

California Massage Therapy Council's Response to Committees' 2021 Background Paper for the California Massage Therapy Council's Sunset Review

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

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.*

CAMTC Response: When the Board was restructured in 2015, the big issue Department of Consumer Affairs (DCA) boards were facing was that they were dominated by the industry that they regulated, and were not getting input from the public that they served. There was an overall concern that industry controlled the regulatory boards too much. This is the backdrop that was occurring when the California Massage Therapy Counsel's (CAMTC) Board composition was changed to its current structure. The Legislature very carefully and thoughtfully created a properly balanced Board that includes both industry as well as non-industry appointments and has made sure that there is not a majority of industry appointments for the Board. They were mindful of the legal issues tied to Board appointments when the statute was changed.

CAMTC Board meetings are held regularly, proper notice of meetings is given in accordance with Bagley-Keene's notice requirements, discussions between Board members are robust, and massage therapists, massage businesses, massage schools, and cities and counties in California are heard and provide expertise related to the profession. A broad coalition of interests are represented on CAMTC's Board, which in turn provides a diverse number of both informed and varied points of view.

CAMTC currently has a broad range of representatives from different entities and interests on the Board, which results in policies supporting safe, legal, and efficacious massage. The majority of CAMTC's members would generally be considered to be "public members" as they are non-industry members who each bring important expertise in their own related areas to the Board. These non-industry members are appointed by the following entities: 1. League of California Cities; 2. California State Association of Counties; 3. California Police Chiefs Association; 4. Anti-Human Trafficking Organization; 5. Director of the Department of Consumer Affairs (appointee specifically designated to be a member of the public); 6. Public Health Official representing a city, or county; and 7. An attorney representing a city in the State.

Five members are appointed by entities that represent the industry and they each provide needed expertise from the profession to the Board: 1. Office of the Chancellor of the California Community Colleges; 2. California Association of Private Postsecondary Schools; 3. American Massage Therapy Association (the appointee must be a Certificate Holder); 4. A rotating seat for a massage professional appointed by a society, association, or other entity with a membership comprised of massage therapist professionals (appointee must be a Certificate Holder); and 5. An individual representing a massage business entity. This accounts for 12 of the Board's 13

members. The last member, depending on who is appointed, can either represent the industry or not, because this individual must be someone who either provides “knowledge of the massage industry *or* can bring needed expertise to the operation of the council for purposes of complying with Section 4603,” which states that CAMTC’s mission is to protect the public. (Bus. & Prof. Code §4602(f)(11) (italics added).) Currently, this seat is filled by a CAMTC Certified Massage Therapist, which means the current Board composition is 6 industry representatives on a 13-member Board, 5 of whom are CAMTC Certified Massage Therapists, resulting in a properly balanced Board that does not create the kinds of issues identified in the U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

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

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

CAMTC Response: Appointing entities are always free to appoint new and different members when their appointee’s term expires or a Board member resigns. All Board members are engaged, regularly attend meetings, and voice their opinions on all of the issues presented. Those with previous experience on the Board bring a depth of knowledge that benefits all individuals while new members bring different points of view. From a legal standpoint, the California Corporations Code does not require term limits for directors on a nonprofit public benefit corporation Board. CAMTC’s Board is currently functioning at a high and engaged level, therefore CAMTC does not believe that any changes to its terms or term limits are necessary or appropriate at this time.

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

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

CAMTC Response: The Board has always been cognizant of the importance of setting up a transparent CEO compensation policy that is deemed reasonable by the IRS.

The Board engaged experts to ensure that we comply with IRS restrictions and that we absolutely don’t over pay, but that we pay fair compensation which is sufficient to retain a very well qualified CEO. The CEO compensation study highlights why the CEO’s compensation is both appropriate and reasonable. In the study, CBIZ looked to other massage related entities such as the Federation of State Massage Therapy Boards and the American Massage Therapy Association as part of the peer review comparison process, along with other appropriate peer organizations.

As part of their market pricing methodology, the consultants examined non-profit peer data and CAMTC's organizational scope. Special consideration was given to the organization's size based on total staff. CAMTC's total staff of 62 was in the range of the median total staff of the peer organizations (median number of staff for peer organizations was 60). The peer organizations include eight smaller organizations as well as the Federation of State Massage Therapy Boards (FSMTB), which represent 46 regulatory Boards and the American Massage Therapy Association (AMTA).

Both FSMTB and AMTA generate their revenues from fees massage therapists pay for exams and membership dues, respectively. An examination of AMTA's IRS publicly available filings reveals that in 2018 massage therapists who are AMTA's members paid the Executive Director, who is located in Evanston, Illinois, \$486,064, which is the equivalent to \$802,005 after factoring in the cost of living differential between Chicago and Los Angeles. In the same year, CAMTC's CEO earned \$332,887.

Unlike government employees that enjoy generous pensions with lifetime payments of a high percentage of their salaries and lifetime health benefits, CAMTC's employees, including the CEO, have worked without any healthcare or retirement benefits for the last ten years. Until 2020, CAMTC's employees, including the CEO, had to buy their own health care with after tax income. A limited retirement plan was first funded in 2021. CAMTC's Board compensation policy meets with the IRS's rules regarding nonprofit organizations salary and benefits.

In 2019, CAMTC's CEO was provided with no benefits and his "compensation" included reimbursement for regular employee expenditures (such as a phone and other forms of technology necessary to perform his job) as well as a monthly stipend to cover expenditures such as health insurance and retirement, which therefore makes his monetary compensation look unfairly inflated by comparison. The study for State EO's failed to account for a full benefits package given to State workers, including the extremely generous retirement package which includes a high level of base pay and payment of health benefits, both for the lifetime of a retired EO.

CAMTC's CEO must possess the ability to build and operate a free standing self-sustained organization that receives no support from a governmental infrastructure. The skill set, and experience needed for CAMTC top leadership are fundamentally different from Department of Consumer Affairs' regulatory board Executive Officers.

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

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.

CAMTC Response: CAMTC already regularly shares requested information about applicants and Certificate Holders with law enforcement and local government agencies pursuant to the Massage Therapy Act, Business and Professions Code section 4614(a).

Business and Professions Code section 4614(a) provides that:

Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage establishments, the council shall provide information concerning an applicant or a Certificate Holder, including, but not limited to, any of the following:

- (1) The current status of an application or certificate.
- (2) Any history of disciplinary actions.
- (3) The home and work addresses of the applicant or certificate holder.
- (4) The name and home and work addresses of any person whose certificate has been suspended and the length of the suspension, if the work address is located within the jurisdiction of agency making the request.
- (5) Any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

Information sharing with law enforcement and local government occurs on an ongoing and regular basis. By providing requested information, CAMTC works in concert with local government and law enforcement to make sure that only the highest standards are imposed by cities and counties in massage establishments around the State. CAMTC notifies city and county representatives when it takes disciplinary action, such as suspension or revocations, against Certificate Holders by email message. These email messages are timely and allow cities and counties to come to CAMTC and ask for additional information so that they can piggy back on CAMTC's action and take their own actions (such as revoking a local business license).

CAMTC also regularly provides documents in response to document subpoena requests. Those who have a demonstrated need for the information requested, and therefore issue document subpoenas to CAMTC or request information pursuant to Business and Professions Code section 4614, regularly receive the requested information. For example, CAMTC recently responded to a Federal subpoena with thousands of pages of documents.

