come close to covering these expenses."

Similarly, CAMTC's report makes reference to the fees associated with receiving a hearing to appeal proposed denial or unapproval of a massage school being inadequate, stating that "the current fees do not come close to covering the costs of providing this service." The implication of these statements is that revenue from other programs is being used to cover these operations. While all certificate holders benefit from an effective and robust massage school approval program, there may be an imbalance in how fees are distributed among various processes within the council's operations. It may also be seen as unjust to supplement services provided to massage institutions with fees charged to individual certificate holders, to the extent that this may potentially result in higher fees being charged to these individuals.

**Staff Recommendation:** *The council should clarify why it feels certain fees are insufficient to cover corresponding activities and provide input as to whether fees should be more appropriately balanced.*

**ISSUE #12: *Fund Balance. Is there cause for concern that the number of months in reserve for CAMTC's budget has fallen significantly since 2016?***

**Background:** CAMTC is not required to maintain a reserve level in its fund balance; however, it has voluntarily established a three-month goal for its operating expenses. Beginning in 2016, CAMTC had an impressive ten months in reserve stored up; this declined to eight months in reserve in 2017. Since 2018, CAMTC's reserve level is at half of what it was four years ago, with five months in reserve reported for 2018 and for January-June of 2019. This may potentially be linked to a noticeable increase in expenditures, which presumably also led to the council's decision to increase certificate fees in 2019.

While five months is still well above the council's three-month goal, the rapid downward trend in its reserve levels justifies an inquiry. To ensure that program revenue and expenditures remain balanced, greater equilibrium should be sought by the council so that any changes in its fund condition occur more gradually. It should be noted that fiscal data provided by CAMTC has not been updated since mid-2019, so there may be additional information available to explain the recent trend and its current status.

**Staff Recommendation:** *CAMTC should provide an update on its fund condition and how many months it currently holds in reserve, and explain why the number of months in reserve fell between 2016 and 2018.*

**CERTIFICATION ISSUES**

**ISSUE #13: *Certification versus Licensure. Should the voluntary certification obtained from CAMTC be converted to a license that is required at the state level?***

**Background:** While the certification program operated by CAMTC was established by the State Legislature and was intended to bring statewide uniformity to the standards and qualifications for massage therapists, there is no state-level requirement for a massage professional to seek and obtain a massage therapy certificate. The Massage Therapy Act makes it unlawful for a person to advertise their services using the title "certified massage therapist" or "certified massage practitioner," or any term implying they are certified or licensed, unless they are in fact in possession of an active and valid certificate issued by the council pursuant. Otherwise, state law does not restrict who may provide services considered to be within the informally accepted scope of practice of a massage professional, nor does it expressly prohibit a massage therapist whose certificate was revoked by CAMTC from continuing to practice massage therapy as long as they do not claim certification.

In most cases, the certificate granted by CAMTC serves instead as part of local regulation of the massage industry. The Legislature initially created the council after determining that the massage industry was "regulated in California by a chaotic mish-mash of local vice ordinances," with each locality setting its own standards for who can offer massage services based on how it chose to draft its local ordinances to prevent prostitution or sex trafficking operations. While the Massage Therapy Act does not require that any local jurisdiction incorporate CAMTC's certificate program into its local regulatory scheme, it does prohibit local governments from enacting or enforcing an ordinance that conflicts with the Act. If a massage therapist possesses a valid certificate from CAMTC, local governments cannot impose any additional professional standards or required qualifications on the professional; they must accept the certificate as confirmation that the individual has sufficient training and fitness to practice.

Local governments otherwise do continue to exercise a great deal of control over how massage services are provided within their jurisdictions. CAMTC has no authority over massage establishments, except when the owner of a massage business is a certificate holder. The Legislature restored much of local government's authority to regulate establishments under its land use authority when it removed preemption language in Assembly Bill 1147.<sup>19</sup>

Significantly, cities and counties may enact ordinances that require massage professionals to receive a CAMTC certificate at the local level. For example, the City of Los Angeles's massage ordinance states that "each person employed or acting as Massage Practitioner or Massage Therapist shall have a valid certificate issued by the California Massage Therapy Council."<sup>20</sup> The City of San José's massage ordinance states that "it shall be unlawful for a person to perform Massage on a person in exchange for money or any other thing of value, or for checks, credit or any other representation of value unless that individual is a certified Massage Therapist."<sup>21</sup> More often than not, the "voluntary" statewide certification is effectively a requirement for massage professionals to practice in a particular jurisdiction.

However, the fact that certification technically remains voluntary at the state level has led to a number of concerns and complaints from representatives of the industry. Advocates for several professional associations have argued that because California lacks a consistently required statewide license, the industry is frequently disqualified from discussions such as the expansion of coverage and ability to bill Medicare and Medicaid and the incorporation of nonpharmacological therapies into pain management treatment plans. These advocates point out that California is one of only five states without statewide licensure for massage therapy.

Finally and not insignificantly, representatives of the industry have argued that by not enacting a for full licensure requirement for massage therapy, California has essentially relegated the profession to a class below that of other healing arts. Arguments have been made that the existing certification program for massage therapy exists more as a safeguard against criminal activity and vice than as support for a profession offering genuine health and wellness services. The Bureau of Labor Statistics, which reports that employment of massage professionals nationwide is projected to grow 26 percent from 2016 to 2026, has stated that "as more states adopt licensing requirements and standards for massage therapists, the practice of massage is likely to be respected and accepted by more people as a way to treat pain and improve overall wellness ... similarly, demand will likely increase as more healthcare providers understand the benefits of massage and these services become part of treatment plans."<sup>22</sup>

It should also be noted that as long as certification remains voluntary, massage therapists will be generally afforded lower standards of due process. As the feasibility study for licensure commissioned by CAMTC pointed out, the greater property right associated with a required license would be accompanied by stronger requirements for due process in regards to how licenses are granted, denied, suspended, or revoked. While this would undeniably result in more costly application reviews and less swift and efficient enforcement actions, a reasonable argument could be made that the current model may be perceived as unfair given that many massage professionals are required to obtain a certificate to practice in a particular jurisdiction while not being afforded the same rights as professionals who possess a full license.

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<sup>19</sup> Further analysis of the role of local government in regulating the passage profession is discussed in Issue #24.

<sup>20</sup> Los Angeles Municipal Code § 103.205

<sup>21</sup> San José Ordinance No. 29662

<sup>22</sup> Bureau of Labor Statistics, U.S. Department of Labor, "Occupational Outlook Handbook: Massage Therapists Summary," (2016).

