



SUNRISE SURVEY FOR REGULATION OF MASSAGE THERAPY BY THE STATE OF CALIFORNIA

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Introduction

“No other California health care profession with as many public users or professional providers as massage therapy represents remains unregulated at the state level.”

More than 5 million California adults receive at least one massage each year, many of them receiving such therapy on a regular basis. These services are provided by approximately 62,000 massage therapists. None of them are state-licensed. That is a problem, with multiple dimensions:

- Massage users and consumers *believe* massage therapists are regulated with public protections, but that isn't the case;
- Lack of scope of practice definition mitigates against therapists keeping their work within boundaries that appropriately reflect their training;
- Law enforcement is stifled by incomplete profession regulation;
- A private certifying organization, the California Massage Therapy Council (CAMTC), conceived by state government in 2008, only has authority to discipline their own voluntary certificate holders, excluding 15,000 other massage therapists legally practicing within California; and
- Numerous cities are regressing to 20th century attitudes – viewing massage as vice and adopting policies to discourage massage therapy in their towns rather than understanding it as a valued professional complementary health care service.

All these challenges would either be wholly solved or substantially mitigated by California instituting required licensure for massage therapists.

Such a solution is not novel, with California being one of the few states to not have established a state regulatory framework: 45 states, D.C., and two U.S. Territories use this model. One other requires all massage practitioners to register with the state. The non-profit Federation of State Massage Therapy Boards (FSMTB) supports state massage boards through developing model practice act guidelines, birthing and administering a psychometrically validated profession entry examination, creating a database that enables sharing information on practitioner disciplinary history, and publicizing best regulatory practices.

This request for profession regulation is also new. In 2004, the two comprehensive service national associations representing massage therapists – the American Massage Therapy Association (AMTA) and Associated Bodywork & Massage Professionals

(ABMP) each developed and submitted thorough, comprehensive Sunrise Survey documents requesting required licensing for California massage therapists.

A key motivator for adopting a statewide regulatory approach was the piecemeal adoption of local government massage regulations that had emerged – in a state in which many local jurisdictions are located cheek by jowl, translating to diverse rules for massage therapists with multiple practice locations. In too many cases, these local rules had emerged based upon a lack of understanding about the health benefits massage therapy offers and indeed hostility toward massage by elected officials.

Why this hostility? Massage is deemed a medical profession across the country. If one looks back decades, massage was, in some instances, used as a facade for prostitution. Today, legitimate massage therapists far outnumber those using the term "massage" as a front for illicit activities. Yet in parts of California, dated attitudes have just not modernized: massage therapists are subject to limited location possibilities or are charged prohibitive fees.

It is important that we clearly identify which kind of local regulation is the problem. In communities that require a business license from every shopkeeper and each professional service provider, massage therapists expect to pay for such a license alongside everyone else. Massage therapists also expect to adhere to local zoning and building code rules, so long as such rules are consistent with those for other professional and office uses rather than punitively singling out massage therapists under a misguided intent at rooting out prostitution.

Inequitable regulation in addition to normal business license requirements include: higher fees for a massage business license, additional license requirements just for massage therapists, ordinances that levy unfair restrictions on practice hours or conditions – on the presumption that all massage therapists really are prostitutes. In essence, these are anti-vice laws, inappropriately being applied to a large proportion of the 65,000 legitimate California massage therapists.

Efforts to provide consistent statewide regulation of massage therapy have been pursued for the past two decades and came to a head in 2005 with a Joint Committee on Boards, Commissions and Consumer Protection Sunrise Review process including a hearing chaired by Senator Liz Figueroa. Advocates at that hearing sought mandatory licensure for all California massage therapists, which approach had been embodied in AB 1388 (Kehoe) introduced in 2004. The Committee found that massage therapy regulation was a confusing patchwork of local ordinances primarily “aimed at controlling illicit ‘massage parlors’” and concluded that this system failed to serve the public and the massage therapy profession.

Senator Figueroa was convinced by hearing testimony that the public would benefit from massage therapy being regulated. She also astutely realized that creating a new licensing board ran against clearly expressed government organization philosophies then being articulated by recently elected Governor Arnold Schwarzenegger.

To address that political challenge, an alternative model was forged, calling for the creation of a new private, non-profit organization authorized to issue voluntary certifications to qualifying massage therapists. The model was acknowledged up-front as being truncated, notably lacking definition of an authorized scope of practice as well as not requiring massage therapists to become certified.

This truncated approach was embodied in **SB 731 (Oropeza)** which was signed into law in September 2008. It authorized a new body to begin issuing certifications starting in September 2009. The subsequently formed organization later titled itself the “California Massage Therapy Council” (CAMTC).

Original SB 731 massage regulations prohibited municipalities from licensing massage therapists holding CAMTC certification – beyond requiring those therapists to secure business licenses, as is the case for other diverse kinds of businesses. A subsequent bill clarified municipalities’ ability to regulate massage establishments as distinct from individuals. Some cities throughout California now require a separate business license for each massage therapist and/or an establishment license for massage therapy clinics. Increasingly it is becoming a slippery slope: cities are blurring the rules either by in effect requiring individual massage therapists to secure a city practice license or by setting business license fees for massage therapy establishments at levels well above what is charged for other kinds of businesses. Specific examples of these behaviors are offered in our response to Question 28 A.

Advocate expectations were that the voluntary certification model would operate for 3-5 years and then evolve into mandatory licensure under full state auspices, as had been sought in AB 1388 (Kehoe).

Thus far, it has not worked out that way.

Initially CAMTC worked to clean up the massage school industry and closed 143 schools (many proving to be diploma mills, wholly or mostly lacking a substantive educational program). In numerous cases, ownership of these pseudo schools was integrated or allied with human traffickers. CAMTC staff members found themselves working closely with law enforcement. It became apparent that attempted infiltration of the massage profession was just one strand in trafficker endeavors. Nevertheless, CAMTC did its part. The clean-up program was so successful that few similar programs had to be similarly treated in recent years.

Late 2014 marked the end of the 3-5 year initial CAMTC operations period. By December 2014, CAMTC had attracted 49,997 individuals qualifying for voluntary certification. That could have marked an inflection point – a time to transition to required licensure – having proved the size of the profession and the desire for a credential valid statewide. CAMTC leadership made an alternative strategic decision. Rather than return to the legislature to seek an evolution to full licensure, leadership sought to perpetuate CAMTC as an organization and to preserve its power and generously paid jobs.

A key adopted growth strategy was to double down in seeking to persuade municipalities around California to require CAMTC certification, thereby creating what amounts to “**mandatory voluntary certification.**” In parallel, CAMTC senior staff sustained a priority on fighting human trafficking by working with law enforcement and district attorneys throughout California. Today, it appears that the de facto primary CAMTC mission – at least as embraced by senior management – has become combating human trafficking rather than persuading additional California massage therapists to secure CAMTC certification, instituting scope of practice boundaries, or evolving the enterprise in the direction of improved public education and protection.

Human trafficking remains a huge challenge in California and nationally. Traffickers seek to place controlled individuals in income generating positions in a variety of industries including restaurants, landscaping, janitorial, construction, housekeeping, hotels, and massage “parlors.”

Other dimensions of human trafficking still command attention. Leadership of such an effort, though, should be with an organization with a broader charter than an entity charged with issuing voluntary massage therapy certification.

Whatever progress has been made in that realm, the sought for gain in the number of CAMTC certified massage therapists fizzled. The latest published count of certified massage therapists (9/30/21) was 49,723 –essentially no change from 7 years earlier.