Due to CAMTC taking denial and disciplinary action against individuals for engaging in acts punishable as a sexually related crime, or conduct based violations, CAMTC in most cases has highly sensitive information related to the conduct of applicants, Certificate Holders, and victims. The information we have is graphic and sexual in nature. Declarations detail sexual assaults or prostitution related activity in excruciating detail. Pictures, videos, and audio recordings are oftentimes provided as evidence in these cases. These can include pictures or videos of individuals engaging in sex acts. CAMTC protects this highly sensitive information so that it is only shared when required and legally appropriate. This makes victims of sexual assault more comfortable sharing personal and deeply painful information with CAMTC, knowing it will not be made public and splashed across the front page of a newspaper. Those who need to see this information have access to it, such as law enforcement and Certificate Holders accused

of engaging in sexual assaults, but the information is tremendously sensitive and not widely shared. Providing this information only pursuant to subpoenas or the information sharing provisions of the Massage Therapy Act protects sexual assault victims, Certificate Holders accused of crimes that were investigated and found to not be actionable, and individuals with checkered pasts who have since changed their ways and proven to be rehabilitated. Imposing PRA requirements onto CAMTC would result in the broad sharing of this highly sensitive, personal information and would suppress the reporting of sexual assaults by victims.

Additionally, imposing PRA requirements on CAMTC would require a significant increase in administrative expenses to service this new responsibility. CAMTC is such a lean and highly efficient organization that an increase in responsibilities of this magnitude would necessitate the hiring of more staff to accomplish this task. Such a requirement would not serve the purpose of protecting the public and would instead place an unnecessary fee increase on Certificate Holders.

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

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.*

CAMTC Response: There is already broad general whistleblower protections for CAMTC employees. The California Labor Code provides much more protection for CAMTC employees than just protection against retaliation for political activity. Labor Code section 1102.5 prohibits employers from retaliating against an employee for disclosing a violation of law (including state or federal statutes, or local, state, or federal rules or regulations) to a government or law enforcement agency, a person with authority over the employee, or to another employee with authority to investigate, discover, or correct the violation or noncompliance. CAMTC employees are well protected from retaliation under this existing Labor Code section. CAMTC also has a Whistleblower section in its employee handbook that it complies with.

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

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.*

CAMTC Response: As a private nonprofit corporation, CAMTC's adoption of bylaws is subject to the California Corporations Code. Our Counsel says no additional requirements are needed.

In relation to its enforcement activities, CAMTC is subject to, and fully complies with, the Fair Procedures doctrine and the Massage Therapy Act. CAMTC also has detailed and specific policies and procedures that it follows in relation to schools and individuals which are shared with the public and those it is proposing to take-action against. Procedures for Schools versus

applicants and Certificate Holders are different, though all parties are provided with sufficient notice and an opportunity to be heard.

Schools

For schools, on January 1, 2020, the new requirements of Assembly Member Chau's bill, AB 775, became operative. AB775 requires, among other things, that a process be engaged in with schools with short specified timelines for completion of applications, CAMTC notification to schools of deficiencies, and purging of incomplete applications.

Specifically, the bill requires, among other things, that:

- Within 30 days of receiving a school application, CAMTC must provide the school with a notice that the Application is Not Complete.
- The School then has 60 days to respond to the notice, and CAMTC can, in its discretion, allow the school an additional 30 days to respond.
- If the application is still not complete, then the application is purged by CAMTC.
- Applicants with purged applications must wait at least 180 days to re-apply.
- CAMTC must approve, propose to deny, or issue corrective action within 1 year from the date the application was submitted. (Only one corrective action allowed.)
- CAMTC must notify schools proposed for denial of the final decision within one year of the notice of proposed denial.
- Denied schools may appeal at the next Board meeting, but no less than 120 days. Discretion for appeal at a later Board meeting may be given for good cause.

Schools who are proposed to be denied approval or have their approval revoked or disciplined are sent a detailed letter that clearly identifies the legal and factual basis for the proposed action. These letters are supported by large amounts of documentary evidence that are shared with the school as well as the Policies and Procedures for Approval of Schools. It is not uncommon for CAMTC's evidence shared with a school to be 400-500 pages long. In this way CAMTC provides schools with sufficient notice of its proposed action and the evidence supporting it.

Schools are also provided with an opportunity to be heard before the decision becomes final and effective. Proposed denial and discipline letters are sent approximately 90 days before the hearing date, though the Procedures only require 5 days before the effective date of the decision. Timely requests for continuances are routinely granted.

Schools can request an oral telephonic hearing or consideration of a written statement, their choice. By providing telephonic hearings CAMTC provides maximum availability for witnesses, schools, and their representatives to appear and provide oral testimony in opposition to the proposed action without the need for costly travel. Schools are not limited in the length or breadth of the documents and evidence they can provide in opposition to a proposed action, and usually provide documents, declarations, and extensive legal briefs. Their document packages commonly comprise hundreds of pages of evidence. Schools can be represented by attorneys or other representatives, and usually are. After an oral telephonic hearing or consideration of a written statement, schools are provided with a written notice of decision which identifies CAMTC's final decision on the matter. These notices are quite extensive and address the

evidence, documents, and legal arguments presented. For example, the last notice of decision letter CAMTC sent was 60 pages long, single spaced.

School hearings are held before dedicated School Hearing Officers who fully and fairly evaluate the evidence before them and make a final decision to either uphold a proposed decision, impose other discipline, or determine that the application for school approval should be approved. The School Hearing Officers are employees of CAMTC who exercise their own independent judgment in making final decisions.

CAMTC's Hearing Officer process (both for schools and individuals) results in a more independent process than that engaged in by DCA boards. The general process for DCA boards is that a decision by the specific agency may be challenged by an individual and the matter heard by an Administrative Law Judge (ALJ), who is employed by the State to serve this function. An agency taking advantage of this process pays the Office of Administrative Hearings for services rendered (Gove. Code §11527), meaning they pay for the ALJ's services related to their matters much like CAMTC pays Hearing Officers for their time. And while an ALJ hears cases opposing action by DCA boards, the decisions ALJs render are **proposed** only, and the final decision on the matter is up to the board itself. After an ALJ renders their proposed decision, the board can either: do nothing (which results in the adoption of the decision after 100 days); adopt the decision in its entirety; reject the decision and refer it back to the ALJ; make changes to the decision; or reject the decision and decide the matter itself. (Gove. Code §11517(c)(1).) Furthermore, after imposition of discipline by a DCA board, a person can petition for reinstatement of their license, or reduction of the penalty after a certain period of time, but the board (not an ALJ) hears the matter itself and decides whether to grant or deny the petition. (Gove. Code §11522.)

As a non-profit organization hearing challenges to its proposed decisions (both those related to schools and individuals), CAMTC's hearing process complies in all ways with the contours outlined in *Hackethal v. Cal. Medical Ass'n* (1982) 138 Cal.App.3d 435. This seminal case involved a doctor who was served with charges and had a hearing in front of the same panel of members that had conducted the preliminary hearings and determined that charges should be filed. In discussing this case, the Court said that disqualifications of individuals hearing the matter should occur only if there is an actual bias. An actual bias occurs in these categories: 1) the fact finder has a pecuniary interest in the outcome; 2) the member has been the target of abuse by the person before him/her; 3) the member is enmeshed in other matters involving the person; or 4) the member may have prejudged the case because of prior participation as an investigator, fact finder, or initial decision maker. (Id. p.443.) CAMTC makes sure that there is no actual bias.

CAMTC employs two different groups of Hearing Officers: those who hear school matters and those who hear individual certification matters. All Hearing Officers are part of the Legal Department, and are therefore separate and apart from the other divisions of CAMTC. As a virtual organization with employees scattered around the State, with all individuals working from their own physical locations, Hearing Officers generally interact only with legal counsel and legal support staff.