Transitioning from voluntary certification to a statewide license requirement would potentially elevate the profession of massage therapy and align the industry with other therapeutic practices. It would no doubt implicate questions of how to appropriately treat those professionals currently practicing massage in jurisdictions that do not require a certificate from CAMTC, and a licensing program with all the associated expectations of due process would likely be both more expensive and less efficient than what is currently operated by CAMTC. Nevertheless, the question of whether licensure would provide greater benefit than the current certification model should be discussed as the future of the profession is debated through the sunset review process.

**Staff Recommendation:** *CAMTC should provide its perspective on whether its voluntary certification program should be converted to a license requirement and what the potential benefits and complications of such a transition may be.*

**ISSUE #14:** *Fair Chance Licensing Act. Should the requirements of Assembly Bill 2138 (Chiu/Low) be applied to CAMTC's certification program??*

**Background:** In 2018, Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the initial application process for individuals with criminal records seeking licensure through a board or bureau under the Department of Consumer Affairs. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions went into effect on July 1, 2020.

Because CAMTC is not a licensing board under the Department of Consumer Affairs, the provisions of AB 2138 do not apply to it. CAMTC is required to conduct a fingerprint background check of each applicant for a certificate through both the California Department of Justice and the Federal Bureau of Investigation. Statute prescribes what misconduct disqualifies an applicant from certification, resulting in the denial of applicants who have been “convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder,” or “committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.”<sup>23</sup>

If AB 2138 were applied to massage therapy certificates, CAMTC would only be authorized to deny applicants who have actually been convicted of substantially related offenses; the council would no longer be allowed to deny applicants it has merely deemed to have committed “acts” that were not formally adjudicated. Arrests or mere acts underlying a conviction that is not substantially related to the massage profession would not be cause for a licensure denial. Further, nonserious, nonviolent, nonsexual convictions would also “wash out” after seven years and no longer be eligible after seven years.

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<sup>23</sup> Bus. & Prof. Code, § 4609

Between January 1, 2016 and June 30, 2019, CAMTC denied 1,548 applicants out of a total of 89,592 applications for certification or recertification. CAMTC states that it does not keep track of how many of these denials were due to a criminal conviction or other background issue with the applicant (versus another issue such as failure to meet education requirements), so it is uncertain how many applicants would potentially become eligible for certification were the provisions of AB 2138 applied to the council. Whether these reforms that were enacted for state regulatory board licensing programs should be extended to certificates granted by CAMTC may be worthy of consideration given the sustained policy interests in removing barriers to economic opportunity for individuals with nonviolent criminal histories.

**Staff Recommendation:** *CAMTC should indicate whether it believes there is a significant reason why AB 2138's provisions should not be extended to applicants for certification as massage therapists.*

### **EDUCATION AND EXAMINATION ISSUES**

**ISSUE #15:** *Competency Assessment Examination. Should applicants for certification be required to pass the MBLEx or a similar examination, or should the requirement be eliminated permanently?*

**Background:** Assembly Bill 1147 established new requirements for massage therapy certification, including a requirement that all applicants pass a massage and bodywork competency assessment examination that is approved by CAMTC. The following exams have been approved by the CAMTC: the Massage and Bodywork Licensing Examination (MBLEx); the National Certification Examination for Therapeutic Massage and Bodywork and the National Certification Examination for Therapeutic Massage if taken prior to February of 2015; and the Board Certification Examination for Therapeutic Massage and Bodywork.

In order to take the MBLEx, an individual is required to complete 500 hours of education, which is the certification requirement in California. The New York State Massage Therapy Examination is only available if an individual meets specified educational requirements from New York. The Board Certification Exam in Therapeutic Massage and Bodywork requires 750 hours. The National Certification Exam for Therapeutic Massage and Bodywork must have been taken on or before February 2015. Therefore, for applicants for certification who have studied in California, under the state's 500-hour education requirements, the MBLEx is the only exam that can be taken to achieve certification.

The Federation of State Massage Therapy Board (FSMTB, the provider of the MBLEx) began requiring candidates seeking to take the MBLEx to demonstrate that they have received their education from an "approved massage therapy education program" beginning July 1, 2017. The massage therapy school must be approved or recognized by the state board or agency authorized to regulate massage therapy. In California, CAMTC is the body recognized by the FSMTB; to be eligible to sit for the MBLEx, an applicant must have attended a school that was affirmatively approved by the council.

The CAMTC only began approving schools in 2016; prior to that, schools were presumed approved until unapproved. Due to the ineligibility of many qualified applicants for certification as massage therapists in California to take the MBLEx, the examination requirement was suspended in 2018 through Senate Bill 1480 (Hill). This suspension was further extended in 2020 through Senate Bill 1474 (Committee on Business, Professions, and Economic Development). While CAMTC and the Committees have considered issues to resolve the outstanding issues with the FSMTB, it may also be considered whether an examination requirement is necessary for a massage therapist to provide services in California.

The suspension of the examination requirement is due to expire on January 1, 2022. Whether to extend or make permanent that suspension is a topic that should be addressed this year.

**Staff Recommendation:** *CAMTC should provide its opinion on whether an examination requirement should be restored and propose any newly identified solutions to the issues with MBLEx eligibility.*

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**ISSUE #16:** *Continuing Education. Should massage therapists be required to take continuing education courses?*

**Background:** Continuing education is not and has never been a requirement for massage professionals in California. Only 500 hours of precertification education at an approved massage school is required. Massage therapists are not required to undergo any additional education or training once certified.

Continuing education is a requirement in some other states. For example, New York requires 36 hours of continuing education every three years. Courses offered by continuing education providers include topics like the treatment of conditions like fibromyalgia, sciatica, and myofascial pain syndrome; sports massage; business operations; and ethics. The cost for these courses ranges, with an average of around \$100 per four hours of continuing education.

Nothing prohibits massage therapists in California from pursuing continuing education. While many available continuing education courses in massage may appear interesting or beneficial, they would remain an option to California massage therapists without the need for a statewide requirement. Meanwhile, it is questionable whether the massage profession evolves so rapidly or requires such constant educational refreshment that creating a new requirement for continuing education would be necessary or justified.