The public deserves to know that, when they enter a massage business, all massage therapists will have the requirements needed for licensure along with having consumer recourse and governmental due process that accompanies it. The public also deserves to know that a state agency will be empowered to act against any practitioners who abuse their professional status. CAMTC can only levy discipline against CAMTC certified massage therapists, based upon CAMTC standards.

We are left with an anomaly. No other California health care profession with as many public users or professional providers as massage therapy represents remains unregulated at the state level. And no other U.S. jurisdiction that regulates massage therapy does so with voluntary certification via a private nongovernmental entity that is not fully subject to state oversight and constitutional due process requirements.

AB 1537 became law, extending CAMTC for an additional year. It included an amendment to Section 4621 of the Business and Professions Code specifying at (c) “It is the intent of the Legislature, in extending the operation of this chapter to January 1, 2023, that there be subsequent consideration of legislation to create a new state board and a new category of licensed professional in accordance with Section 9148.4 of the Government Code.

ABMP and AMTA present this Sunrise Review and an associated Unmarked Bill in accordance with this statutory directive.

Our answers to the 57 specific Sunrise Survey questions that follow provide supporting detail for our request to begin fully regulating the massage therapy profession starting January 1, 2023.

It is the intent of ABMP staff members who prepared this updated Sunrise document – and their AMTA colleagues – to continue to listen to and address the interests of as many stakeholders as possible while finding a means to solve or at least substantially mitigate the challenges outlined at the top of this introductory section.

Section A: Applicant Group Identification

This section of the questionnaire is designed to help identify the group seeking regulation and to determine if the applicant group adequately represents the occupation.

1. WHAT OCCUPATIONAL GROUP IS SEEKING REGULATION? IDENTIFY BY NAME, ADDRESS AND ASSOCIATIONAL AFFILIATION THE INDIVIDUALS WHO SHOULD BE CONTACTED WHEN COMMUNICATING WITH THIS GROUP REGARDING THIS APPLICATION.

Associated Bodywork and Massage Professionals (ABMP) and Strategies 360 drafted this Sunrise Review. ABMP represents 9,082 massage therapy members in California. In performing this work and related bill development, ABMP has coordinated closely with representatives from AMTA at the national and California state chapter levels. AMTA likewise has approximately 9,000 California members.

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2. LIST ALL TITLES CURRENTLY USED BY CALIFORNIA PRACTITIONERS OF THIS OCCUPATION. ESTIMATE THE TOTAL NUMBER OF PRACTITIONERS NOW IN CALIFORNIA AND THE NUMBER USING EACH TITLE.

We estimate there are approximately 65,000 massage therapists in California. About 50,000 of them are currently voluntarily CAMTC Certified Massage Therapists (CMT). No massage therapist is required to be certified in California. Part of ABMP's California massage therapist membership consists of non-CAMTC certified therapists. Other non-certified therapists practicing in California also contact us, particularly when a local government is considering new approaches to massage regulation. Based upon those populations and our experience in other states that adopted licensure – seeing therapists emerge once licensing is required – lead us to estimate the 65,000 total. The remaining 15,000 currently uncertified therapists refer to themselves as massage therapists, massage practitioners, massage and bodywork therapists, or bodyworkers. The term “bodyworker” as applied to someone providing general massage therapy services, e.g. “my bodyworker,” is somewhat unique to California. In terms of scope of entry-level practice, there is no difference between massage and bodywork.

3. IDENTIFY EACH OCCUPATIONAL ASSOCIATION OR SIMILAR ORGANIZATION REPRESENTING CURRENT PRACTITIONERS IN CALIFORNIA AND ESTIMATE ITS MEMBERSHIP. FOR EACH, LIST THE NAME OF ANY ASSOCIATED NATIONAL GROUP.

The answer to Question 1, groups requesting regulation, lists Associated Bodywork & Massage Professionals and the American Massage Therapy Association, each having approximately 9,000 California massage members. Both these organizations are national in scope, each has more than 50 employees providing comprehensive services to members, and both have active government relations programs. No other organization serving massage therapy professionals meets these criteria.

Several other companies, some of which present as associations, provide liability insurance to massage therapists, but none of these have as many as five individuals providing substantive, profession-related member supports. None of them have active ongoing government relations functions. None of them publicize the number of massage therapists for whom they provide liability insurance. None have as large a massage therapy presence as ABMP or AMTA. Among these organizations, the most prominent are:

American Massage Council

Hands-on Trade Association

Massage Magazine Insurance Plus

4. ESTIMATE THE PERCENTAGE OF PRACTITIONERS WHO SUPPORT THIS REQUEST FOR REGULATION. DOCUMENT THE SOURCE OF THIS ESTIMATE.

We would never presume to reflect the opinions of every one of our members. We have formed best estimates of where their views appear to congregate through diverse contact and periodic surveys. The most powerful evidence behind practitioner support for a statewide credential versus local government professional licensing lies in the number who obtained certification from CAMTC – approximately 50,000.

As state licensing would increase consumer confidence, provide a defined scope of practice, and make it simpler to satisfy local law enforcement of the legitimacy of their ability to practice, we are confident of broad support for licensing among that three-fourths of the massage profession. The views of the other 15,000 California therapists are less clear. Not all cities or counties require certification; many therapists practicing in those jurisdictions see less pressure to have, and benefit from having, CAMTC certification. A substantial portion of them may feel unenthused about the prospect of needing to secure a state license and being accountable to state regulations.

5. NAME THE APPLICANT GROUP REPRESENTING THE PRACTITIONERS IN AN EFFORT TO SEEK REGULATION. HOW WAS THIS GROUP SELECTED TO REPRESENT PRACTITIONERS?

ABMP and AMTA are the largest massage therapy associations in the nation, representing over 160,000 massage therapists nationwide, and more than 18,000 In California. Both organizations have been advocating for massage therapists for decades and have the resources available to speak on behalf of their members.

6. ARE ALL PRACTITIONER GROUPS LISTED IN RESPONSE TO QUESTION 2 REPRESENTED IN THE ORGANIZATION SEEKING REGULATION? IF NOT, WHY NOT?

Yes, ABMP and AMTA both represent certified massage therapists, massage therapists, massage practitioners, massage and bodywork therapists, and bodyworkers.

Section B: Consumer Group Identification

This section of the questionnaire is designed to identify consumers who typically seek practitioner services and to identify non-applicant groups with an interest in the proposed regulation.

7. DO PRACTITIONERS TYPICALLY DEAL WITH A SPECIFIC CONSUMER POPULATION? ARE CLIENTS GENERALLY INDIVIDUALS OR ORGANIZATIONS?

Practitioners do not typically deal with a specific consumer population. With more than 5 million California adults receiving at least one massage during the past year, a broad cross-section of the population accesses such services. Clients are always individuals, coming to a massage therapist or bodyworker for any of a wide variety of reasons.

Among individual consumers, the level of knowledge regarding the practice of massage therapy varies greatly. Those seeking to utilize massage for therapeutic or health care purposes may have a different type of knowledge than those seeking massage for relaxation purposes. Both purposes are important and must be honored; regardless, licensure assists in providing the consumer with reassurance that those possessing the credential meet minimum requirements to practice massage safely and competently. Licensure is often more necessary in those professions where there is a higher level of knowledge asymmetry between the provider and the consumer.

8. IDENTIFY ANY ADVOCACY GROUPS REPRESENTING CALIFORNIA CONSUMERS OF THIS SERVICE. LIST ALSO THE NAMES OF APPLICABLE NATIONAL ADVOCACY GROUPS.