Hearing Officers do not have a pecuniary interest in any decision made. All CAMTC Hearing Officers work other jobs and are employed by CAMTC on an hourly, as needed basis. CAMTC has a rotating number of Hearing Officers and not all Hearing Officers hear all matters. As opposed to ALJ's who generally work full-time for the State in that capacity, CAMTC Hearing Officers work a very limited number of hours for CAMTC. For example, for Hearing Officers hearing school matters, CAMTC has only had approximately 6 school oral hearings since 2016. This means that school Hearing Officers have worked for CAMTC on average less than 20 hours a year.

Hearing Officers do not participate as Hearing Officers over matters where they have a relationship of any kind with any of the parties contesting a proposed decision, in order to ensure their impartiality and make sure they can exercise their own independent judgment on the matter. Hearing Officers work for CAMTC only as Hearing Officers. They do not conduct investigations, are not fact finders prior to the hearings they are asked to preside over, and are not involved in any way as an initial decision maker.

Schools who do not agree with a final decision made by the Hearing Officers may appeal the matter to the full Board, where they are given the opportunity to make an oral presentation not to exceed 20 minutes, and the Board determines whether to uphold the decision or not. Schools may also challenge CAMTC's decision by timely filing an action in superior court, much like individuals challenging a DCA Board's final decision can do the same. (Gove. Code §11523.)

In terms of transparency, as a condition of applying for school approval, schools agree that CAMTC can share denial and disciplinary letters and evidence upon request, in addition to other information with massage related entities. CAMTC therefore shares this information when requested. Additionally, it notes the status of a school on its website, including whether it was denied approval or disciplined.

Individuals

Individuals are also provided with sufficient notice and an opportunity to be heard before a denial or disciplinary action is taken against them.

CAMTC fully complies with the Fair Procedure doctrine and the provisions of the Massage Therapy Act, which requires that any denial or discipline be "decided upon and imposed in good faith and in a fair and reasonable manner." (Bus. & Prof. Code §4610(d).) Before taking-action against an individual, CAMTC sends a letter detailing the legal and factual basis for the proposed action. This detailed notice more than meets the statutory requirement that an individual be provided with the "reasons for the denial or discipline." (Bus. & Prof. Code §4610(e)(3).) While the law requires 15-days of notice before the denial or discipline becomes final and effective, (Bus. & Prof. Code §4610(e)(3)), CAMTC normally sends letters 30 days before a scheduled hearing date, and the final decision does not become final and effective until 21 days from the date of the hearing, for a total of approximately 51-days of notice, not 15. The law also requires that an individual be provided with the opportunity to be heard 5 days before a decision to deny or impose discipline becomes final and effect. (Bus. & Prof. Code §4610(e)(4).)

CAMTC holds hearings 21 days before a decision becomes final and effective, providing well more than the required notice.

CAMTC sends a PROPOSED letter before taking any denial or disciplinary action against an individual. In the letter the individual is provided with the legal and factual basis for the proposed action. They are also provided with a copy of the Denial Procedures and all declarations and criminal history records, if those documents have been used to take proposed action against them. The individual is also notified of their opportunity to request an oral telephone hearing or consideration of a written statement and clearly informed of how to take advantage of that opportunity. They are also notified of hearing fees and all deadlines and the consequences of failing to meet them.

Providing oral telephone hearings allows individuals to easily access CAMTC's process without the need for costly travel, or miss a day of work. During the pandemic CAMTC has not needed to change its existing process. Just like with schools, individuals are not limited in the evidence they can provide in opposition to a proposed action, they are routinely granted continuances, they can have counsel or another representative represent them, and they are not limited in the length or breadth of the documents they can submit, with some opposing counsels regularly submitting more than 50-page briefs in individual cases. All evidence submitted is considered by dedicated Hearing Officers that serve no other function. As noted in the discussion above about schools, Hearing Officers hearing certification matters have no pecuniary interest in the matter, have no relationship of any kind with the individuals before them, and do not conduct investigations, are not fact finders prior to the hearings they are asked to preside over, and are not involved in any way as an initial decision maker.

In terms of transparency, CAMTC already posts disciplines and suspension on its website as a status for individuals when viewing the "verify certification" website. Due to the sensitive nature of the basis for many denial and disciplinary actions, CAMTC believes that this provides sufficient transparency as to the actions it takes against individuals.

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?

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

CAMTC Response: As a nonprofit corporation, CAMTC undergoes an annual audit by an outside accounting firm specializing in nonprofit organization audits. The audit reports are provided to the Board and the public as they are regularly part of Board packets. Transparency has always been a critical aspect of CAMTC, especially given the size of our board and the sharing of information. Audit reports can be accessed by going to CAMTC's website. Finances are discussed in open Board meetings; annual audit reports are shared publicly. This is a very open process.

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

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.*

CAMTC Response: Our books are open, and the State auditor is welcome to look at them just like anyone else. CAMTC is meticulous with its finances, and wholly transparent. Its budgets and annual audits are all part of the Board packet and shared with Board members and members of the public alike on a regular basis. We are audited annually and our finances are discussed openly at Board meetings. The treasurer's reports are posted on the website four times a year and an outside auditor looks at the financial documents annually. CAMTC receives annual audits in compliance with the California Attorney General's requirements under the Nonprofit Integrity Act. These audits are publicly available on its website along with all other financial documentation.

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?

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.*

CAMTC Response: During annual Board trainings General Counsel, Jill England, discusses this issue with the Board, gives examples of conflicts that might arise, and tries to make sure that Board members feel comfortable raising the issue of a possible conflict of interest should it occur. CAMTC's Bylaws contain the Conflict of Interest Policy which complies with IRS standards for nonprofit 501c3 organizations. The IRS reviewed CAMTC's policy when we applied for 501c3 status. CAMTC Board members also review and sign this policy annually.

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

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.*

CAMTC Response: CAMTC receives ongoing advice from its accountants and auditors regarding the limits on lobbying and always stays well below the required threshold. CAMTC uses a lobbying firm minimally, as they are helpful to guide CAMTC as it navigates through the legislative process. CAMTC spoke with its auditing firm and has gotten a written opinion on the lobbying limits and makes sure that they are not exceeded.

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?*

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.*

CAMTC Response: Unlike boards and bureaus that struggle financially, CAMTC is solvent. It is able to put money aside and keep a more than appropriate level of reserves. The Board has determined that CAMTC reserves should not fall below an amount equal to three months of expenses and CAMTC has maintained this reserve level. Like any other business, CAMTC regularly assesses what is needed in the future. CAMTC is fair in our charges. CAMTC's fees are appropriately balanced to cover its specific services and provide it with an appropriate level of reserves. The only area where fees are not sufficient to cover activities are the school hearing and application fees, which only comprise a small percentage of CAMTC's annual income. CAMTC's Board has determined that it is appropriate for certification fees to partially fund the activities of the Educational Standard Division and approval of schools since without schools providing massage education, there can be no Certificate Holders.

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?*

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.*

CAMTC Response: Constant auditing and careful budgeting has put CAMTC in a viable fiscal position. CAMTC does not agree with the characterization of the reserve fund balance as "falling significantly." In recent years CAMTC has intentionally taken pro-active steps to provide excellent customer service to Certificate Holders which has resulted in less funds being held in reserve. CAMTC has also intentionally stepped up outreach efforts and law enforcement training. The Board has intentionally decided that it is more prudent to provide a higher level of customer service and support of local law enforcement and local government rather than having an excessive amount of reserves sitting in the bank.

Increases in operating expenses to provide these enhanced services are therefore directly tied to a slight reduction in reserve fund balance, though at all times it has stayed well within the three-month reserve fund balance required by Board policy. The Board determined that given the general stability of income, it was prudent to increase spending to support the delivery of outstanding customer service, decrease the processing times for applications and fund additional law enforcement training. This intentionally planned investment in customer service and better public protection has benefited applicants and Certificate Holders.