**Staff Recommendation:** *The council should share any insights it has into whether continuing education has proved successful in other states and whether it believes there is any reason for California to consider imposing such a requirement.*

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**ISSUE #17:** *School Approval and Un-Approval. Does CAMTC's current process for approving and un-approving schools appropriately provide due process for schools and students?*

**Background:** Statute defines an “approved school” or an “approved massage school” as a school that is approved by CAMTC, has not been unapproved by CAMTC, and is approved by the BPPE, the Department of Consumer Affairs, or the organizations that accredit junior and community colleges, and corresponding agencies in other states.<sup>24</sup>

Until 2014, CAMTC did not have a formal school approval process. However, during CAMTC’s first sunset review, concerns were raised that many schools were potentially producing diplomas while not providing an actual massage therapy education to individuals, and CAMTC process was only reactive. This was especially important during a period of time when there were concerns about illicit businesses and practitioners infiltrating the legitimate massage therapy profession. In 2014, the Legislature questioned whether CAMTC’s reactive unapproval process was the best mechanism to ensure that students were meeting important programmatic standards for massage therapy practice.

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<sup>24</sup> Bus. & Prof. Code, § 4601

In order to alleviate that concern, Assembly Bill 1147 required CAMTC to restructure its school approval system from a complaint-driven unapproval process to a more thorough and proactive approval process. AB 1147 did not specify the parameters for what that approval process should entail, and instead required CAMTC to develop policies, procedures, rules or bylaws governing the requirement and process for the approval and unapproval of schools, including any corrective action required to return a school to approved status. Essentially, the parameters of how CAMTC would review schools, deny approval, the criteria necessary for a massage program, among others, was left for the CAMTC to develop.

Statute requires that CAMTC develop policies, procedures, rules, or bylaws governing the requirements and process for the approval and unapproval of schools, as specified, including any corrective action required to return a school to approved status.<sup>25</sup> These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance. The required policies and procedures were developed by CAMTC through the organization's board process and any alterations to CAMTC's policies continue to be done by the Board of Directors. The CAMTC Board of Directors has made numerous edits to policies and procures over the years, including the implementation of very detailed requirements for a school to meet minimum standards for training and curriculum in massage and related subjects.

Given that CAMTC is a voluntary certifying entity, a school operator does not need to have CAMTC approval to offer a massage therapy education in California to operate. However, individuals who attend non-CAMTC approved institutions are not able to obtain CAMTC's voluntary certification, unless they applied during specified-grace periods offered by CAMTC. Applications for schools approval became available on April 1, 2015. It took time for CAMTC to review schools and formally deny schools, which posed a challenge to individuals in the process of obtaining education at schools in the formal approval pipeline. In an effort to address those concerns, CAMTC established grace periods for students who may have attended or were in the process of attending a school that had not obtained a formal approval process. According to the CAMTC's web site: "If you attended a school that applied for CAMTC school approval on or before December 31, 2018, or applied for re-approval and is ultimately denied, you may still apply for CAMTC Certification using education from the denied school as long as your CAMTC Application for Certification is received within the applicable grace period and you provide additional proof of adequate education (in addition to a transcript and diploma) by passing an education hearing. Applications received after the grace period has ended will not be able to use education from a denied school or program to meet the educational requirements for CAMTC Certification."

A number of schools and students reached out to the Committees and the Legislature to share concerns about the prolonged school approval process, and as a result, Assembly Bill 775 (Chau, Chapter 290, Statutes of 2019) established timelines for the approval of a massage therapy school by CAMTC, and requires a school that is not approved by CAMTC to notify student applicants and obtain signed acknowledgements of confirmation that each applicant understands that the school is not approved and that the education will not count towards voluntary certification.

Since CAMTC School Approval began on July 1, 2016, through August 1, 2019, CAMTC has approved 100 campuses, with five schools provisionally approved, denied six schools, purged 39 school applications, and re-approved 61 campuses. There are currently 78 unapproved schools. Of those, eleven have been unapproved since July 1, 2016.

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<sup>25</sup> Bus. & Prof. Code, § 4615

Recently, a massage school with campuses in San José and Santa Cruz was informed by CAMTC that its application for re-approval would be denied. This denial was asserted violations of the Massage Therapy Act including, among other things, allegations that the school sold transcripts to students. CAMTC indicated that it believed that an “accelerated program” offered by the school at a greater cost than its standard program resulted in students completing their 500 hours unrealistically quickly and with home addresses listed in Southern California. In return, the school insists that these accusations are entirely false, and its students have stated that they attended the accelerated program, often from 6am to 2pm every day, in order to continue working while achieving their degree faster, with many of them traveling from Los Angeles and sleeping on their instructor’s couch for weeks at a time.

The student of the denied school have presented the Committees with photographs, videos, and other documents to prove that they attended classes. Furthermore, the school claims that when the CAMTC inspector arrived for a surprise audit, three classes were actively underway and the students waited half an hour after the end time for the inspector to come see them in class, but he left without ever doing so. The school points out that they operate a successful acupuncture program that has never been the subject of any allegations. The school also alleges that they were afforded very little due process.

Unapproved or denied schools may appeal a proposed decision in an oral telephonic hearing or through the submission of a written statement. Fees are charged for each of these hearings. The appeal is then considered by at least two Hearing Officers, who are also employees of CAMTC and whose decision is considered final. Essentially, a denied school such as the one in the recent case has no option for appealing a CAMTC decision except to different segments of CAMTC itself. Therefore it is unlikely that once a school has been determined by CAMTC to merit unapproval, there is very little recourse.

At the same time, CAMTC has made it clear that it takes its authority to unapproved schools very seriously and that it believes this function is part of its core mission as a way to prevent human traffickers from securing fraudulent credentials for those intended to engage in illicit sexual activity under the guise of massage therapy. While it is generally acknowledged that the due process provided to schools approved and unapproved by CAMTC is substantially lower than processes in place at state agencies, this is considered a tradeoff of the greater speed and efficiency that CAMTC possesses. While there may be concerning accusations and criticisms of CAMTC’s process for unapproving schools, it should be considered whether its current operations remain the best way to quickly address fraudulent activity.

***Staff Recommendation:*** *CAMTC should speak to whether any criticisms of its activities may be considered valid cause for changes to the Massage Therapy Act and its role in regulating schools.*

***ISSUE #18: Foreign Education. Should statute be revised to enable CAMTC to accept education from massage schools located outside the United States?***

**Background:** CAMTC previously accepted hours of education from a foreign school for purposes of certification if it determined that the education was “at least substantially equivalent to the requirements applied to California school programs.” However, on February 22, 2018, CAMTC’s Board of Directors formally voted to no longer accept any foreign transcripts for massage certification. Statute only allows for CAMTC to accept out-of-state education that is: “recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.”<sup>26</sup> CAMTC has interpreted this statute to prohibit acceptance of education from schools outside the United States.