No group exists currently to represent consumers of massage services. However, virtually all massage practitioners are also massage consumers, so the professional organizations have a strong consumer bias. Both large national membership organizations in the field (ABMP and AMTA) provide consumer grievance procedures to the public as a channel for reporting inappropriate practices by any of their respective association members. Consumers with concerns also may access the appropriate state massage regulatory agency in the 44 states currently licensing massage, a protection which would become available to California consumers if massage licensing is adopted.

9. IDENTIFY ANY CONSUMER POPULATIONS NOT CURRENTLY USING PRACTITIONER SERVICES THAT ARE LIKELY TO DO SO IF REGULATION IS APPROVED.

Consumers not using massage include those for whom out of pocket costs of maintaining health are prohibitive. To the extent that repeal of expensive local permit fees may occur (typically California city and county permit fees are significantly higher

than massage certification or licensing fees in other states) and uniform state rules bring more massage therapists out into the open, massage may become modestly more accessible to a portion of the economically disadvantaged.

With state licensing of the massage profession and resulting greater transparency, medical providers may be more willing to employ or refer their patients to massage therapists to provide clinical massage as an inexpensive and effective supplementary treatment. Massage therapy is a health care profession and should be treated as such by health insurance companies. Classifying massage therapy in this manner would expand access to services.

Some would-be consumers today are discouraged from trying to locate a massage therapist after reading articles about arrests at local parlors purporting to offer massage. Post-adoption of statewide massage licensing rules, individuals concerned about how to locate a qualified and legitimate massage therapist may become more confident about accessing the service.

10. DOES THE APPLICANT GROUP INCLUDE CONSUMER ADVOCATE REPRESENTATION? IF NOT, WHY NOT?

To the best of our knowledge, there are no specific consumer advocate groups in California for massage. As mentioned in the answer to Question 8, both ABMP and AMTA are accessible to citizens who may have a complaint about services provided by a member of one of those organizations. We anticipate that massage consumers will testify at hearings about prospective massage licensing.

Though not precisely a consumer group, massage boards in other states charged with a mandate to advance public protection do represent consumer interests. We are aware that senior officers of at least one massage board in a state adjacent to California have expressed interest in testifying in support of licensing for California massage therapists.

11. NAME ANY NON-APPLICANT GROUPS OPPOSED TO OR WITH AN INTEREST IN THE PROPOSED REGULATION. If none, indicate efforts made to identify them.

The California Massage Therapy Council (CAMTC) opposes mandatory licensure for California massage therapists. Applicant suggests that their position is motivated by self-interest in preserving power and generous compensation for senior officers.

The Guild for Feldenkrais Method (FGNA), The Rolf Institute, National Association of Teachers of Alexander Technique (NASTAT), Trager Institute USA, American Polarity Therapy Association (APTA), American Organization for Bodywork Therapies of Asia

(AOBTA), California Reflexology Association, American Bowen Academy (representing Bowenwork Therapy), International Association of Structural Integrators (IASI), and Jin Shin Do all do work which may fit under broad definitions of massage and/or bodywork. International Somatic Movement Education and Therapy Association (ISMETA), Zero Balancing and Cranio-Sacral Therapy are also among the non-massage disciplines that may be affected.

The one belief members of these groups strongly share is that the work they perform is important and deserving of respect, but **it is not** massage therapy. Most, if not all, of these groups do not support regulation at the state level that may subject them to the need for traditional massage therapy training. Where appropriate, we work with these groups' leadership and individual practitioners within a state to exempt them from massage licensing regulations. In most states licensing massage, some or all these modalities are exempted from massage regulation. Occasionally, one or more of these groups seek state licensing under rules and a board separate from massage therapy regulation. Typically, such efforts fail due to a lack of critical mass to support a law, a board, and a staff.

ABMP routinely works and communicates with massage school owners and directors around the country, including in California. Based upon those conversations, it is apparent that some massage therapy schools may want to stay with the current regulatory scheme, though at least 10 have expressed frustration with aspects of current rules implementation and with the fees charged by CAMTC for their school engagement. We hesitate to identify these schools publically as they continue to be regulated by CAMTC. Change is difficult. We are working with representatives of the diverse mix of schools and believe the licensing proposal enjoys the support of at least a plurality of school owners and directors.

In addition, some massage or spa franchise owners, district attorneys, police chiefs and local law enforcement have concerns about licensing versus voluntary certification. These individuals and companies have voiced support for CAMTC continuing its role. We attribute some of this support to their familiarity with CAMTC's principal actors. They believe, as does applicant, that having CAMTC in place has been better than prior diverse local regulation of massage services.

Many massage and spa owners are also struggling to hire enough massage therapists to meet consumer demand. Absent knowing what mandated licensing would require and how it would work, they appear to have conjured scenarios in which licensing would exacerbate their labor supply challenge even though that perception flies in the face of other states' experience when adopting massage licensure: uniformly, the creation of required licensing has brought more practitioners out in the open.

Those preferences have notably been voiced in 2021 and early 2022 before the proposed new legislation had even been revealed. Ironically, the bill we are presenting contains many of the same law enforcement interaction provisions as does the CAMTC

Act. In fact, the proposed bill would greatly simplify law enforcement engagement with massage therapy providers because every therapist would be required to have and post a currently valid California massage therapy license. The bill contains similar language regarding summary suspensions as is the case in the current act, The main change between the current act and the bill is the fact of required licensure. We aim to give law enforcement both more clear-cut information on therapist status and more authority while simultaneously providing ample consumer protection.

Section C: Sunrise Criteria

This part of the questionnaire is intended to provide a uniform method for obtaining information regarding the merits of a request for governmental regulation of an occupation. The information you provide will be used to rate arguments in favor of imposing new regulations (such as educational standards, experience requirements, or examinations) to assure occupational competence.

Part C1 – Sunrise Criteria and Questions

The following questions have been designed to allow presentation of data in support of application for regulation. Provide concise and accurate information in the form indicated in the Instructions portion of this questionnaire.

I. UNREGULATED PRACTICE OF THIS OCCUPATION WILL HARM OR ENDANGER THE PUBLIC HEALTH SAFETY AND WELFARE

12. IS THERE OR HAS THERE BEEN SIGNIFICANT PUBLIC DEMAND FOR A REGULATORY STANDARD? IF SO, PROVIDE DOCUMENTATION. IF NOT, WHAT IS THE BASIS FOR THIS APPLICATION?

Answers to prior questions establish broad California citizen utilization of massage services. As massage becomes more recognized as a relatively inexpensive complementary therapy, some prospective clients inquire about credentials. When presented with a CAMTC certificate, most clients assume that translates to a state license. If the client is somewhat sophisticated, they likely assume anyone so credentialed has clearly defined boundaries governing their work. (Anecdotally, some members of the Assembly Business and Professions Committee and Senate Committee on Business, Professions and Economic Development acknowledged that, prior to joining their committee, they assumed when receiving a massage that the therapist was state licensed.) Virtually all consumers who learn that massage therapists are not state licensed are shocked to learn that almost anyone can practice massage with little or no

training. Research reveals that Californians believe that clients would feel more confident knowing that those providing massage have met a uniform standard of education and are accountable to some credible professional regulatory agency.

The evolution of CAMTC over the past 12 years has introduced a professional education requirement (currently a minimum of 500 hours of massage education including coverage of several specified subject areas). That requirement, which essentially would be maintained under licensure, currently applies to the vast majority of the approximately 50,000 CAMTC certified therapists, but not to the other one-fourth of therapists practicing within the state. A modest portion of CAMTC therapists qualified under less stringent prior education requirements. If licensure is approved, another modest number of therapists who received their massage training prior to the creation of CAMTC's current educational standards may be able to qualify for a license via satisfying one of two grandfathering routes. That process, designed to treat fairly experienced therapists who got trained in a prior era, is typically part of the process when states adopt massage licensing.