The slight increase in costs, and decrease in reserves, has resulted in an unparalleled level of customer service. For example, at the inception of the pandemic, when callers could not get through to EDD and other State agencies, CAMTC connected a caller to a live customer service agent in less than 30 seconds. As of June 30, 2019, the median processing time for complete new application packets with no outstanding issues was 10 days, and the median processing time for complete recertification applications with no outstanding issues was 6 days. The Board has made an informed decision to decrease reserves and increase costs with the result of providing excellent customer service. CAMTC has also invested in additional law enforcement trainings.

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

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.

CAMTC Response: Santa Clara District Attorney Jeff Rosen said it best when he said, the voluntary certification program works and should not be changed to licensure. Rosen believes, as do many others that the current program does exactly what it was designed to do. It elevates the profession and protects the public. It provides CAMTC with sufficient flexibility and adaptability to take swift denial and disciplinary action, all at a low cost while complying with the Fair Procedures doctrine and the Massage Therapy Act and protecting the rights of Certificate Holders for notice and an opportunity to be heard. It is making a real difference in abating crime and eliminating Human Trafficking within the industry.

While some organizations have expressed the opinion that licensure is the only way for massage professionals to be treated appropriately as members of a healing profession, that is not the case. CAMTC has successfully fought to have Certificate Holders recognized as health care professionals by the California Department of Public Health, who recently opined that Certified Massage professionals are “alternative healthcare providers” eligible for COVID-19 vaccinations. This was accomplished by the hard work of CAMTC’s staff. CAMTC has received an opinion from the Centers for Medicare and Medicaid Services (CMS) under the Dept. of Health & Human Services Division of Policy, Analysis, and Planning Medicare Part C Policy, stating that certified massage providers in California are also eligible for Medicare reimbursement for providing medically approved non-opioid pain management (essentially that licensure is not required in States like California where there is a certification program instead). This communication dispels the notion that California Certified Massage Therapists are getting left behind.

Other States are reviewing their State licensure programs to see if they should be switching to a different model due to the increasing costs for enforcement, while CAMTC’s costs have remained very stable due to its employment of staff attorneys and paralegals. CAMTC has made it safer and easier to identify legitimate massage professionals and schools. CAMTC is gaining momentum with cities and counties as more work hand in hand with CAMTC to address eliminating human trafficking.

CAMTC actively works on a daily basis with local law and code enforcement and local governments in cities and counties around the State to stop the hijacking of the profession, end the scourge of human trafficking, and prevent sexual assaults. CAMTC's aggressive actions to deny and discipline schools engaging in fraudulent activity cuts off the flow of human trafficking victims and protects students, many of whom are recent immigrants, victimized by unscrupulous schools who take their money but do not provide the education promised.

CAMTC's swift discipline for a low cost has been acknowledged as one of its strong points in the feasibility study performed by an outside consultant. CAMTC employs staff attorneys that do the vast majority of the individual denial and disciplinary work, and paralegals that do the related administrative work, instead of paying hourly fees for these services.

CAMTC has consistently out-performed its disciplinary performance measures since it began tracking them in 2015. For example, the average number of days from intake to final date of formal discipline (commonly referred to as PM4) from 2016 through the third quarter of 2019, has ranged from 83 days to 204 days, with an average PM4 of 128 days during that time period. This is well below the DCA Board performance target of 540 days, and the numbers from boards and bureaus the committees are used to seeing, who measure PM4s in years and months, not days.

CAMTC's swift discipline is an important component of its overall approach to elevating the profession and supporting local law and code enforcement and local government. When CAMTC disciplines a Certificate Holder by suspending or revoking their certificate, in many jurisdictions that allows a city or county to revoke that individual's local business permit, effectively shutting the business down. In this way, CAMTC works hand in hand with local law and code enforcement to stop massage being used as a subterfuge for prostitution and elevates the reputation of the profession.

CAMTC's process also allows it to take swift and decisive action against sexual predators. Its suspension process allows it to quickly suspend the certificates of sexual predators based either on criminal charges being filed by the DA's office, or receipt of a declaration signed by a victim under penalty of perjury asserting that the massage provider engaged in an act punishable as a sexually related crime. Suspensions can happen as quickly as one day. This swift action protects the public by stopping sexual predators from providing massage, even in situations where a criminal case has not been filed or can take years to resolve.

CAMTC's unique structure allows it to effectively protect the public and elevate the profession in its current format. CAMTC emphasizes the elevation of the profession.

Changing it to a State Board would take away all of these benefits and instead saddle the profession with excessive fees, slower denial and disciplinary actions, a resurgence of fraudulent schools selling transcripts, the licensure of unqualified individuals, and an increase in illicit massage establishments.

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

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.*

CAMTC Response: CAMTC's mission is to protect the public. It regularly takes action against individuals that engage in acts punishable as a sexually related crime and suspends Certificate Holders based on criminal charges being filed or receiving declarations signed under penalty of perjury attesting that the individual engaged in acts punishable as a sexually related crime, such as sexually assaulting a massage client or engaging in prostitution related activity. The suspension process has allowed CAMTC to suspend a sexual predator in as short as a few hours from the time that criminal charges were filed. Quick and decisive action is key to stopping sexual predators from victimizing clients and taking human trafficking victims out of the stream of commerce.

By taking action as authorized in the Massage Therapy Act, CAMTC is able to elevate the profession, remove a criminal element that is trying to hijack the profession and use massage as a subterfuge for prostitution, and allow massage to be acknowledged as the ancient healing profession it is. CAMTC's ability to take action as currently structured gets results that are needed and it is highly effective for massage, which is an industry that faces its own unique challenges.

DA's and juries don't like prostitution related cases, which results in them either not being prosecuted as a policy in certain jurisdictions, plead down to a lesser unrelated offense, such as trespass, or nullified by juries who mistakenly believe that undercover officers "entrap" individuals. Likewise, sexual assaults that occur when an individual is getting a massage are not regularly prosecuted due to a myriad of reasons, including victims not wanting to be victimized a second time by aggressive defense counsel, or inappropriate actions by massage providers failing to meet the legal definition of a crime. This results in a low level of convictions for actions that are substantially related to the qualifications, functions, or duties of a Certificate Holder. CAMTC's current structure works very well to address the unique challenges the profession faces by allowing it to quickly take action on these conduct-based violations, and these provisions should be continued.

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?

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.*

CAMTC Response: CAMTC agrees it is important to continue exploring this issue with the committees and its Board. The issue has not been addressed by CAMTC's Board since the

pandemic, though prior to that time the Board voted to continue the exam requirement. In massage as in every profession there is a question as to whether exams should be required. There was an intensive discussion amongst the Board on this issue and the vote to continue to require an exam was a very close vote. There were strong positions on all sides, as there are on all testing questions.

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

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.*

CAMTC Response: CAMTC agrees it is important to continue exploring this issue with the committees and its Board. We discussed this issue with Senate Business and Professions staff years ago, and included in that discussion was the fact that some States have continuing education and some states don't. For those states that do require it, we have heard that it is a huge area of non-compliance. There are both good and bad sides to continuing education, but we are doing what the Legislature has required. We have heard that continuing education sometimes becomes a fund-raising tool for different entities, like schools, and California has told us they don't want continuing education in the past. CAMTC can take on this task if the Legislature requires it, but it would result in an increase in administrative fees for administering this function. The board will continue to engage on this issue.