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<sup>26</sup> Bus. & Prof. Code, § 4601

In an April 2019 newsletter, CAMTC stated that it was “currently working with the Legislature to create a pathway for at least some acceptance of foreign education.” Meanwhile, a number of massage therapists trained in other countries including Canada and Costa Rica have contacted the Committees requesting that statute be amended to allow or require acceptance of their education. If CAMTC does believe that it should be authorized to consider applicants for certification with foreign education and training, it would seem appropriate to consider amending statute to provide for that authorization.

***Staff Recommendation:*** *CAMTC should explain why it no longer believes it has authority to grant certificates to applicants who were educated at foreign massage schools and what language it believes would be necessary to allow for such education to be accepted again.*

***ISSUE #19: Relationship with the BPPE. Does the shared responsibility for massage school approval with the Bureau for Postsecondary Education allow for efficient and effective regulation?***

***Background:*** CAMTC’s approval process for many massage schools is carried out in conjunction with licensure by the BPPE, which primarily regulates for-profit private postsecondary schools. If a massage school is subject to the BPPE’s oversight, then both the BPPE and CAMTC must approve a school for it to offer massage programs accepted for purposes of certification as a massage therapist. The BPPE’s process for approving schools is distinct from CAMTC’s—the 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, if they are approved by the BPPE, but students from those schools may not use educational units for CAMTC certification.

A recently unapproved school has pointed to its continued approval by the BPPE as evidence that it is not a “diploma mill” and should not have been subjected to unapproval. However, CAMTC points out that for the six schools denied since approval since July 1, 2016, all six were currently approved by the BPPE, and the vast majority of purged applications were from BPPE-approved schools. While many regulatory boards whose education requirements are met through programs offered at private for-profit institutions overseen by the BPPE do not engage in an additional level of approval, without CAMTC does not appear to believe that the BPPE is sufficient to deter the type of fraud that it asserts is rampant in the massage industry.

CAMTC and BPPE recently signed a memorandum of understanding related to information sharing, and CAMTC states that it works closely and consistently with the BPPE. Schools applying for CAMTC approval authorize the council to share information with other entities, including the BPPE. CAMTC also provides the BPPE with information related to schools upon request. This ongoing cooperation may allow for a balance of ensuring that massage schools are both actually providing quality education to students and are appropriately authorized to operate and charge tuition to massage students.

***Staff Recommendation:*** *CAMTC should provide an update regarding its relationship with the BPPE and whether it believes it continues to be necessary for schools to receive approval from both the council and the bureau.*

## ENFORCEMENT ISSUES

### **ISSUE #20: *Human Trafficking. How does current regulation of the massage therapy profession contribute to statewide efforts to combat human trafficking?***

**Background:** CAMTC states that it has been “at the forefront of anti-human trafficking efforts since inception.” According to the council, “human traffickers want the air of legitimacy provided by businesses that appear to be legitimate massage establishments but are actually fronts for illicit activity.” In instances where staff for CAMTC describe its purpose and work, combating human trafficking is nearly always one of the core topics raised.

Despite evidence suggesting that massage therapy has physiological benefits analogous to other healing arts licensed by the state, the industry has long been associated with commercial sexual activity. The result has been a treatment of massage therapy practice as a “vice” industry. The term “massage parlor” has in many discussions been treated as a euphemistic synonym for a bordello. This perception has persisted as national awareness of human trafficking has grown. In the California Attorney General’s 2012 report *Human Trafficking in California*, the definition of “sex trafficking” makes reference to “brothels disguised as massage parlors.”

In June of 2016, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development held an informational hearing entitled *The Role of Regulated Professions in Combatting Human Trafficking*. In the background paper, the Committees examined how state legislation regarding massage therapy has contributed to localized anti-trafficking efforts. The paper described how “some licensed professionals may be uniquely situated to identify victims of human trafficking” and indicated that increased education for licensees could be an effective approach. The report further states that “strict and enforceable disciplinary standards may help alleviate licensed professions being infiltrated by illegal enterprises attempting to use legitimate businesses within California for human trafficking.”

In January of 2018, the Polaris Project, an anti-trafficking organization, released a report entitled *Human Trafficking in Illicit Massage Businesses*. This report, which analyzed tens of thousands of human trafficking cases reported through the project’s hotline cross-referenced with other data sources, identified massage establishments as the second most common context for sex trafficking after escort services. The Polaris Project believes that California is home to “over 35 percent of the country’s illicit massage businesses (IMBs) and contains two of the three main cities in the country to which victims are recruited.” The report found that as many as 42 percent of Mandarin-language ads recruiting women in California for massage therapy jobs “show one or more flags of trafficking.” California is also identified as a key “port of entry” for sex trafficking victims, with IMBs operating in networked connections with others across the country.

In a section of the report specifically titled “The Regulatory Landscape of California,” the Polaris Project acknowledges that the state’s Massage Therapy Act has resulted in “the enactment of many dramatically different laws at the county and city level,” and states that many counties have instituted strong regulatory schemes. However, the report goes on to express concern that “three counties with some of the highest concentration of IMBs in California, and therefore highest in the entire country, either do not have a law regulating massage business operations (Los Angeles County), have laws that regulate massage businesses as sexually-oriented businesses (San Diego County), or their major cities do not have laws regulating massage business operations (Santa Clara County).”

The report notes that because county laws are only enforceable in unincorporated areas, traffickers simply relocate to a specific large city to avoid strong regulations at the county level. An example given involves Santa Clara County, which worked with the Polaris Project to develop a new county-level law, wherein the result was simply that “traffickers simply picked up and moved to San José (the heart of Silicon Valley) or other cities with more permissive laws.” The core issue, Polaris Project states, is that “traffickers reap tremendous benefits from a lack of coordination between state, county and city legislation. The only way to cut them off at the pass is to undertake a coordinated effort to make sure they have nowhere else to go.”