Cities and counties wish to lower the cost, human and economic, of abating illicit businesses. It is difficult currently to prevent illicit "massage" businesses from opening. A state licensing law could at least assure local governments licenses are only being issued to those meeting the state required criteria. Municipality business permits could then be denied or revoked if the practitioners lack state licensing credentials.

Others who would welcome state regulation include citizens who object to adult services in their communities masquerading as massage or who have been deceived by illicit establishments. Few situations are more embarrassing or traumatic than walking into an establishment anticipating a professional massage, only to be presented with a menu of additional sexually oriented services.

Finally, massage practitioners who are subject to onerous local laws or who have been solicited by clients expecting sexual services uniformly would prefer reasonable standardized regulation throughout the state to the existing situation in which three-fourths of therapists possess CAMTC certification and one-fourth do not.

13. WHAT IS THE NATURE AND SEVERITY OF THE HARM? DOCUMENT THE PHYSICAL, SOCIAL, INTELLECTUAL, FINANCIAL OR OTHER CONSEQUENCES TO THE CONSUMER RESULTING FROM INCOMPETENT PRACTICE?

In massage therapy, potential harm has two dimensions – harm to consumers and to massage therapists. Therapists are also members of the public deserving protection, whether from being a victim of human trafficking or from clients seeking sexual services. Mandatory state licensure trumps voluntary certification in providing avenues to help protect trafficked therapists.

Under legitimate therapeutic circumstances, two individuals (client and therapist) enter into a “he said/she said” scenario. One is typically partially or fully naked. It requires little imagination to understand the potential for exploitation and need for consumer recourse, in this case with the therapist being the consumer.

Physical harm to massage clients due to incompetent massage is rare relative to harm rates and severity in some other health professions – just compare relative costs paid for malpractice insurance: physicians and chiropractors pay 20-30 times as much as massage therapists do – yet physical harm does occur in massage. ABMP operations go back to 1987, AMTA’s to 1943; both organizations have consistently included professional and general liability insurance for members as part of their offerings. The need for such coverage is clear: both organizations have been presented with thousands of claims filed by consumers securing massage from ABMP or AMTA members. In the past ten years, ABMP received 247 claims of harm from massage performed in California, with the complainant seeking economic damages. Twenty of those claims were for alleged sexual assault.

It is important to note, though difficult to document, that more instances of physical harm from massage are believed to go unreported than reported. A therapist-client relationship is close and personal, even when the therapist strives to maintain appropriate distancing and boundaries. A substantial knowledge gap exists between therapist and client about what massage work is appropriate in response to presented client conditions. These characteristics tend to breed reluctance on the part of clients to complain about the massage experience or its after-effects.

In our experience, the two most frequent causes of injury from a massage session are (1) a therapist’s failure to secure an adequately comprehensive medical history from a client prior to the session commencing ... and then to be guided by that record; and (2) performing services that extend beyond the boundaries of work for which the therapist has been educated. The risks on the second of these are especially acute in California because the CAMTC Act contains no defined scope of practice governing its certified therapists ... and massage therapists not CAMTC certified also have no scope boundaries.

Past medical history unlearned due to inadequate intake practices can lead to exacerbation of numerous physical and medical conditions. A frequent problem area is the neck, another the lower back. Massage therapists operating outside conventional practice guidelines sometimes fashion themselves as being able to perform work appropriately reserved for chiropractors. All such inappropriate massage work can lead to clients having enlarged physical harm, restricted body movement, additional medical expense, loss of ability to work, and/or psychological distress.

In California today, there is no consistent way for a client, before receiving a massage from that person, to evaluate how competent a potential therapist is since there is no standard for training or for disclosing credentials, if any. Even if the consumer refuses to

pay for an incompetently delivered massage session, she or he cannot recoup the lost time or make up for the frustration involved. While a licensing system would not totally eliminate incompetent practitioners, agreed upon minimum training standards would help lessen problem frequency.

Indirect harm may also occur when the therapist does not know to refer a client for other care. Such ignorance can potentially have major medical consequences for the client. Another form of potential harm is for clients who might receive inappropriate massage from an untrained practitioner who doesn't recognize the potential for harm (e.g. pregnant women, cancer patients).

In addition, the reference in the answer to Question 12 to client emotional trauma caused by illegal establishments posturing as offering massage therapy only to then suggest available sexual services is too often a product of a lack of clear standards applicable to every place massage therapy is offered. A client suffering through such an experience may unfortunately be discouraged permanently from utilizing massage services.

A few individuals now providing massage therapy services in California have ignored all ethical boundaries and engaged in sexual assault of clients. Neither ABMP's nor AMTA's liability policies provided to members cover such behavior, but we still receive complaints from consumers about such incidents. All regulated states keep such information; having such public records would be a benefit for California consumers if state regulation would exist.

Potential harm exists if there is no statewide process allowing for revocation of licenses for those who act inappropriately. Currently, many police officers and district attorneys are reluctant to pursue criminal charges related to massage. As a result, there is unlikely to be any record of sexual assaults by or upon practitioners. The only recourse is civil action. With the current voluntary certification scheme with not everyone required to have a license, the perpetrator of such outrages can continue to practice even if a victim has successfully sued the perpetrator, as most applications only ask if one has a criminal conviction. Permits are denied only for criminal convictions of specified crimes. Even with a sexual conviction, individuals can practice in areas with no local regulation.

A licensing framework also provides an administrative remedy to the consumer harmed by incompetent practice. An administrative system costs nothing to the complaining consumer and is often more efficient than the civil system. While the administrative judgment cannot provide monetary compensation, such a system can provide a sense of justice to the victim while also protecting the public by prohibiting or limiting the practitioner from continuing to practice, ordering remediation by additional education, training, or supervision, or by other such remedies. The disciplinary process under a licensing scheme can also provide (if statutorily authorized) recoupment of fees and

costs of the proceeding by the licensee so that the costs of the disciplinary actions are borne most by those who violate the practice act.

Finally, another dimension of economic harm is the cost indirectly passed on to consumers of massage therapist local municipality licensing fees. As an example, the city of Belmont has made itself a poster child: a massage license there costs \$4,514. Other cities utilize “conditional use permits” as the vehicle to discourage massage therapists from setting up shop in their town. Ultimately, the massage consumer bears the burden, either by having a share of that cost factored into their service price or by having no massage therapy services available in their community because operating costs are prohibitive.

14. HOW LIKELY IS IT THAT HARM WILL OCCUR? CITE CASES OR INSTANCE OF CONSUMER INJURY. IF NON, HOW IS HARM CURRENTLY AVOIDED?

Currently, it is likely that the types and frequency of harm mentioned in the answer to the previous question do and will continue to occur - not each type of harm in every community and every therapist-client relationship, but altogether they have impact. See answer to Question 13 for frequency information. We hope to alleviate the harm by some form of uniform state regulation and by authorizing a dedicated state agency to regulate, investigate, and provide disciplinary action when appropriate.

15. WHAT PROVISIONS OF THE PROPOSED REGULATION WOULD PRECLUDE CONSUMER INJURY?

No regulation of any health profession has ever totally precluded consumer injuries, but we are confident that uniform statewide massage licensing will lessen injury occurrence. How much that will be so will depend upon the wording of the final law, details of implementing regulations developed by a new state massage board, and continuing licensee education about sound practices by both the board and massage professional organizations. Uniform regulation and a process for addressing consumer complaints will allow for statewide oversight. Procedures for revoking a license will make it easier to prevent some forms of harm from re- occurring or escalating. Combined revenue from license fees will be sufficient to pay for investigation and enforcement, including revocation of licenses. Once licenses are revoked by the state, cities can more easily close violating businesses.