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?*

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.*

CAMTC Response: CAMTC's current approval process provides for appropriate "due process" for both schools and students. As addressed in response to question number 6, CAMTC provides a proper amount of Fair Procedure and has recently implemented the provisions of AB 775 in relation to schools. (Please note that CAMTC currently does not un-approve schools. It approves or denies approval to applicant schools and disciplines or revokes approval for currently approved schools.) CAMTC does not believe that the criticisms it faces are a valid cause for changes to the Massage Therapy Act. CAMTC notes that the most vocal critics of its school approval process and procedures are those entities that it has found engaged in fraudulent conduct and it therefore denied their applications.

For example, one of the schools that CAMTC recently denied had the opportunity to appeal the denial decision to the Board but failed to do so. This school and its students were found to have

engaged in fraud, including providing attendance records showing students were in two places at the same time or that they were present in class on a date and time that the School Inspector arrived and they were not present. The denied school also initially provided transcripts and attendance records for students that failed to identify all of the exact classes they took, in violation of CAMTC's procedures. Instead, the school grouped 200 hours of various elective classes into one listing, characterizing all of these various classes with one title as if it were one 200-hour class. The practice occurred on the transcripts of approximately 100 students, who allegedly attended the school on various dates and times. It is important to note that not only did the transcripts include this generic identification of 200 hours of a 500-hour program, so did the attendance records. When confronted with this issue, the school then provided new transcripts listing the same exact "elective" classes for each of these students, even though students allegedly attended the school on different dates and times. No credible explanation was provided by the school as to how they knew which specific classes each individual student attended, given the fact that the attendance records did not list specific classes. Furthermore, when CAMTC pointed out that the elective classes listed on these replacement transcripts included a number of classes that were not CAMTC approved, and therefore could not be used for CAMTC certification, the school then stated that it had made yet another "mistake" and issued a third transcript for these approximately 100 students which replaced the not approved classes with CAMTC approved classes, yet provided no credible information as to how the school knew which classes these students allegedly attended when the attendance records did not have this information listed.

Students who allegedly attended this school have been sent proposed denial letters based on evidence of fraud and failing to complete all of the hours of education listed on their transcripts. Instead of choosing to come to hearing and prove their education, the vast majority have decided instead to request an education extension and go to another massage school. If the students really attended this school for all of the hours listed on their transcripts, passing an education hearing should be simple, as hearings focus on entry-level rudimentary knowledge. The certification Hearing Officers (who only hear matters related to individual certification) who would hear the student's cases are currently all CAMTC certified massage professionals who have taught massage, owned massage schools, and are active practitioners of the profession. The questions asked are about basic, entry-level concepts all individuals with massage education can easily answer.

As previously discussed in response to question number 6, School Hearing Officers (who hear only those matters related to school approval/denial/discipline) exercise their independent judgment when reviewing a proposed decision to deny or discipline made by the Educational Standards Division. School Hearing Officers have no pecuniary interest in any matter they preside over, they work on average about 20 hours a year for CAMTC, they have no relationship with the entities and individuals before them, and they were not involved in any manner with the investigation or fact finding performed by ESD that resulted in the issuance of a proposed denial or disciplinary letter.

Fair procedure and sufficient process is provided for both schools and students. Recently, in 2019, Assembly Member Chau put forth a bill, AB 775, that substantially changed the process requirements for school approvals. Those requirements became operative on January 1, 2020. CAMTC supported this bill and appreciates Assembly Member Chau's willingness to work with CAMTC on this important issue and provide strong protections for both students and schools.

AB775 requires, among other things, that a process be engaged in with schools with short specified timelines for completion of applications, CAMTC notification to schools of deficiencies, and purging of incomplete applications.

Specifically, the bill requires, among other things, that:

- Within 30 days of receiving a school application, CAMTC must provide the school with a notice that the Application is Not Complete.
- The School then has 60 days to respond to the notice, and CAMTC can, in its discretion, allow the school an additional 30 days to respond.
- If the application is still not complete, then the application is purged by CAMTC.
- Applicants with purged applications must wait at least 180 days to re-apply.
- CAMTC must approve, propose to deny, or issue corrective action within 1 year from the date the application was submitted. (Only one corrective action allowed.)
- CAMTC must notify schools proposed for denial of the final decision within one year of the notice of proposed denial.
- Denied schools may appeal at the next Board meeting, but no less than 120 days. Discretion for appeal at a later Board meeting may be given for good cause.

AB775 also requires schools that are not CAMTC approved to notify students of this fact, and get their affirmation, in writing, that they understand that hours provided by the school can't be used for CAMTC certification.

It has only been a little more than one year since these new requirements were put into place, and during this last year the global pandemic resulted in the physical closure of all massage schools in March of last year, and most massage schools still remain physically closed. Due to the current pandemic situation, these new provisions haven't been used sufficiently for CAMTC to make any final determinations about whether they have adequately addressed the issue, though they do appear to have done what they were designed to do. CAMTC does not believe that new changes are needed to its school processes.

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

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.

CAMTC Response: CAMTC looks forward to working with the committees on this important issue. Creating a pathway to ensure that education received in other countries is equivalent to or exceeds the standards for education provided by CAMTC approved schools, and can therefore be used for certification, is a complicated task. CAMTC is happy to work hand-in-hand with the legislature and provide technical input on revisions to the Massage Therapy Act to ensure that education provided outside of the United States is verified to be equivalent to the education provided at CAMTC approved schools in California. We have previously met with legislative staff in the past about how to accomplish this. 80% of people who inquire about certifying with foreign education come from British Columbia and Ontario, Canada. We don't want to stand in the way of any highly qualified professionals and would welcome the ability to certify them. We look forward to working with the committees and reporting to the Legislature on this important issue.

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?*

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.*

CAMTC Response: CAMTC has a close working relationship with BPPE. In order for a school to be CAMTC approved, in the vast majority of cases it must first be approved by BPPE. BPPE focuses on financial and administrative issues for schools and CAMTC focuses on curriculum and the delivery of substantive education for the profession of massage therapy. This division of labor is logical and allows for efficient and effective regulation. As the subject matter expert, it makes sense that CAMTC is, and continues to be, the entity ensuring that appropriate education is provided to potential Certificate Holders.

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

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 those efforts.*

CAMTC Response: Human trafficking is a source of tragedy and despair. We are proud that we have worked closely with law enforcement, prosecutors, and NGO's and are recognized as a national leader at battling an issue that must be addressed with urgency and continued vigilance.

CAMTC's unique structure allows it to sit in an unprecedeted place where it has the flexibility and adaptability to quickly pivot and take real steps to actively combat human trafficking and sex acts exchanged for money performed under the guise of massage. We work every day in partnership with law and code enforcement and cities and counties to take decisive action that cuts off the lifeblood of human traffickers, and separates this illegal and incredibly lucrative,

highly organized, criminal enterprise from the ancient healing art of massage. While some in the massage profession think that human trafficking should be left to law enforcement and not certifying boards or organizations, we understand that the profession is involved, like it or not. And we believe that if we are not at the table, we are on the menu.

CAMTC takes a strong three-pronged approach to attack the scourge of human trafficking: 1. Approving massage schools; 2. Quick and decisive denial and disciplinary action against individuals; and 3. Partnering with Local Government. By addressing this issue on a number of fronts, CAMTC is seeing real change occurring.

1. Massage Schools

Human trafficking is intricately entangled with fraudulent massage schools that sell transcripts while providing little to no real massage education. For human trafficking to thrive in massage, it helps to look as legitimate as possible. Illicit massage businesses that are really fronts for prostitution want their workers to have the cloak of certification to protect them when law enforcement comes knocking. To get certified by CAMTC requires education that appears legitimate. Thus, fraudulent massage schools proliferate as part of the human trafficking networks.