The fact that California does not provide for universal statewide licensure of massage therapists has been identified as an impediment to the implementation of policies that would leverage the state’s regulatory function to identify and combat traffickers. Furthermore, the fractured nature of massage therapy regulation has been criticized by some as not only for producing inconsistent or insufficient local enforcement of illicit businesses. The strong association between massage therapy and sex trafficking has led some jurisdictions to pass what the massage industry regards as unduly onerous regulation that inappropriately burdens legitimate businesses. This criticism is compelling considering that many massage therapy services are provided by small businesses or sole proprietorships staffed and operated by vulnerable immigrant communities. A reasonable argument could be made that true sex trafficking enterprises are well-equipped to circumvent any constrictive local regulations, placing the weight of their impact on legitimate businesses.

On November 16, 2017, CAMTC issued a response to the Polaris Project’s findings, stating that in reviewing its data, it “does not have evidence that its certificate holders are either victims or perpetrators of human trafficking” and that “no CAMTC certificate holder has a criminal conviction for human trafficking and no certificate individual has stated to CAMTC that they have been trafficked.” CAMTC has made it clear that it believes its process for granting certifications and approving massage schools has a substantial impact on preventing human traffickers from operating massage establishments. Additionally, CAMTC’s Board of Directors specifically includes a designated representative of an anti-human trafficking organization.

The council’s role in combating trafficking is empowered by the Massage Therapy Act. Statute requires CAMTC to immediately suspend the certificate of any individual who is arrested for prostitution or any sexually related crime. CAMTC is also authorized to suspend the certificate of any individual whom they believe to have committed a sexually related crime or a felony absent an arrest, with requirements for notice and appeal. In addition, the Massage Therapy Act specifically prohibits massage services from being offered by individuals who are unclothed or dressed in an alluring manner, including transparent attire and swimsuits (except under specific circumstances).

When evaluating the significance of CAMTC’s actions against human trafficking, there are certain arguments that should be considered in the context of the council’s laudable endeavors. First, while certainly sex trafficking continues to be an active and abhorrent industry operated by transnational criminal organizations and other perpetrators, it may be reasonably assumed that not *all* paid sexual services offered by massage therapists are the result of force or coercion by a sex trafficker. While pimping, pandering, and prostitution remain illegal under state law and are a justifiable cause for revoking a massage therapist’s certificate, it may be considered ill advised to overzealously conflate all commercial sex acts with human trafficking, and recognize that in many instances the illicit activities being prevented may in fact be a form of consensual sex work.

Additionally, while human trafficking has certainly been identified as a pervasive issue in the massage industry, it is also not the only profession where victims of trafficking are forced to work. Studies indicate that human trafficking is also common in service industries such as nail salons, construction, and the restaurant industry. While forced sexual activity is arguably the most appalling form of trafficking, some anti-human trafficking advocates have postulated why only massage therapy appears to be subjected to often extreme restrictions in the interest of preventing activities that appear to be less zealously combated elsewhere.

Finally, as discussed in Issue #21, CAMTC does not have authority over massage establishments, only certified massage therapists working within them. Therefore, inasmuch as the council has a key role in combating sex trafficking operations through its enforcement activities, it is limited to taking action against those providing illicit services. If an unlawful massage business is indeed operating as a front for traffickers forcing massage professionals to engage in commercial sexual activity, it is debatable whether revoking the victim's certificate is in fact an urgent priority in law enforcement's response.

CAMTC should be applauded for its ongoing work to partner with local law enforcement to combat human trafficking. However, the sustained and stigmatic association between commercial sexual activity and the massage industry is doubtlessly harming the reputation of a legitimate healing art profession, and there continue to be reports of local governments enforcing draconian ordinances against lawful massage businesses in the furtherance of anti-trafficking policies. As CAMTC continues to root much of its mission in its work against sex trafficking, there should remain a mindfulness to ensure that supporting good actors within the profession is not unduly deprioritized

**Staff Recommendation:** *The CAMTC should further discuss its commitment to combating human trafficking and provide its thoughts on how to avoid burdening legitimate operators in pursuit of those efforts.*

**ISSUE #21: Massage Establishments. Does CAMTC's lack of oversight over massage establishments and their owners represent a gap in its enforcement authority?**

**Background:** The Massage Therapy Act currently does not grant CAMTC authority over massage establishments, which are defined as “a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.”<sup>27</sup> The council has oversight over massage professionals who seek and receive voluntary certification, as well as schools that wish to have their programs count toward certificate requirements. In regards to places of business where massage services occur, however, CAMTC's authority is very limited.

Statute does allow CAMTC to discipline an owner or operator of a massage business or establishment “for the conduct of all individuals providing massage for compensation on the business premises.” However, this only applies when the business owner or operator is themselves a certified massage therapist already subject to CAMTC's oversight.<sup>28</sup> CAMTC cannot take any direct enforcement against uncertified massage establishment owners, or place requirements specifically on massage establishments that fall outside their regulation of certified professionals.

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<sup>27</sup> Bus. & Prof. Code, § 4601

<sup>28</sup> Bus. & Prof. Code, § 4607

Instead, power to regulate massage establishments belongs to local governments. Provisions in the Government Code expressly recognize the right of cities and counties to “enact an ordinance which provides for the licensing for regulation of the business of massage when carried on within the city or county.”<sup>29</sup> These ordinances are limited in terms of what requirements may be placed on massage professionals working within those businesses that conflict with the provisions of the Massage Therapy Act, but generally local governments retain authority to regulate and take enforcement action against establishments. (More on the role of local government is discussed under Issue #24.) CAMTC therefore often states that it sees its role as providing support to local governments in their oversight of massage businesses.

The question of whether CAMTC’s authority should extend beyond massage professionals and bring massage establishments under their oversight has long been raised. During the council’s first sunset review in 2014, the background paper raised the question: “Should CAMTC certify or regulate massage businesses or establishments?” The background paper pointed out that were CAMTC given that authority, “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.”

Ultimately, the Legislature chose not to extend CAMTC’s oversight to massage establishments, and instead local government’s authority to regulate those businesses was expanded and restored. A bill proposed in 2018, Assembly Bill 3061 (Gloria), would have created a statewide registration program for massage establishments within CAMTC. However, this bill ultimately did not pass with that language in place.

Recent high-profile incidents regarding misconduct at massage establishments further invoked the question of whether CAMTC should possess greater oversight authority. In November 2017, a major franchise chain of massage establishments was the subject of an article reporting that there had been over 180 complaints of sexual misconduct against the company and its employees. When some accused the national company of having policies in place that were partially responsible for allowing this misconduct to persist, there was little authority for CAMTC to investigate or take action against the owners of the establishment; instead, their jurisdiction was limited to specific therapists accused of misconduct who had been certified by the council.

