

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA MESSAGE THERAPY COUNCIL WITH RESPONSES

ADMINISTRATIVE ISSUES

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

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

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

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

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

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

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

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

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

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

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?

Background: Statute provides that "board member terms shall be four years" for CAMTC's Board of Directors. However, it does not place any limitation on the number of terms that a member may serve. Additionally, it is not clearly stated that a board member must vacate their position following the completion of their term unless reappointed, nor is there any specific

grace period provided. Instead, CAMTC appears to have interpreted the four year term language to refer to when appointing authorities should be expected to either reappoint their representative or identify a replacement.

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

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

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

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?*

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

CAMTC's CEO received compensation and benefits totaling \$346,611, which may increase up to 8 percent per year with the Board's approval.

While nonprofits are generally authorized to grant compensation to its executives deemed "reasonable" by the Internal Revenue Service (IRS), the question of whether salaries provided by CAMTC are excessively generous is meaningful given that the entirety of the council's budget is derived by fees, included those collected from certificate holders. In response to the inquiry, CAMTC commissioned a "CEO Compensation Study" in 2019. This study found that the total cash compensation provided by CAMTC—which the study identified as \$369,048—was just over the 25th percentile compared to similar nonprofit executives. As a result, the Board of Directors adopted a new compensation policy in 2019 to prohibit the CEO's total compensation package from exceeding the 75th percentile for peer groups identified by the study over the course of the agreement or eroding the council's three-month reserve.

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

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

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

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?

Background: While the Massage Therapy Act is clearly intended to provide CAMTC with regulatory responsibilities analogous to a state government body, it is established in statute as a private nonprofit and is therefore not necessarily required to comply with various laws aimed at ensuring transparency and accountability within state bureaucracy. This was arguably in part the legislative intent of the nonprofit model, as it allows for more flexibility and efficiency. Statute *does* provide that meetings of CAMTC's Board of Directors must comply with the provisions of

the Bagley-Keene Open Meeting Act. However, many other similar laws and public oversight mechanisms do not necessarily apply to the council's operations.

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

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

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

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?

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

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

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

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

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

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

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?

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

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

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

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

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

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?

Background: The Department of Finance (DOF) has “general powers of supervision over all matters concerning the financial and business policies of the State and whenever it deems it necessary, or at the instance of the Governor, shall institute or cause the institution of such investigations and proceedings as it deems proper to conserve the rights and interests of the

State.”¹⁸ This includes investigations of state agencies, which allows for the examination of financial records. These provisions apply to “each agency of the state” and refer specifically to “the handling of public money or its equivalent.”

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

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

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?*

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

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?

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

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

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

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

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?

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

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

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

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

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.

FISCAL ISSUES

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

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

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

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

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

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?

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

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

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

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.

CERTIFICATION ISSUES

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

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

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

Local governments otherwise do continue to exercise a great deal of control over how massage services are provided within their jurisdictions. CAMTC has no authority over massage establishments, except when the owner of a massage business is a certificate holder. The Legislature restored much of local government’s authority to regulate establishments under its land use authority when it removed preemption language in Assembly Bill 1147.¹⁹

Significantly, cities and counties may enact ordinances that require massage professionals to receive a CAMTC certificate at the local level. For example, the City of Los Angeles’s massage ordinance states that “each person employed or acting as Massage Practitioner or Massage Therapist shall have a valid certificate issued by the California Massage Therapy Council.”²⁰ The City of San José’s massage ordinance states that “it shall be unlawful for a person to perform Massage on a person in exchange for money or any other thing of value, or for checks, credit or

any other representation of value unless that individual is a certified Massage Therapist.”²¹ More often than not, the “voluntary” statewide certification is effectively a requirement for massage professionals to practice in a particular jurisdiction.

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

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

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

Transitioning from voluntary certification to a statewide license requirement would potentially elevate the profession of massage therapy and align the industry with other therapeutic practices. It would no doubt implicate questions of how to appropriately treat those professionals currently practicing massage in jurisdictions that do not require a certificate from CAMTC, and a licensing program with all the associated expectations of due process would likely be both more expensive and less efficient than what is currently operated by CAMTC. Balancing these issues would likely require discussions by the Committees through the comprehensive sunrise review process.²³ In the meantime, the question of whether licensure would provide greater benefit than the current certification model should be discussed as the future of the profession is debated through the sunset review process.

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

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??

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

determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions went into effect on July 1, 2020.