Prior to the current system of active school approval, which began on July 1, 2016, CAMTC unapproved schools. By 2014, CAMTC had unapproved over 60 schools. This sent a clear message that fraud and human trafficking was infiltrating the massage education industry and needed to be addressed. In 2015 the Legislature enacted new legislation that allowed, and actually required, CAMTC to proactively approve all massage programs from which it accepted education for purposes of certification. CAMTC has now unapproved or denied over 80 schools and kept dozens more at bay. Many fraudulent schools initially applied but failed to complete the process, and others decided it wasn't worth even applying. Before CAMTC, there were over 300 massage programs in the state. Now, there are only 73 CAMTC Approved Schools. To say we have clamped down on fraudulent massage schools is an understatement. CAMTC's school approval process has been so successful that many local jurisdictions, even some that do not require CAMTC Certification, accept education only from CAMTC approved schools.

But fraudulent schools and human trafficking rings don't give up easily. They continually look for new ways to thwart the system. There is a lot of money to be made. As with illicit massage businesses, we often compare fraudulent massage schools and the people behind them to the Whack-A-Mole game. Just when we think we've knocked them out, they pop up somewhere else. This has required CAMTC to remain vigilant in its quest to expose fraudulent schools. We continue to vet each new school thoroughly and monitor approved schools through regular unscheduled site visits.

A fraudulent massage school can take on many forms. Often, fraudulent schools don't always start out that way, and some don't even have a bad intent. Organized crime and human traffickers prey on financially troubled and naïve school owners looking to

improve their monetary situation. School owners may be told a sob story about allegedly well-qualified individuals who received education in other countries but can't practice massage in the U.S. because their education doesn't transfer. These individuals sometimes convince school owners to cut corners and issue transcripts when not all hours of education have been received. Over time, school owners become accustomed to the fast money and move from a place of questionable practices to outright sale of transcripts, with the deluded notion that they are helping disadvantaged people. In reality, they are setting them up to be the victims of human trafficking.

During the pandemic, schools have generally been forced to limit in-person classes. This has pushed education online, something CAMTC did not accept before, but has allowed for temporarily. While many approved schools have done a terrific job teaching certain materials online, a few approved schools have fallen off the wagon and allowed fraudulent education to occur. CAMTC has established new protocols to allow our unscheduled site visits to continue virtually. This has allowed us to catch fraudulent behavior quickly and impose disciplinary actions on these schools when we see it.

Still, these fraudulent schools continue to find a way. To combat fraudulent massage programs trying to circumvent CAMTC's approval process, CAMTC supported legislation in 2019 that requires all massage programs in the state that are not approved by CAMTC to inform students that they are not CAMTC approved and to get the students' acknowledgment in writing.

In addition to going after the schools themselves, CAMTC has worked to educate potential students who may be taken advantage of or, worse, become victims of human trafficking. New students may not even know that they need CAMTC Certification or a local permit to massage in their area. Through broad distribution of brochures and its website, CAMTC has targeted these prospective students in order to educate them about massage requirements, proper education, and how to identify human trafficking.

2. Quick and Decisive Denial and Disciplinary Action

Taking quick and decisive action when it comes to individual certification denials and discipline works to combat human trafficking. When CAMTC takes action against an individual's certificate (denial, suspension, or revocation for example), this information is quickly communicated to local law and code enforcement representatives in the jurisdictions where the individual lives and works. The Massage Therapy Act allows for significant information sharing pursuant to Business and Professions Code section 4614. CAMTC has a system in place to notify cities and counties quickly when suspension or revocation occurs. This allows the city or county to piggyback on CAMTC's action and revoke the individual's local business license or permit. If the city or county has appropriate provisions in their municipal code, they can act very quickly to shut the business down by revoking their business permit or registration, even if they don't require certification. Prior to CAMTC, many cities and counties had red-light abatement provisions that they used to address illicit massage establishments, but the terms of those provisions were onerous to enforce. It took a significant amount of resources and time,

usually years, to shut down illicit massage establishments. By partnering with CAMTC, business can be shut down by cities and counties very quickly.

Quick action also works to take victims of human trafficking out of the stream of commerce. If these victims are not certified, then they can't be openly set up in illicit massage establishments as massage providers. Human traffickers want victims with clean records. Denial, suspension, or revocation by CAMTC blemishes the records of these individuals and puts them on the radar of local law and code enforcement, making them less able to be used by human traffickers in massage establishments.

3. Partnership with Local Government

CAMTC works every single day with local law and code enforcement. We have strong relationships with local government that involve sharing of information back and forth which allows CAMTC to take action against applicants and Certificate Holders that violate the law and in turn also allows cities and counties to revoke local permits and massage business licenses based on CAMTC's quick action. CAMTC regulates individuals, and cities and counties regulate businesses. Working together allows us all to make inroads against human trafficking. CAMTC does not have staff that are physically present at local businesses, to ensure compliance, but cities and counties do. They regularly send in law and code enforcement to determine if businesses are complying with the law. When they aren't, cities and counties send that information to CAMTC, who can then turn around and use that information to deny applicants or discipline Certificate Holders. If cities or counties require certification, they can then use the revocation of a certificate to also revoke a business license, thereby resulting in quickly shutting down a business engaged in illicit activity.

CAMTC has been honored by a dozen groups who have sent letters thanking CAMTC for its help with human trafficking issues. In a recent report, published by the South Bay Coalition to End Human Trafficking, to the County of Santa Clara, one of ways that the illicit massage industry currently operates with little to no repercussions is because of government bureaucracy. It would not serve the interests of the state to have the massage industry regulated by a state body. CAMTC is a unique model in that it operates with jurisdiction provided by state law, but with the flexibility to operate as a nonprofit. The Bay Area Anti-Trafficking Coalition has written that CAMTC's ...work ... "as an effective non-profit, is an integral part of making the very visible massage industry a safe place for owners, therapists and clients."

John Vanek was the first Human Trafficking officer in San Jose and is currently the Human Trafficking Coordinator for San Mateo County. John is a nationally recognized expert on this subject. He said CAMTC is the only expert in Human Trafficking in massage and has encouraged us to claim leadership in this arena.

The current voluntary regulation of the massage therapy profession and massage programs is well recognized and supported by local governments as well as human trafficking organizations. It fits right into the paradigm of "prevention, protection, prosecution and partnership" that make up the international framework used by the United States and the world to combat human trafficking.

CAMTC plays a unique role here. CAMTC sends brochures every two years to Certificate Holders to help educate them on this important issue and to provide contacts to those who may indeed be victims. CAMTC has and continues to train law and code enforcement officers on human trafficking and other crimes within the massage industry. CAMTC has shared information during some of the largest massage related human trafficking operations in the state, including a recent one across Santa Clara, San Mateo, and Ventura counties.

Working closely with Victim Service Providers that directly serve this population, CAMTC supports outreach to help potential victims understand their options, including the possibility of qualifying to provide massage therapy in a legitimate establishment. CAMTC is directly engaged in helping implement best practices in victim centered approaches. For these reasons, Human Trafficking organizations, coalitions, collaboratives, and taskforces throughout the state have welcomed partnerships with CAMTC.

CAMTC regularly works with local government to ensure that municipal code requirements are fair to legitimate massage providers and are not unduly burdensome. In fact, some of the requirements in local massage regulations that are most burdensome to legitimate operators have in the past been naively promoted by human trafficking organizations themselves. These regional and national organizations have come to appreciate partnering with CAMTC for expertise and experience in Best Practices that do not harm the professional massage community. CAMTC is committed to continuing to work on local massage ordinances that are fair to legitimate providers.

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

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.

CAMTC Response: CAMTC has a robust program for certifying massage professionals while still allowing for local control. CAMTC strikes a balance between local control and a statewide program for massage certification. The Massage Therapy Act maintains local control but minimizes local abuse. The current authority is working very well and we don't see a reason to change it.