Whether CAMTC should have authority over massage establishments remains a topic of discussion. Part of the consideration is whether local governments are exercising sufficient oversight over these service settings to satisfy the role that CAMTC would play were its jurisdiction expanded. This question will also serve generally as part of the larger question as to what the Legislature expects from CAMTC’s regulatory role and whether it is adequately empowered to carry out that role in a way that protects the public and advances the profession of massage.

***Staff Recommendation:*** *CAMTC should provide its perspective to the Committees regarding whether it believes there would be benefit from providing the council with jurisdiction over massage establishments and whether there have been any new developments since the last time the issue was raised.*

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<sup>29</sup> Gov. Code, § 51030

**ISSUE #22: *Complaints. Does CAMTC's current process for receiving and enforcing complaints sufficiently protect the public?***

**Background:** Consistent with many other licensing entities, CAMTC receives complaints about individual certificate holders. Complaints can come from anywhere (cities, law enforcement, individuals, students, schools, and the public); however, CAMTC's inquiry is limited to investigating conduct by CAMTC certificate holders and applicants that is substantially related to the qualifications, functions, or duties of a certificate holder. As previously discussed, CAMTC does not have any authority to revoke a business license or permit.

Approximately 1,156 complaints received between 2016 and June 30, 2019. CAMTC has demonstrated significant pride in its complaint resolution timelines, which it believes are much faster than those for boards under the Department of Consumer Affairs. CAMTC notes that it seeks to quickly address all complaints received and treats notifications from law enforcement as complaints, and asks that any information local jurisdictions have to share with CAMTC be communicated through the complaint link.

As noted on the CAMTC website, through the council's complaint guidelines, in order to make a complaint, an individual must provide their name and contact information, including any information about filed police reports. In addition, if the CAMTC decides to investigate the complaints, the individual who levied the complaint must be willing to provide a signed declaration under penalty of perjury; possibly testify to the allegations; explain the relationship with the massage professional; and provide any other evidence in your possession. CAMTC does not investigate anonymous complaints. While other licensing boards acknowledge that anonymous complaints are much harder to investigate and resolve, there may be a legitimate question as to whether CAMTC's policy of requiring identifying information from each complainant is appropriate given its mission of protecting the public.

**Staff Recommendation:** *CAMTC should provide an overview of its complaint intake and resolution process and explain why it has chosen not to accept or investigate anonymous complaints.*

**ISSUE #23: *Enforcement Process. Is sufficient due process provided throughout CAMTC's procedure for certificate revocation, suspension, or other discipline?***

**Background:** The Massage Therapy Act grants CAMTC broad authority to take disciplinary action against certificate holders, including through suspensions and revocations of certificates. Statute identifies a broad range of specific causes for discipline for acts constituting professional misconduct. As with any regulatory program, taking swift and effective action against professionals who have engaged in misconduct or gross negligence is a core component of CAMTC's mission to protect the public.

Unlike other regulatory boards, however, the investigation, enforcement, and adjudication processes for allegations against massage therapists are all entirely placed within the purview of the council. Whereas boards and bureaus under the Department of Consumer Affairs typically utilize the Attorney General's office to prosecute discipline cases, with many ultimately being heard by an Administrative Law Judge within the Office of Administrative Hearings, CAMTC does not implicate any of these entities and handles all disciplinary matters itself. As previously discussed, the Administrative Procedures Act has limited applicability to CAMTC when it comes to how cases are brought and decided following a complaint or accusation.

The discipline process begins when a potential case against a certificate holder is identified by way of a complaint from the public or local law enforcement, or through CAMTC directly suspecting a certificate holder of misconduct. Once a potential disciplinary action has been identified, a file is initiated by the council employees within its Background Review Department (BRD), which will “put these individuals in line to be reviewed.” CAMTC states that BRD will then review potential cases during a weekly call or meeting to assess the seriousness of the potential misconduct. According to CAMTC, “BRD has a detailed process that allows it to quickly identify those cases that appear to be minor in nature and those that appear to be more complex or serious.”

If the complaint or suspected misconduct is easily deemed not subject to discipline by CAMTC, then BRD will send it to “In-House Clearance.” These matters will then be formally resolved with no action taken against the certificate holder. As an example, CAMTC states that if the complaint is linked to a subsequent arrest notification or criminal conviction for offenses that are clearly not substantially related to the certificate, it will send the matter to In-House Clearance.

“Minor Review Cases” are considered ineligible for In-House Clearance but still likely to be resolved without action. BRD has monthly calls or meetings to discuss these issues, which are also generally cleared without any disciplinary action taken. Examples provided by CAMTC for these Minor Review Cases are complaints that a massage therapist charged too much for a massage or smelled like cigarettes. CAMTC states that all Minimum Review Cases meetings are “staffed by a minimum of two BRD employees who make a unanimous decision on whether the issue can be cleared or further review is required.”

The third categorization of complaints and allegations that BRD determines must be investigated. These are then referred out to investigators in a separate Investigations Unit, which are simply a different branch of CAMTC employees. (Investigations and BRD were once part of the same Professional Standards Division before being split off in 2019.) These investigators then engage in gathering evidence against the certificate holder by interviewing witnesses and victims and obtaining documents. Once an investigation is complete, the investigators make a recommendation to the BRD regarding what violations they believe the certificate holder committed and what discipline would be appropriate. However, only BRD may make the decision to proceed with discipline or close a case.

BRD has weekly telephone calls to discuss these investigated cases. BRD employees discuss the evidence and determine whether they think a disciplinary action is justified and appropriate. CAMTC states that if a majority of the BRD employees on the call believe that there is sufficient evidence to take action against a certificate holder, then a proposed decision is officially made, including the type of discipline to be imposed.

Certificate holders are then provided at least fifteen days’ notice of the proposed discipline in the form of a “Proposed Revocation/Discipline Letter” (PRL). This letter includes the factual and legal basis for the proposed action and the violations that the certificate holder is accused of. The certificate holder is then also notified of their opportunity to be heard.

Certificate holders being accused of misconduct may pay CAMTC a fee to have either a telephonic hearing or to submit a written statement. CAMTC charges certificate holders a \$270 fee for telephonic hearings and a \$180 fee for consideration of a written statement. These hearings are then held by at least two Hearing Officers. These Hearing Officers are also employees of CAMTC. The Hearing Officers review all the evidence submitted, including evidence provided by the certificate holder in the hearing or through written statement, and deciding whether to uphold, reject, or modify the proposed decision.