II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE INSUFFICIENT

16. TO WHAT EXTENT DO CONSUMERS CURRENTLY CONTROL THEIR EXPOSURE TO RISK? HOW DO CLIENTS LOCATE AND SELECT PRACTITIONERS?

Information asymmetry between providers and consumers regarding scope of work, competency, and scope of practice is significant and thus creates the need for licensure.

Massage is increasingly recognized as a health care profession across the country and is being used for managing stress, enhancing self-awareness, maintaining health, increasing athletic performance, rehabilitating from injuries, and as an adjunct to medical treatment for a wide variety of conditions such as stroke, depression, cancer, and for pre-term babies.

The consumer may be referred to an establishment or sole practitioner by someone who has personal experience with the provider, such as a friend, health care provider, or other massage practitioner. If a personal referral is not available, locating a provider through professional associations, over the Internet, or other referral sources are available.

Currently, with voluntary certification there is no defined permitted scope of practice for massage therapists in California – whether CAMTC certified or not. As such, a consumer most likely will not have access to a standard for judging a baseline of competency.

Consumers are rarely prepared to personally evaluate or compare services offered before visiting a venue where the service is to be provided. Additionally, few clients understand various descriptions of training and credentials, such as the difference between a massage therapist using the term massage therapist, which might indicate as little as completion of 100 hours of training at a state approved school, and "LMT," "NCTMB," a certificate evidencing earning of a passing score on the national Massage & Bodywork Licensing Examination (MBLEx), or "Diplomate in Asian Bodywork," which indicate that the therapist passed a certification exam.

Selecting a high-end spa increases the likelihood that a consumer will not be exposed to risk, because reputational risk incentivizes spa owners to establish quality controls in hiring and feedback from clients, but such value comes at a significant cost: generally, high-end spas ask up to 50% higher fees than do most individual practitioners.

17. ARE CLIENTS FREQUENTLY REFERRED TO PRACTITIONERS FOR SERVICES? GIVE EXAMPLES OF REFERRAL PATTERNS.

Most massage clients self-find a therapist, though medical referral is rising. Referrals to a massage practitioner include from medical doctors, chiropractors, nurses, psychotherapists, physical therapists, dentists, and social workers. These providers recognize their patients/clients would benefit from massage therapy to address conditions such as musculoskeletal dysfunction, pain, general emotional stress and distress, pre-operative or post-operative stress or lymphatic drainage problems, etc.

Other referrals come from neighbors, co-workers, family and friends, personal fitness trainers, etc. who have either enjoyed the practitioner's work personally, or are confident in their reputation.

18. ARE CLIENTS FREQUENTLY REFERRED ELSEWHERE BY PRACTITIONERS? GIVE EXAMPLES OF REFERRAL PATTERNS.

Responsible therapists who understand the limits of their training and know the scope of their practice for which they have the training and are qualified refer clients to other health care providers to secure diagnosis or if an alternate or additional therapy is indicated. Massage therapists typically refer to orthopedic doctors, physical therapists, chiropractors, osteopaths, general physicians, acupuncturists, mental health practitioners, dentists, and dermatologists.

With proper training, massage therapists understand that there are many cases where a client should be referred to a medical practitioner. Unrelenting lower back pain for example can indicate prostate or bone cancer or spinal pathology. Temporomandibular joint dysfunction may need to be referred out to a dentist. Well-trained massage therapists will alert clients to suspicious skin lesions that should be screened by a dermatologist. Often, the massage therapist is the only professional person seeing the client's skin, particularly regions such as the back, on a regular basis.

19. WHAT SOURCES EXIST TO INFORM CONSUMERS OF THE RISK INHERENT IN INCOMPETENT PRACTICE AND OF WHAT PRACTITIONER BEHAVIORS CONSTITUTE COMPETENT PERFORMANCE?

Currently, the professional associations (ABMP and AMTA) and the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) maintain web sites with a great deal of information for the consumer. This information focuses on a) how to locate a massage therapist; and b) what to expect when receiving a massage, trying to anticipate typical questions and concerns. ABMP and AMTA plus one independent organization also collectively publish four massage magazines which contain information helpful to consumers, but which, with one exception, are written with

primarily a professional practitioner rather than a consumer audience in mind. The exception is *Body Sense*, published by ABMP, which is written for and distributed to massage clients. Additional information is available on the Internet, some of it sound and helpful. Most consumers have little ability to sort the good from the bad quickly or efficiently.

Upon Legislative and Governor approval of a California Board of Massage Therapy, there would be a 24/7 publicly accessible database of currently licensed massage therapists. This would mirror FSMTB, which has a “look up a license” feature on their website that connects to the state licensing boards to determine if an individual is licensed and/or has a recorded disciplinary action.

20. WHAT ADMINISTRATIVE OR LEGAL REMEDIES ARE CURRENTLY AVAILABLE TO REDRESS CONSUMER INJURY AND ABUSE IN THIS FIELD?

ABMP and AMTA offer liability insurance to members to redress consumer injury. So do several other companies, of which Massage Magazine Insurance Plus is the largest, which essentially exist to provide insurance with only skeletal member supports. CAMTC has a summary suspension tool in place for certificate holders straying beyond boundaries. This summary suspension only applies to its voluntary certificate holders, not to all California massage therapists. The proposed bill also contains summary suspension language, though, under its mandatory licensing framework, summary suspension would reach a broader massage therapist audience. In addition, if a massage therapist has inappropriate contact with a client, local law enforcement officials can be contacted and the therapist may potentially be criminally prosecuted.

These remedies are incomplete. Insurance is designed to address primarily negligence type liability, not criminal acts. Even in potential negligence situations, a therapist may be reluctant to report a complaint incident or be inclined to shade comments about what occurred to increase chances of a claim denial, thereby leaving a client with only the civil tort system as a remedy.

More concerning, monetary compensation does nothing to prevent a therapist from potentially injuring, harming, or otherwise violating ethical boundaries while serving a future client. Licensing is needed in California to provide non-criminal legal and other disciplinary remedies.

21. ARE THE CURRENTLY AVAILABLE REMEDIES INSUFFICIENT OR INNEFFECTIVE? IF SO, EXPLAIN WHY.

Disciplinary actions taken against a certificate holder by CAMTC can result in a loss of eligibility for CAMTC certification, but have no force in preventing that person from continuing to practice massage in the state. Absent a readily accessible, universal massage therapist database that includes a record of disciplinary action taken by the state, an uncertified therapist can perpetrate an offense in one community and move to the next with no notice to the second community that an offense has taken place. Even a disciplined CAMTC certified therapist can move to another California community that does not require CAMTC certification.

The CAMTC summary suspension is insufficient as it does not apply to all massage therapists in California.

III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE PUBLIC

22. EXPLAIN WHY MARKETPLACE FACTORS WILL NOT BE AS EFFECTIVE AS GOVERNMENTAL REGULATION IN ENSURING PUBLIC WELFARE. DOCUMENT SPECIFIC INSTANCES IN WHICH MARKET CONTROLS HAVE BROKEN DOWN OR PROVEN INEFFECTIVE IN ASSURING CONSUMER PROTECTION.