Local governments are the appropriate parties to determine what works best for each of them in their local jurisdictions. Each city and county regulates their local businesses in a manner that is appropriate for their specific area. California is a highly diverse state with city, urban, suburban, and rural counties. What works in San Francisco does not necessarily work in Orange County or Humboldt County. CAMTC has the legal authority to take action against Certified owners of massage establishments, and regularly does so. Certified owners and operators of massage establishments are responsible for all of the conduct that occurs on the premises of the business

under current law. (Bus. & Prof. Code §4607.) CAMTC works closely with cities and counties and has built strong relationships that work for the benefit of all.

One of the great successes of Sunset hearings is that the push and pull between CAMTC and local governments over who was in charge of what has ended with the various previous amendments made to the Massage Therapy Act. At this point in time both CAMTC and local governments generally understand the boundaries of each other's authority and work very well together within their own jurisdictions. While there are of course outliers, and issues do sometimes occur, they are usually quickly and easily resolved.

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

CAMTC Response: CAMTC has a robust process for receiving, reviewing, and acting on complaints against individuals. Complaints are received and immediately reviewed by BRD personnel (including nights and weekends) to determine how to address them. All complaints received are immediately responded to by an email message notifying the individual that the complaint has been received and a short time later a follow up email is sent by the BRD Supervisor.

Complaints are initially reviewed to determine if the individual the complaint is against is an applicant or Certificate Holder. If the complaint looks actionable, it is then sent to the Investigations department for further review and investigation. If there is insufficient evidence then the case is ended. If there is sufficient evidence, then cases are moved forward, reviewed by BRD and then proposed action is taken, such as sending a warning letter or proposed denial, revocation, or discipline letter. While complaints are reviewed and investigated, this is not done at the expense of the rights of Certificate Holders, who are always given notice and an opportunity to be heard.

CAMTC does not currently accept anonymous complaints against individuals in an effort to protect the rights of its applicants and Certificate Holders. CAMTC requires those making a complaint against an applicant or Certificate Holder to stand behind their statements. Because actions against applicants and Certificate Holders may be taken based on a declaration signed under penalty of perjury, requiring those making complaints to stand behind their statements is one way that it ensures the veracity of those statements and protects the rights of applicants and Certificate Holders, including knowing the identity of their accuser so that they may properly counter the accusations made against them.

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

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.*

CAMTC Response: CAMTC goes well beyond the legal standard in its absolute commitment to fairness to Certificate Holders. This can be seen by the fact that CAMTC has faced very few lawsuits over its denial and disciplinary actions and has been largely successful in defending against those lawsuits. CAMTC fully complies with the Fair Procedure doctrine and the provisions of the Massage Therapy Act, which requires that any denial or discipline be “decided upon and imposed in good faith and in a fair and reasonable manner.” (Bus. & Prof. Code §4610(d).) Before taking action against an individual, CAMTC sends a letter detailing the legal and factual basis for the proposed action. This detailed notice more than meets the statutory requirement that an individual be provided with the “reasons for the denial or discipline.” (Bus. & Prof. Code §4610(e)(3).) While the law requires 15-days of notice before the denial or discipline becomes final and effective (Bus. & Prof. Code §4610(e)(3)), CAMTC normally sends letters 30 days before a scheduled hearing date, and the final decision does not become final and effective until 21 days from the date of the hearing, for a total of approximately 51-days of notice, not 15. The law also requires that an individual be provided with the opportunity to be heard 5 days before a decision to deny or impose discipline becomes final and effect. (Bus. & Prof. Code §4610(e)(4).) CAMTC holds hearings 21 days before a decision becomes final and effective, providing well more than the required notice. Individuals are also able to request continuances, which are freely granted to applicants and suspended Certificate Holders.

CAMTC sends a proposed letter before taking any denial or disciplinary action against an individual. In the letter the individual is provided with the legal and factual basis for the proposed action and notified of their opportunity to request an oral telephone hearing or consideration of a written statement. The Denial Procedures accompany every letter as well as all declarations and their criminal history record, if those formed the basis of a proposed action. The proposed denial and disciplinary letters clearly identify timelines and due dates. Individuals appearing at oral telephonic hearings may provide their own testimony and bring other witnesses to provide testimony as well. The oral hearings are telephonic, which allows individuals from all over the state to easily access hearings without the need for costly travel and lots of time off of work. Individuals may be represented by counsel or other representatives and are not limited in the length or breath of evidence they can provide in opposition to a proposed action. We routinely see the following types of evidence submitted in opposition: declarations; various types of documentary evidence; audio recordings; video recordings; and legal briefs drafted by counsel, with some opposing counsels regularly submitting more than 50-page briefs in individual cases. All evidence submitted is considered by dedicated Hearing Officers that serve no other function.

Employees working for BRD, Investigations, and as Hearing Officers are all well qualified for their positions. Most are either former law enforcement, massage professionals, or both. Others were well qualified individuals with other backgrounds, such as paralegal or investigator, and learned their current positions on the job. In many instances, a background as a massage professional is key to understanding when an individual has engaged in unprofessional conduct that is not in conformance with the norms of a professional massage. This is why many employees in BRD, Investigations, and Hearing Officers have massage professional backgrounds. Hearing Officers have also had backgrounds as massage school owners, instructors, and massage business owners in addition to being Certified Massage Therapists.

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?

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.*

CAMTC Response: CAMTC's relationship with local government is broad and effective. The strategic partnership with law enforcement, code enforcement and other local government staff includes regular no-cost training by CAMTC and robust sharing of information and best practices. The California Association of Code Enforcement Officers (CACEO) has written "In recent years, code enforcement officers' roles have continued to expand to include more traditional law enforcement investigations such as illicit massage establishments. In response to these expanding duties, CAMTC and CACEO have formed an effective partnership to train code enforcement officers on how to identify massage establishments being used for prostitution, human trafficking and a variety of other crimes adversely affecting our communities."

Cooperation with local government is regular, ongoing, and a statewide standard has been established with an extraordinarily high level of trust and respect flowing between CAMTC and local jurisdictions. While we don't expect all local governments to collaborate with CAMTC, it is a dynamic growing relationship between CAMTC and local government and is gaining momentum.

CAMTC maintains an extensive database of massage ordinances, including regulations of businesses, zoning and fees. New ordinances are analyzed by our staff and newly identified or worded "Best Practices" are saved. These become the samples available to local officials. Requests for samples of complete ordinances or specific sections are selected based on proximity and size of the city or county and expressed priorities of the requesting jurisdiction. CAMTC continues to reach out to local government to support ordinances which are congruent with the Massage Therapy Act.

Along with the robust information sharing services between CAMTC and local government staff, including after hour and weekend availability of CAMTC staff, CAMTC is considered a crucial partner in the efforts to prevent and abate illicit activity under the guise of massage. This also

directly benefits the profession as provisions for fair and effective zoning and business regulations are adopted by more and more jurisdictions.

While the relationship between CAMTC and local jurisdictions is strong, supportive, and mutually beneficial, there are some outliers. The Massage Therapy Act speaks very clearly about what cities and counties can and cannot require, yet to address the small number of outliers, the legislature may want to consider clarifying certain provisions in the Act.

Here are a few examples where some local jurisdictions are not complying with the current provisions of the law. Further clarifying the law may help to address these issues.

Business and Professions Code section 4603.1 states that:

Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers.

In 2017 this section was moved from Legislative Intent provisions into the body of the statute (AB 2194) to make it directive, yet clearly not all local regulations comply with its provisions. For example, one city charges \$2,000 a year for a business license (reduced from \$3,800), the same fee it charges Escort service businesses, while professionals, including physicians, attorneys, chiropractors, and physical therapists, pay \$150 per year. The result is that not a single solo massage provider or even small massage group practice operates in the city. This bundling of massage with escort services further seems to violate Government Code section 51034 (c), which states the following:

Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

(2) Define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment.