According to CAMTC, “the decision of the Hearing Officers shall be final.” If a certificate holder wishes to continue to protest the decision, their only option is to file a lawsuit against CAMTC in superior court. This lawsuit must be filed within ninety days of the effective date of the discipline.

In essence, the Hearing Officers are considered the appellate level reviewers of the proposed disciplinary action brought by BRD based on the recommendations and evidence submitted by Investigations. Each one of these individuals is an employee of CAMTC. At no point in time does an independent entity consider the case. CAMTC appears to believe that additional due process is created by ensuring that there is consensus among multiple employees as to the appropriate action to be taken. If a certificate holder truly believes CAMTC’s employees acted wrongly in their proposed discipline, then a lawsuit against the council is their opportunity to have a third party weigh in.

It is additionally unclear whether CAMTC requires each of the employees involved in this process to meet any particular qualifications. For example, it is not apparent that either BRD or Investigations staff are required to have a law enforcement or criminal justice background, though it is possible that some do. While Hearing Officers are divisionally placed under CAMTC’s Special Counsel and Senior Staff Attorney on its organizational chart, it is not known if these individuals themselves must be licensed attorneys. While nothing in the Massage Practice Act requires minimum qualifications for these employees, there is a question as to how distantly related these CAMTC employees are to the investigators, prosecutors, and judges involved in a disciplinary action brought by a board under the Department of Consumer Affairs.

As has been discussed, there is no denying that CAMTC’s disciplinary process is tremendously efficient when compared to enforcement activities at similar state agencies. Meanwhile, because CAMTC’s certification is voluntary, there is a valid reasoning that the expectations for due process should not rise to that same level. However, given the enormous amount of discretion that clearly exists solely within the jurisdiction of CAMTC and its employees regarding whether a massage therapist will be subjected to formal discipline, there should be a discussion of whether additional steps to ensure accountability and transparency in the enforcement process are justified.

**Staff Recommendation:** *CAMTC should explain its current enforcement processes for disciplinary actions against certificate holders, including what qualifications and standards are applied to those working within BRD, Investigations, and as Hearing Officers, and speak to whether it believes there could be any improvements to enhance due process for certificate holders.*

### **LOCAL GOVERNMENT ISSUES**

**ISSUE #24:** *Relationship with Local Governments. Is the relationship between local government and CAMTC an effective model for regulation of the profession and prevention of illicit activity?*

**Background:** A key element of an effective massage regulatory system in California is open communication, specifically uniform sharing of information that leads to consistent regulation of the profession in every jurisdiction. Since the inception of a statewide, voluntary certification program in California, the relationship between CAMTC, local governments, and practitioners has been fraught with issues and has been a consistent topic addressed during every sunset review oversight effort for CAMTC.

There are many layers that establish oversight of the massage therapy profession in California. As previously discussed, CAMTC is responsible for the voluntary certification of individuals, while local governments are responsible for regulating businesses and establishments, as well as the individuals who choose not to obtain certification from CAMTC. Although some local jurisdictions require CAMTC certification in order to practice within their area, not all cities or counties do. Since CAMTC only certifies an individual, and does not have authority over any business or establishment operator or owner (unless the business owner happens to be a sole-proprietor who has certification), a transparent and communicative relationship between CAMTC, local governments, and law enforcement is imperative.

As a result of changes made to the Massage Therapy Act during the CAMTC's first sunset review, Assembly Bill 1147 more clearly delineated regulatory oversight of massage therapy businesses for cities and counties related to land use for massage establishments and businesses. AB 1147 also established a number of new protections for certified massage professionals, including restrictions on local governments from requiring certificated individuals to do the following: complete a medical examination; complete a separate background check; comply with any additional education requirements beyond those required for certification and; obtain any other license, permit, certificate or authorization to provide massage for compensation in excess of what CAMTC already considers.

One challenge to a consistent regulatory landscape is the illicit industry that cities and local jurisdictions continue to contend with. While CAMTC can swiftly revoke or provide probationary status for a certificate holder, local jurisdictions have a greater challenge in addressing bad business operators (non-certified business owners). There have been discussions about CAMTC expanding its regulatory authority to help combat illicit business through the regulation of establishments; however, to date, the CAMTC continues to provide a voluntary certification of individual massage practitioners only and does not certify or have any relationship with businesses owners or establishments throughout the state.

CAMTC, law enforcement, and local jurisdictions, must rely on communication with each other to help combat bad actors. Currently, the CAMTC provides a no-cost *CAMTC Law & Code Enforcement Training* to law and code enforcement and local agencies. CAMTC noted in its 2019 Sunset Review Report that "CAMTC also communicates regularly with cities, counties, and local law enforcement agencies to gather information about local disciplinary actions taken against an applicant or certificate holder applying for certification or recertification. Email communication with cities, counties, and law enforcement agencies related to applicants and certificate holders is continuous and on-going. Weekly notifications of all suspensions, reinstatements, and revocations are sent to all authorized contacts."

Additionally, communication between the local governments and CAMTC is imperative in addressing enforcement related challenges. While issues have been raised in past sunset reviews as to whether or not there was effective communication between all parties, CAMTC noted in its 2019 sunset review report, "CAMTC is receiving more information than ever before, and putting this information to good use, resulting in an increase in suspensions based on evidence. Likewise, local jurisdictions are using CAMTC's help to close down illicit establishments."

**Staff Recommendation:** *The council should update the Committees on the status of its relationship with local governments, particularly local law enforcement, and whether any action by the Legislature would further strengthen these critical partnerships.*

## COVID-19 PANDEMIC ISSUES

### **ISSUE #25: Pandemic Response. How has CAMTC responded to the COVID-19 public health crisis in its regulatory activities?**

**Background:** CAMTC was able to swiftly respond to the COVID-19 pandemic, in part due to its unique status as a nongovernmental entity. For example, CAMTC explains that its employees have always telecommuted, and that there is no centralized office for the council beyond the building where AMG’s employees traditionally work. The council therefore did not have to implement any new remote work policies to accommodate state and local stay-at-home orders. For operations conducted by AMG employees, CAMTC states that their contractor quickly adapted and continued its administrative activities with little interruption, though some physical services were initially suspended.