Because CAMTC is not a licensing board under the Department of Consumer Affairs, the provisions of AB 2138 do not apply to it. CAMTC is required to conduct a fingerprint background check of each applicant for a certificate through both the California Department of Justice and the Federal Bureau of Investigation. Statute prescribes what misconduct disqualifies an applicant from certification, resulting in the denial of applicants who have been “convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder,” or “committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.”²⁴

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

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

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

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.

EDUCATION AND EXAMINATION ISSUES

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

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

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

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

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

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

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

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?*

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

Continuing education is a requirement in some other states. For example, New York requires 36 hours of continuing education every three years. Courses offered by continuing education providers include topics like the treatment of conditions like fibromyalgia, sciatica, and

myofascial pain syndrome; sports massage; business operations; and ethics. The cost for these courses ranges, with an average of around \$100 per four hours of continuing education.

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

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

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?*

Background: Statute defines an "approved school" or an "approved massage school" as a school that is approved by CAMTC, has not been unapproved by CAMTC, and is approved by the BPPE, the Department of Consumer Affairs, or the organizations that accredit junior and community colleges, and corresponding agencies in other states.²⁵

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

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

Statute requires that CAMTC develop policies, procedures, rules, or bylaws governing the requirements and process for the approval and unapproval of schools, as specified, including any corrective action required to return a school to approved status.²⁶

These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance. The required policies and procedures were developed by CAMTC through the organization's board process and any alterations to CAMTC's policies continue to be done by the Board of Directors. The CAMTC Board of Directors has made numerous edits to policies and procures over the years, including the implementation of very detailed requirements for a school to meet minimum standards for training and curriculum in massage and related subjects.

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

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

that the school is not approved and that the education will not count towards voluntary certification.

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

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

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

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

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

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

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?

Background: CAMTC previously accepted hours of education from a foreign school for purposes of certification if it determined that the education was “at least substantially equivalent to the requirements applied to California school programs.” However, on February 22, 2018, CAMTC’s Board of Directors formally voted to no longer accept any foreign transcripts for massage certification. Statute only allows for CAMTC to accept out-of-state education that is: “recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.”²⁷ CAMTC has interpreted this statute to prohibit acceptance of education from schools outside the United States.

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

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

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?

Background: CAMTC's approval process for many massage schools is carried out in conjunction with licensure by the BPPE, which primarily regulates for-profit private postsecondary schools. If a massage school is subject to the BPPE's oversight, then both the BPPE and CAMTC must approve a school for it to offer massage programs accepted for purposes of certification as a massage therapist. The BPPE's process for approving schools is distinct from CAMTC's—the BPPE is charged with student protection and ensuring financial solvency of a school, while CAMTC's statutory responsibility is to determine whether the school meets minimum standards for training and curriculum and is limited to approving the school in relation to CAMTC certification. This means schools can be unapproved by CAMTC and still operate massage programs, if they are approved by the BPPE, but students from those schools may not use educational units for CAMTC certification.

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

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

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

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.

ENFORCEMENT ISSUES

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

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

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

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

In January of 2018, the Polaris Project, an anti-trafficking organization, released a report entitled *Human Trafficking in Illicit Massage Businesses*. This report, which analyzed tens of thousands of human trafficking cases reported through the project’s hotline cross-referenced with other data sources, identified massage establishments as the second most common context for sex trafficking after escort services. The Polaris Project believes that California is home to “over 35 percent of the country’s illicit massage businesses (IMBs) and contains two of the three main

cities in the country to which victims are recruited.” The report found that as many as 42 percent of Mandarin-language ads recruiting women in California for massage therapy jobs “show one or more flags of trafficking.” California is also identified as a key “port of entry” for sex trafficking victims, with IMBs operating in networked connections with others across the country.

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

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

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

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

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

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

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

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

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

Staff Recommendation: *The CAMTC should further discuss its commitment to combating human trafficking and provide its thoughts on how to avoid burdening legitimate operators in 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 unprecedented 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?

Background: The Massage Therapy Act currently does not grant CAMTC authority over massage establishments, which are defined as "a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis."²⁸

The council has oversight over massage professionals who seek and receive voluntary certification, as well as schools that wish to have their programs count toward certificate requirements. In regards to places of business where massage services occur, however, CAMTC's authority is very limited.

Statute does allow CAMTC to discipline an owner or operator of a massage business or establishment "for the conduct of all individuals providing massage for compensation on the business premises." However, this only applies when the business owner or operator is themselves a certified massage therapist already subject to CAMTC's oversight.²⁹ CAMTC cannot take any direct enforcement against uncertified massage establishment owners, or place requirements specifically on massage establishments that fall outside their regulation of certified professionals.