Prior to 2009, California had no statewide regulation of massage therapists in any dimension. It was a disaster for consumer protection. For a factual account, reference is made to the 2005 report of The Joint Committee on Boards, Commissions and Consumer Protection which concluded that the “hodge-podge” of local municipality massage regulations – or in some places no regulation at all – ill-served public knowledge, protection, or economic value. After that Committee’s hearings, its chair persuaded Governor Schwarzenegger to agree at least to a partial remedy – voluntary certification by a private, non-profit organization over which the Legislature would retain supervisory power.

CAMTC, the resulting new non-profit organization, has been in place since 2009 and has provided a quasi-regulatory scheme for portions of California massage therapists since then. That scheme has had tenuous, inconsistent impact on and support from diverse local government entities within the state. Consumers gained some, albeit incomplete, information about those massage therapists who elected to secure voluntary CAMTC certification and to submit to CAMTC disciplinary requirements. There is evidence that a comprehensive regulatory scheme is needed and welcome for massage therapy. It is overdue to take regulation advancing public protection statewide. Consistent massage therapy regulation across California would maximize public benefit.

23. ARE THERE OTHER STATES IN WHICH THIS OCCUPATION IS REGULATED? IF SO, IDENTIFY THE STATES AND INDICATE THE MANNER IN WHICH CONSUMER PROTECTION IS ENSURED IN THOSE STATES. PROVIDE, AS AN APPENDIX, COPIES OF REGULATORY PROVISIONS FROM THESE STATES.

Upon request, we are happy to provide a link to and/or copies of the regulatory provisions in the 45 states in which massage therapists are required to possess a state license, plus registration requirements in Vermont.

Licensed States	Registration State	Voluntary Certification State
Alabama	Vermont	California
Alaska		
Arizona		
Arkansas		
Colorado		
Connecticut		
Delaware **		
Florida		
Georgia		
Hawaii		
Idaho		
Illinois		
Indiana		
Iowa		
Kentucky		
Louisiana		
Maine		
Maryland **		
Massachusetts		
Michigan		
Mississippi		
Missouri		
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		
New Mexico		
New York		
North Carolina		

North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin

** 2 Tier Title Regulations

Three states remain unregulated, Minnesota, Kansas and Wyoming. In all three of these states, licensing bills have been introduced in the 2022 session.

24. WHAT MEANS, OTHER THAN GOVERNMENTAL REGULATION, HAVE BEEN EMPLOYED IN CALIFORNIA TO ENSURE CONSUMER HEALTH AND SAFETY? INDICATE WHY THE FOLLOWING WOULD BE INADEQUATE:

a. CODE OF ETHICS

Both ABMP and AMTA have Codes of Ethics for our members. Not all CAMTC certified massage therapists or massage therapists without certification are members of our organizations: we together cover 18,000 out of an estimated total 65,000 California massage therapists. A code of ethics is not in the current CAMTC act nor in the proposed licensing bill language.

b. CODES OF PRACTICE ENFORCED BY PROFESSIONAL ASSOCIATIONS

As stated above, both AMTA and ABMP have codes of ethics. Professional associations have difficulty revoking membership based on individual claims of misconduct due the reality of the “he said, she said” syndrome: few massage sessions have a witness present or even nearby. Members of our respective associations voluntarily associate with us to have access to an array of benefits. They are not our employees, so we cannot supervise their day-to-day activities or enforce quality control

over their activities other than when gross malfeasance may be reported and subsequently validated, which can result in termination of membership.

c. DISPUTE-RESOLUTION MECHANISMS SUCH AS MEDIATION OR ARBITRATION

Dispute-resolution is possible for individual problems and is utilized in resolution of many clients' claims of injury during a massage session, but such procedures are cumbersome as a general practice. Mediation or arbitration are rarely utilized outside of a professional association grievance resolution process. Voters in elections choose representatives to represent their views. Governments pass laws and ordinances to cover most citizen behavior. Law enforcement activities and disputes pushed into courts of law are exceptions rather than the rule. Having every societal disagreement be resolved through mediation or arbitration would be extremely cumbersome and inefficient. The same conclusions would apply to massage therapy disputes.

d. RECOURSE TO CURRENT APPLICABLE LAW

The current CAMTC Act is insufficient as it only applies to voluntarily certified massage therapists. Licensure would apply consistent rules to all massage therapists in California. While some local governments have developed thoughtful, balanced regulations regarding the provision of massage therapy in their communities, many local governments have adopted ordinances that are overly burdensome on massage therapists. Such local ordinances add regulation to legitimate massage therapists in a misguided attempt to address human trafficking. Requiring all massage therapists to obtain expensive licenses to operate a business does nothing to shut down illicit businesses. The proposed bill would make it a misdemeanor to practice without a license, thereby giving local governments and law enforcement the ability to enter an establishment, ask to see a state-issued massage therapy license, and -- if none is forthcoming -- shut down the establishment. Such as is the case with the CAMTC Act, the proposed bill provides for summary suspension for malfeasance. The difference is that, with mandatory licensure, it would also apply to those who are not currently certified.

e. REGULATION OF THOSE WHO EMPLOY OR SUPERVISE PRACTITIONERS

An Audience Audit March 2021 national survey of nearly 3,000 national practitioners found that 59% were individual business owners and another 14% characterized themselves as independent contractors. Only 19% labeled themselves as employees. Even adjusting for possible survey response bias toward individuals well established in the profession, one quickly grasps the limits of employer regulations in promoting consumer health and safety throughout the massage therapy profession.

As is the case with the CAMTC Act, the proposed legislation does not regulate employers, but it would require non-sole proprietor massage business owners to register with the proposed California Board of Massage Therapy.

f. OTHER MEASURES ATTEMPTED

In 2005, a coalition came together to advocate for required licensure, like what is currently being proposed. Due to Governor Schwarzenegger's push to limit new licensing boards, what emerged was a "60% of a loaf" alternative -- voluntary certification with a **statutorily created non-profit entity**. While implementors of this model have achieved some constructive accomplishments, licensure offers a better path at this time to make regulation of massage therapy uniform throughout California.

25. IF A "GRANDFATHER" CLAUSE (IN WHICH CURRENT PRACTITIONERS ARE EXEMPTED FROM COMPLIANCE WITH PROPOSED ENTRY STANDARDS) HAS BEEN INCLUDED IN THE REGULATION PROPOSED BY THE APPLICANT GROUP, HOW IS THAT CLAUSE JUSTIFIED? WHAT SAFEGUARDS WILL BE PROVIDED TO CONSUMERS REGARDING THIS GROUP?

All those who are currently certified by CAMTC would roll over automatically to licensure effective January 1, 2023. Consumers are protected as these individuals were previously vetted by CAMTC.

Two different grandfathering or legacy clauses, found at Business and Professions Code (BPC) §4613 and §4614, have been proposed in the bill for licensure. The first group are individuals with a history of successful massage practice, who can qualify by providing income tax returns showing income from massage practice during at least three of the previous five years. While each such covered applicant may have a unique story and history, two characteristics frequently apply: (1) they received massage education many years ago when most California massage schools had core programs covering fewer than the current 500 instruction hour norm; and (2) they reside and practice in communities that did not embrace requiring all massage therapists in their town to secure CAMTC certification. Some in this group belong to ABMP or AMTA. If such individuals erred and generated complaints leading to disciplinary action, their association may have weeded them out – a backstop for consumer protection.