CAMTC states that during the initial stages of the pandemic, it assisted with seeking clarify for its certificate holders regarding how the stay-at-home orders impacted their services and whether they would be considered essential. According to the council, whether massage was considered “healthcare” was a central debate during the lockdown and a “hugely divisive and contested issue.” CAMTC sent a formal letter to the Governor’s Office seeking clarification of this issue. The California Department of Public Health clarified that only massage therapists providing “medical massage” based on the referral from a doctor or chiropractor would be permitted indoors as an essential service. Ultimately, massage therapy studios were included under the Governor’s guidance for “personal care services” and massage services in non-healthcare settings became allowed indoors with modifications and restrictions.<sup>30</sup>

Because CAMTC is not a board or bureau under the Department of Consumer Affairs, it is not eligible for any waivers of law pursuant to the Governor’s Executive Orders N-40-20 and N-75-20. Instead, CAMTC took proactive steps to help certified massage therapists and applicants during the health crisis. The council temporarily suspended late fees for certificate holders as a way to ease any financial burdens. CAMTC also changed its education policies to temporarily allow Interactive Distance Learning (IDL) hours for lecture based subject matters at massage schools. CAMTC also allowed schools to provide IDL for hands-on hours, but required that at least 75 of those hours be provided in-person under the active and direct supervision of a qualified instructor.

Generally throughout the pandemic, CAMTC has worked to help provide information to certificate holders and other massage stakeholders through FAQs, interactive maps, and even podcasts. As state directives governing what businesses may continue to operate under what conditions have rapidly changed and been considered at times ambiguous, CAMTC has served as an information hub and has worked with stakeholders to ensure as much continuity of services as possible. Generally speaking, CAMTC should be commended for its ability to minimize interruption of its services while enabling its certificate holders to adapt to the limitations brought by the COVID-19 pandemic.

**Staff Recommendation:** *CAMTC should inform the Committees of any significant challenges it faced in responding to the COVID-19 pandemic and whether any action by the Legislature would better enable it to be flexible and responsive as needed for the duration of the public health crisis.*

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<sup>30</sup> <https://files.covid19.ca.gov/pdf/guidance-expanded-personal-care-services--en.pdf>

## TECHNICAL CLEANUP

### **ISSUE #26: *Technical Cleanup. Is there a need for technical cleanup?***

**Background:** As the massage profession continues to evolve and new laws are enacted, many provisions of the Business and Professions Code relating to massage therapy become outmoded or superfluous. The council should recommend cleanup amendments for statute.

**Staff Recommendation:** *CAMTC should work with the committees to enact any technical changes to the Business and Professions Code needed to add clarity and remove unnecessary language.*

## CONTINUED REGULATION OF THE MASSAGE PROFESSION BY THE CALIFORNIA MASSAGE THERAPY COUNCIL

### **ISSUE #27: *Continued Regulation. Should the certification of massage professionals be continued by the California Massage Therapy Council?***

**Background:** Since CAMTC was first established through the enactment of Senate Bill 731 in 2008, the Legislature's core intent to provide for consistent, statewide standards and qualifications for massage therapists has arguably been achieved. Subsequent legislation has continued to restructure the council and adjust the balance of responsibility between CAMTC and local governments. However, continuation of the entity as a nonprofit regulator has been the recommended result of both of its prior sunset reviews.

There is little argument to be made that the state should not continue to revert to the so-called "chaotic mish-mash" of local ordinances governing the requirements to practice massage therapy in California. The certificate program operated by CAMTC has greatly increased mobility and clarity within the profession, though as previously discussed, inconsistencies in whether the certificate is featured as a requirement for a particular locality continues to frustrate historical efforts by the profession to achieve the universal scheme that exists in other states. As previously discussed, this has led to the persistent debate about whether the Massage Therapy Act should transition from a Title Act to a Practice Act and require licensure for all massage therapists practicing within the state.

From an administrative perspective, CAMTC has certainly delivered upon the promises inherent with the nongovernmental regulator model. The council is able to act swiftly, flexibly, and inexpensively in its operations, particularly when compared to analogous boards and bureaus under the Department of Consumer Affairs. If the Legislature wishes to prioritize these traits in its regulation of professionals, then CAMTC could certainly be held up as a paragon of the nonprofit structure.

However, as discussed throughout this paper, there are a number of potential downsides to empowering an entity outside the auspices of state government to exercise regulatory control over a profession. Some may argue that the efficiencies boasted by CAMTC come at the cost of transparency, accountability, and due process. With so many so-called "good government laws" passed over the years to promote public confidence in bureaucracy inapplicable to CAMTC, the balance of interests remains subject to adjustment by the Legislature. Further prompting this deliberation is statements from some within the massage industry, including those representing societies and associations, that the current framework CAMTC operates is uncondusive to the persistent goal of elevating the profession as a healing art.

There are many reforms, both minor and significant, that may be contemplated by the Committees as CAMTC undergoes its current sunset review. There is little doubt that statute could be revised to require the council to further emulate the state licensing board model in areas that would increase public confidence and allow the industry to more closely resemble other health care professionals. However, each potential new mandate or structural change would likely be at the expense of the advantages that come with constructing CAMTC as a nonprofit corporation.

This essentially raises an existential question for the Committees to consider as they review CAMTC in advance of its repeal date. Are the arguable disadvantages to how the council currently operates its certification program justified by its benefits? Further, if the Legislature were to address these issues through significant reform, at what point would it no longer be practical for the regulatory authority to be placed with CAMTC as it is currently constituted?

If the Legislature were ultimately to explore resolving perceived deficiencies in the administration of the Massage Therapy Act by transitioning CAMTC from a nonprofit council to a state board under an agency like the Department of Consumer Affairs, it should consider seriously the impact on those who work within the profession. While many within the massage industry have called for full licensure by an entity more closely resembling other healing arts boards, this change would potentially burden many massage professionals through increased fees, longer application processing timelines, and slower reactions to changes in the industry. Any change to how CAMTC is currently structured would also likely require readjustments on behalf of local governments, which have by now adapted to working with the current council in exercising its share of oversight.

As the Committees carry out this discussion, the original goals for enacting state law to regulate the practice of massage should be kept in mind: protecting the public, creating uniformity, and elevating the profession. These objectives can certainly no longer be achieved were the Massage Therapy Act to simply be repealed. However, whether CAMTC's current structure and authority should be simply extended is also a subject for fair debate, and the Committees should seek closure on some of these questions over the course of this sunset review.

**Staff Recommendation:** *Some mode of state-level oversight of the massage profession should be continued as the Legislature contemplates whether solutions to the issues raised in this background paper may reasonably be implemented by CAMTC in its current form.*