Instead, power to regulate massage establishments belongs to local governments. Provisions in the Government Code expressly recognize the right of cities and counties to "enact an ordinance which provides for the licensing for regulation of the business of massage when carried on within the city or county."³⁰ These ordinances are limited in terms of what requirements may be placed on massage professionals working within those businesses that conflict with the provisions of the Massage Therapy Act, but generally local governments retain authority to regulate and take enforcement action against establishments. (More on the role of local government is discussed under Issue #24.) CAMTC therefore often states that it sees its role as providing support to local governments in their oversight of massage businesses.

The question of whether CAMTC's authority should extend beyond massage professionals and bring massage establishments under their oversight has long been raised. During the council's first sunset review in 2014, the background paper raised the question: "Should CAMTC certify or regulate massage businesses or establishments?" The background paper pointed out that were CAMTC given that authority, "a business or establishment registration or certification would be eligible for denial, suspension or revocation for specified unprofessional conduct and other reasons as to be determined by CAMTC and other stakeholders, making it more difficult for improperly managed businesses to remain in operation."

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

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

jurisdiction was limited to specific therapists accused of misconduct who had been certified by the council.

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

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

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?*

Background: Consistent with many other licensing entities, CAMTC receives complaints about individual certificate holders. Complaints can come from anywhere (cities, law enforcement,

individuals, students, schools, and the public); however, CAMTC's inquiry is limited to investigating conduct by CAMTC certificate holders and applicants that is substantially related to the qualifications, functions, or duties of a certificate holder. As previously discussed, CAMTC does not have any authority to revoke a business license or permit.

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

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

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

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?

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

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

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

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

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

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

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

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

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

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

In essence, the Hearing Officers are considered the appellate level reviewers of the proposed disciplinary action brought by BRD based on the recommendations and evidence submitted by Investigations. Each one of these individuals is an employee of CAMTC. At no point in time does an independent entity consider the case. CAMTC appears to believe that additional due

process is created by ensuring that there is consensus among multiple employees as to the appropriate action to be taken. If a certificate holder truly believes CAMTC's employees acted wrongly in their proposed discipline, then a lawsuit against the council is their opportunity to have a third party weigh in.

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

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

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

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.

LOCAL GOVERNMENT ISSUES

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

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

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

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

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

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

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

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

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 (CASEO) 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.

CUPs 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 CUPs 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.

COVID-19 PANDEMIC ISSUES

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

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

CAMTC states that during the initial stages of the pandemic, it assisted with seeking clarify for its certificate holders regarding how the stay-at-home orders impacted their services and whether they would be considered essential. According to the council, whether massage was considered “healthcare” was a central debate during the lockdown and a “hugely divisive and contested issue.” CAMTC sent a formal letter to the Governor’s Office seeking clarification of this issue. The California Department of Public Health clarified that only massage therapists providing “medical massage” based on the referral from a doctor or chiropractor would be permitted indoors as an essential service. Ultimately, massage therapy studios were included under the Governor’s guidance for “personal care services” and massage services in non-healthcare settings became allowed indoors with modifications and restrictions.³¹

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

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

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

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 professional 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.

TECHNICAL CLEANUP

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

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

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

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.

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

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

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

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

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

However, as discussed throughout this paper, there are a number of potential downsides to empowering an entity outside the auspices of state government to exercise regulatory control over a profession. Some may argue that the efficiencies boasted by CAMTC come at the cost of transparency, accountability, and due process. With so many so-called “good government laws” passed over the years to promote public confidence in bureaucracy inapplicable to CAMTC, the balance of interests remains subject to adjustment by the Legislature.

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

This essentially raises an existential question for the Committees to consider as they review CAMTC in advance of its repeal date. Are the arguable disadvantages to how the council currently operates its certification program justified by its benefits? Further, if the Legislature were to address these issues through significant reform, at what point would it no longer be practical for the regulatory authority to be placed with CAMTC as it is currently constituted? It is likely that the nuances and urgencies of these unresolved questions would prompt the Committees to discuss any structural changes to the council through the sunrise review process, which is intended to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting the public health, safety, and welfare.

If the Legislature were ultimately to explore resolving perceived deficiencies in the administration of the Massage Therapy Act by transitioning CAMTC from a nonprofit council to a state board under an agency like the Department of Consumer Affairs, it should consider seriously the impact on those who work within the profession. While many within the massage

industry have called for full licensure by an entity more closely resembling other healing arts boards, this change would potentially burden many massage professionals through increased fees, longer application processing timelines, and slower reactions to changes in the industry. Any change to how CAMTC is currently structured would also likely require readjustments on behalf of local governments, which have by now adapted to working with the current council in exercising its share of oversight.

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

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

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.