The second grandfathering route is providing proof of adequate professional knowledge by passing the Massage and Bodywork Licensing Examination (MBLEx). The MBLEx is a national psychometrically validated examination created and monitored by the Federation of State Massage Therapy Boards. Forty-three states require an applicant for licensure to earn a passing grade on the MBLEx. Among those 43, Arizona requires the MBLEx for those who have not graduated from an Arizona massage therapy program. Hawaii and New York have their own state examinations. California does not currently require the MBLEx, though it did until recently and is slated to recommence requiring passage of this exam in 2023. The examination is comprehensive including addressing anatomy, physiology, ethics, and sanitation as well as basic techniques. The

MBLEx is difficult to pass if an applicant is not adequately prepared or qualified, currently the exam has approximately a 72% pass rate. Consumers would be protected as the MBLEx is a rigorous exam that assesses a massage therapist's professional knowledge and skills to practice safely and competently.

IV. REGULATION WILL MITIGATE EXISTING PROBLEMS

26. WHAT SPECIFIC BENEFITS WILL THE PUBLIC REALIZE IF THIS OCCUPATION IS REGULATED? INDICATE HOW THE PROPOSED REGULATION WILL CORRECT OR PRECLUDE CONSUMER INJURY. DO THESE BENEFITS GO BEYOND FREEDOM FROM HARM? IF SO, IN WHAT WAY?

CAMTC regulation put California on the path of schools requiring at least 500 education hours. Newly qualifying CAMTC certified massage therapists currently must have at least 500 hours of approved education in California or from elsewhere if seeking to qualify by endorsement. Those requirements would continue if a switch to mandatory licensure is made. Having licensure statewide would ensure that those practicing throughout the state have appropriate education or experience. The proposed new regulations would further enhance consumer protection by phasing in a requirement for therapist continuing education, meeting guidelines promulgated by the board, as a condition of license renewal.

Required licensing would bring consumers a recourse for grievances arising out of a massage therapy session by enabling the filing a complaint to the California Board of Massage Therapy. Consumers will be protected by knowing that all massage therapists in the state work within a statutory scope of practice. A scope of practice does not exist with the CAMTC Act.

With licensing, consumers will have recourse for grievances by filing a complaint to a state agency specifically focused upon professional regulation. That agency also would be guided by and would have access to resources of the State Attorney General's Office. Costs for regulation and enforcement of the massage profession will be borne by the profession itself through the state licensing agency.

The public would also clearly benefit from knowing that all legitimate massage therapists are state licensed and can be required to affirm that status by displaying a currently valid license. That contrasts with the current situation in which some therapists are CAMTC certified, others are not, and none must hew to state scope of practice guidelines. Consumer confusion on these basics would vanish. Resulting psychological comfort is a benefit that extends beyond freedom from physical harm.

Uniform licensing would improve consumer knowledge and education, thus enhancing consumer power. Licensure is not a barrier to entry, but a filter for minimum competency. Ensuring continuing competence would be facilitated by proposed continuing education requirements – not only in specific modalities, but also in safe and hygienic practice, ethics, boundaries, and professional practice (such as proper client intake and assessment).

As previously noted, no regulation can preclude consumer injury. The proposed required state licensing will serve to mitigate potential consumer injury.

27. WHICH CONSUMERS OF PRACTITIONER SERVICES ARE MOST IN NEED OF PROTECTION/ WHICH REQUIRE THE LEAST PROTECTION/ WHICH CONSUMERS WILL BENEFIT MOST AND LEAST FROM REGULATION?

All consumers need protection because the harm from incompetent massage therapy can be great – physical injury, exacerbation rather than improvement of a condition, sexual assault/misconduct by the therapist against the client, or against the therapist by the client. Because massage is used by such a broad range of people, more than 5 million California users each year, it is difficult to identify which consumers – other than juveniles receiving massage – might need more or less protection.

Benefits are easier to state. The California populous will benefit from a level playing field, which will promote competition based upon service value. The creation of an authorized scope of practice, which does not exist in the current CAMTC act, will especially protect consumers with only modest massage knowledge by stopping therapists from venturing into “experimental territory.” With voluntary certification, not all California massage therapists have been vetted. The consumers who will see no difference will be those who have a current ongoing relationship with a reliable massage practitioner. They won’t lose anything. They will merely find it easier to find another therapist if the current relationship ends for any reason.

28. PROVIDE EVIDENCE OF “NET” BENEFIT WHEN THE FOLLOWING POSSIBLE EFFECTS OF REGULATION ARE CONSIDERED:

A. RESTRICTION OF OPPORTUNITY TO PRACTICE

B. RESTRICTED SUPPLY OF PRACTITIONERS

C. INCREASED COSTS OF SERVICE TO CONSUMERS

D. INCREASED GOVERNMENTAL INTERVENTION IN THE MARKETPLACE

With the possible exception of D, the impact of statewide massage regulation, assuming it pre-empts local regulations, would be just the opposite of the potential concerns raised above.

A. For much of the state, there will be less restriction of opportunities to practice openly. Current local regulations make it very difficult to practice in some areas and easy in others. Many cities have onerous ordinances under the current quasi-regulatory scheme while others have no ordinances at all. For example, the Riverside County Ordinance is dated 1989 and requires a “massage technician license,” which form of license does not exist today. The Riverside fee for an initial massage business license is \$595, with an annual renewal fee of \$316. A “massage technician license” costs \$224, with an annual renewal fee of \$120. San Jose’s ordinance refers to “massage parlors” and commands a two-year business license fee of \$2,300, with a \$898 renewal fee. Los Angeles requires \$1,895 for an initial massage establishment license with a \$1,119 renewal fee.

It is difficult for massage therapists, the majority of whom are sole practitioners, to spread their practice over multiple jurisdictions – each of which has different requirements and fees. Someone living in a major metropolitan area could potentially have work spread among three or four jurisdictions, with diverse regulations and fees to contend with. State-wide licensing will level the playing field. In addition, mandatory licensing will provide the public peace of mind knowing that all massage therapists are required to be state licensed. Resulting improved visibility of service availability will likely expand supply, thereby providing more opportunities for massage therapists to work.

B. The current regulatory scheme may have more of a stranglehold on the current supply of practitioners as not all massage therapists are certified in cities that require CAMTC certification. Statewide licensure would open the market up to all practitioners who want to practice as more massage therapists would have licensure than is the case with voluntary certification today. Statewide licensure expands intrastate mobility to increase the supply of massage therapists for all types of employment situations.

Notably, in states which have adopted massage regulation during the past 15 years, the number of massage practitioners has uniformly increased post-licensing. ABMP has never experienced a membership decline in any state newly adopting licensing. As we have seen in other states, licensing in net doesn’t drive practitioners out of the field.

C. Costs may drop in some localities as all massage therapists will be practicing on a level playing field with the public taking comfort in knowing massage therapists must be licensed. Associated business costs may drop, depending on fees and other requirements local government currently levy in their ordinances. Even more important, a single statewide standard accompanied by reasonable licensing fees will

bring more therapists out into the open. Further information on costs is provided in answers to economic questions later in this questionnaire.

D. Mandatory licensure in other states is clear cut: to practice, you must qualify for and then possess a state professional license. Local governments are not supposed to levy duplicative professional licensing requirements. By contrast, current California individual therapist certification and school approval processes are onerous (and in numerous municipalities duplicative), and the former do not apply to all massage therapists in California. In addition, local establishment ordinances that require all practitioners to possess “voluntary” CAMTC certification, plus pay a massage establishment fee, are additionally economically burdensome. Statewide licensure would require all massage therapists to obtain their licenses through a DCA supervised board. DCA is adept at administering statewide licensing for numerous professions.

V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE

29. TO WHAT EXTENT DO INDIVIDUAL PRACTITIONERS MAKE PROFESSIONAL JUDGMENTS OF CONSEQUENCE? WHAT ARE THESE JUDGMENTS? HOW FREQUENTLY DO THEY OCCUR? WHAT ARE THE CONSEQUENCES?