This is one example of a city that has simply moved land use of massage out of the Adult Entertainment zoning section of its ordinance and into a new section, or within the massage ordinance itself, yet not changed the actual requirements. What other businesses, other than liquor stores and adult businesses, are restricted from being located within one thousand feet of any other massage establishment or adult entertainment establishment? Or within five hundred feet of any parcel of land zoned for residential use? Or within six hundred feet of any parcel of land that contains any one or more of the following specific land uses: Church; Courthouse; Public playground/park/recreation area; or School? These are clearly adult entertainment zoning requirements regardless of where they are located in the local ordinance. Distance limitations such as this have also prohibited individual massage therapists from sharing office suites or even single offices.

Another city amended their ordinance in 2018 to include provisions such as limited zoning for massage businesses, required conditional use permits (CUPs) with no grandfathering option, and

imposed restrictive parking requirements that do not consider the fact that massage therapists can only see one client at a time, unlike medical offices, and included distance restrictions similar to those described above. In 2020, after being closed for most of the preceding year due to the pandemic, this city informed a very reputable small massage business owned by a longtime local resident, with a 10-year history in the city, that they had to pay \$4,500 plus other costs to apply for a CUP or close. With no assurance of approval, and after exhausting all avenues for assistance, the business shut its doors in March of 2021. Further consideration of the restrictions would have cost the business over \$6,000. The city has apparently lost 2/3rds of the massage businesses as a result of these restrictions.

CPUs are applied to other businesses, though they are mostly applied to those businesses located in specific districts. However, many cities require CUPs for all massage establishments and prohibit CPUs in districts where personal services can locate, or similar healthcare professions (such as physical therapy or chiropractic). Fees for CUPs can easily exceed \$10,000, which is prohibitive for most small massage business, and certainly for sole proprietors.

In 2014 (AB 1147), the legislature revised Government Code Section 51034 (c) to state the following:

Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

- ...
- (7) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

As a result of certain jurisdictions claiming that they could still conduct criminal background checks of certified massage therapists who were also massage business owners, even if sole providers, the legislature, in 2017 (AB 2194), strengthened the language in Government Code Section 51034(c) to the following:

Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

- ...
- (8) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check, including a criminal background check or requiring submission of fingerprints for a federal or state criminal background check, or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

CAMTC has vetted these individuals already and the law is quite clear in this section, however this has not convinced all cities that no further fingerprint background check can be performed on Certificate Holders. Meanwhile, applicants for massage business permits are left paying for a

redundant live scan and background check in these cities while they also must wait up to several months for approval, all the while hoping not to lose a lease opportunity. Obviously, waiting months for local jurisdictions to process CUPs presents the same dilemma of whether to pay the fees, sign a lease, and hope for city approval. Meanwhile, CAMTC receives subsequent arrest notifications from DOJ and reviews all notices for potential investigation and discipline.

Business and Profession Code section 460 states:

- (a) No city, county, or city and county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs or an entity established pursuant to this code by a license, certificate, or other means to engage in a particular business, from engaging in that business, occupation, or profession or any portion of that business, occupation, or profession.
- (b) (1) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) or licensed or certified by an entity established pursuant to this code from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.

A number of jurisdictions prohibit mobile massage (also referred to as out-call or off-premises massage), yet these are common practices that provide a much-needed service to house-bound populations such as: the elderly; injured; ill; parents of small children; and pregnant women who may be restricted to bed with fetal monitors. Several companies, operating much like Uber, exclusively send massage therapists to homes and businesses. CAMTC requires all certificate Holders to acknowledge that they are required to obtain business licenses in any city where they conduct business, if the city so requires. Some jurisdictions require a brick-and-mortar location to operate out of, requiring Certified massage professionals to incur the expense of an office, or to be employed by a massage facility, when they can save money by conducting the administrative aspect of their businesses from their homes. Requiring a brick-and-mortar location fails to acknowledge the prevalence of new modes of operation for businesses.

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

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.

CAMTC Response: CAMTC rose to the challenges brought on by the Pandemic, and has been tireless in its wide-ranging actions to address the global pandemic and its impact on massage professionals. It has provided unequalled customer service, even during the time that its customer service agents were newly dispersed to remote locations and learning new technologies, connecting callers to a live customer service agent in less than 30 seconds. It actively fought (and prevailed) to have massage recognized by the State as the healing art it is

when the identification of healthcare “essential workers” who were allowed to practice in person during lockdown did not include any massage therapists. It has aggressively pursued inclusion of certified massage therapists in the CDPH’s definition of health care workers eligible for COVID-19 vaccinations. It has waived late fees for applications for more than one year. It changed School Policies and Procedures to allow acceptance of Interactive Distance Learning for lecture hours and all but 75 hours of hands-on practice.

It has taken more actions than can be fully addressed here (please see the Addendum to the Sunset report for more detail), but here is a highlight of some of the most important actions it has taken in addition to those already noted. It has:

- Issued 58 bulletins to date related to COVID-19;
- Requested that FSMTB work to provide massage specific guidelines for practicing during the pandemic (which they did);
- Provided an informational podcast with world renowned experts addressing COVID-19 issues specific to massage; and
- Partnered with a leading massage magazine to make content available related to massage and blood clotting issues related to COVID-19.

CAMTC is happy to discuss this issue with the committees but it does not believe that any additional flexibility or responsiveness is needed for the duration of the pandemic. However, it might be helpful for the Legislature to clarify in statute that Certified Massage professionals are healthcare providers.

Unlike other regulatory bodies, we stayed open and shared information with others throughout the pandemic. CAMTC was and still is a hub of information for all massage related parties.

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

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.*

CAMTC Response: CAMTC has requested technical clean-up for a few issues identified in its Sunset Report. It looks forward to working with the committees on these technical issues.

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

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.*

CAMTC Response: CAMTC elevates the profession, takes swift and decisive denial and disciplinary action, and works with local entities for no State cost, all while providing Fair

Procedure and conforming to the requirements of the Massage Therapy Act. While working with the Legislature and a wide range of stakeholders, the unique structure of CAMTC continues to strengthen and accomplish what it was designed to do. CAMTC has already addressed the bulk of this question in response to question #13 above, but also adds the following.

CAMTC's individual certification program is fair, responsive, reliable, and proven to be successful. CAMTC is extraordinarily proud of its law enforcement, code enforcement, and local agency training program. The training program has proved to be exceedingly useful to law enforcement agencies, code enforcement departments, cities, and counties. CAMTC believes that its strong actions related to massage schools and individual denials and discipline, all while providing Fair Procedure, have been making a difference in the fight against human trafficking in local communities.

Human traffickers want the air of legitimacy provided by businesses that appear to be legitimate massage establishments but are actually fronts for illicit activity. CAMTC's efforts to approve only schools that are actually providing all of the education listed on the transcript and deny approval to schools engaged in fraudulent activity cuts at the heart of human traffickers, making it more difficult for them to set up individuals with little to no real massage training in illicit establishments and stops schools from victimizing students by taking their money and not providing real massage education. Its diligent efforts to deny and revoke certification to those who engage in prostitution related activity also cuts off the easy flow of victims and takes them out of the stream of commerce, making it more expensive and complicated for human traffickers to engage in their criminal enterprise. Its swift action to suspend sexual predators protects the public and makes all customers receiving massages safer. Through these efforts and its cooperation with local law and code enforcement agencies and local government, CAMTC is working to stem the tide of human trafficking, and protect the public. CAMTC believes it should be reauthorized for another four years.