Massage therapy sessions should routinely begin with the therapist having a prospective client fill out a health assessment questionnaire, followed by therapist review of the client’s answers and discussion to clarify any ambiguities. Even in as benign a situation as a five-minute, clothed chair massage, the practitioner should determine if massage is safe – especially in regard to neck issues in that kind of session – and then should tailor the treatment to the individual’s situation to ensure no harm is done. What a therapist is looking for are any indications or contraindications that suggest whether a massage session is appropriate. At the global level, a therapist is making a major judgment about whether to provide services to the client. For repeat clients recently massaged, a check-in conversation to ascertain any relevant recent changes in health condition usually suffices.

The most common contraindications include abnormally high blood pressure, certain forms of cancer, aneurysm, compromised circulation, contagious disease, fever (>102F), fractures, open sores, phlebitis, varicose veins, recent surgery, or abdominal massage when the client is pregnant. A properly trained massage therapist will have met competency standards that help to ensure patient and client safety. These

precautions apply equally to all clients and patients, whether they are receiving massage for medical or relaxation/stress reduction reasons.

Once a session begins, a therapist is trained to keep periodically checking in with a client about depth of work and whether the work is causing any discomfort. A trained therapist can usually sense by the client's body language whether resistance, one signal of discomfort, emerges. In essence, the massage therapist is constantly making judgments about the appropriateness of the work being provided.

Whether to provide a massage at all or whether to back off the depth of work on parts of the client's body being massaged – if wrongly decided or inadequately monitored – can cause client injury, typically an aggravation of an existing condition or worsening of the client's health. Because massage therapy does not involve invasive procedures, pharmaceutical substances, or extensive diagnostic steps, it poses a lesser risk than, for example, chiropractic or physical therapy treatments. A common consequence of massage is transient soreness; more serious after-effects can occur, though less often. Flawed decision-making about whether to perform massage at all and, if so, how deep to work, lead to a significant proportion of filed client damages claims.

30. TO WHAT EXTENT DO PRACTITIONERS WORK INDEPENDENTLY (AS OPPOSED TO WORKING UNDER THE AUSPICES OF AN ORGANIZATION, AN EMPLOYER OR SUPERVISOR).

A clear majority of massage sessions are in independent practice settings, meaning that just one massage therapist and one client are present. ABMP's 2021 massage therapist national survey found (2,971 respondents: + or – 3% at a 95% confidence level) that 59% of massage therapists work as independent business owners. By contrast, 19% listed themselves as employees. Another 14% work as independent contractors. Those independent contractors' work could be for a spa, an athletic club, a chair massage company, a franchise, or a mix of these and other service providers.

While ABMP's survey showed that close to one-third of massage work occurs in medical or spa settings in which nominally the massage work is being done under the auspices of an organization or employer, as a practical matter the actual massage work done by individual practitioners is almost completely unsupervised.

Spa management and some other medical professionals may or may not be capable of evaluating massage competency. Even in offices of chiropractors and other massage-friendly medical practitioners, a massage is almost always performed with only two people present in the room -- the massage practitioner and the client. Supervision is minimal if present at all.

Because massage therapy is frequently performed in facilities that are not otherwise regulated (unlike most other health care professions and para-professions) and in private rooms with only the provider and client present rather than public settings, the risk of incompetent practice increases.

31. TO WHAT EXTENT DO DECISIONS MADE BY THE PRACTITIONER REQUIRE A HIGH DEGREE OF SKILL OR KNOWLEDGE TO AVOID HARM?

The proper training of massage therapists, especially in anatomy and physiology, alerts practitioners to unique characteristics of the human body. This knowledge permits practitioners to identify the conditions that favor or contraindicate massage therapy, as well as to permit the therapy to be delivered to the appropriate parts of the body. While a layperson may be able to provide a pleasurable light backrub, proceeding beyond that level without relevant professional knowledge is ill advised.

Unqualified massage practitioners also may potentially cause psychological and emotional harm. The connection that must be formed between therapist and client could place a client in a vulnerable position if the practitioner lacks adequate training. As with other professional health care workers who would be alone in a room with a patient, the same rules that govern these encounters should likewise exist to protect consumers and the reputation of bona fide practitioners of massage therapy. Boundary issues, transference and counter-transference issues are perhaps even more common due to the intimate nature of the therapy. Trust and comfort between the therapist and the client represent core elements of successful massage therapy.

The dynamics of a therapist massaging a client creates a power differential which only therapists prepared to address both the professional and ethical aspects of the profession really should be handling. By contrast, untrained, under-trained or unscrupulous individuals are more prone to not respect appropriate boundaries, either by stumbling into situations they are unprepared to handle or by malevolently taking advantage of the situation. Inappropriate comments, inappropriate touching, inappropriate draping, or an inappropriate setting represent some of the ways that this damage can be caused. A uniform California regulatory structure - because it would set appropriately high minimum training requirements and establish enforcement mechanisms - would reinforce the required boundaries to help assure safe and competent practice.

The foundation upon which the course of therapy is delivered will almost always be dependent upon the integrity of the therapist. In addition, massage therapists generally deliver massage services in a private room, unsupervised, usually isolated because of the privacy demands of the therapy. As such, a massage therapist must routinely

exercise independent judgment in a therapeutic setting generally marked by a one-to-one environment.

Poorly trained practitioners will not have enough knowledge to answer many client questions, and **often do not even realize their own limitations**. Myths may become perpetuated as an insecure therapist responds based on unfounded hearsay.

VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED

32. DOES THE PROPOSED REGULATORY SCHEME DEFINE A SCOPE OF ACTIVITY WHICH REQUIRES LICENSURE, OR MERELY PREVENT THE USE OF A DESIGNATED JOB TITLE OR OCCUPATIONAL DESCRIPTION WITHOUT A LICENSE?

The proposed bill requires licensure and provides for a delineated Scope of Practice at Section 4602(f). Title protection language can be found at Section 4632. By contrast, the current CAMTC act, while offering title protection for CAMTC Certified therapists, contains no scope of practice language.

33. DESCRIBE THE IMPORTANT FUNCTIONS, TASKS AND DUTIES PERFORMED BY PRACTITIONERS. IDENTIFY THE SERVICES AND/OR PRODUCTS PROVIDED.

Important functions, tasks and duties include the following: assessment of the client's physical condition to determine suitability of massage, maintaining appropriate hygiene standards, performing appropriate manual therapy, maintaining client and practitioner decorum, maintaining appropriate boundaries, keeping appropriate records, referring to other professionals when appropriate, and maintaining client confidentiality. Services include manual therapy of many types.

As part of its background research to make certain that questions asked on the MBLEx reflect actual practice, FSMTB performs Job Task Analysis, capturing specific massage therapist tasks and the importance of each. Empirical data from those periodic analyses describe the important functions, tasks, and duties performed.

34. IS THERE A CONSENSUS ON WHAT ACTIVITIES CONSTITUTE COMPETENT PRACTICE OF THE OCCUPATION/ IF SO, PROVIDE DOCUMENTATION. IF NOT, WHAT IS THE BASIS FOR ASSESSING COMPETENCE?

“Massage” is a term sometimes used broadly – encompassing all kinds of massage and bodywork services – and other times more narrowly to reflect massage therapy based on a Swedish approach to the manipulation of soft tissues for health enhancement purposes.

With several competing models of the nature of massage, securing universal consensus as to what constitutes competent practice of massage is next to impossible. However, knowing what work is appropriate in what circumstances is a basic measure that secures broad support. The basis for assessing competence varies with the specialty, the approach, and the objectives of the client and the therapist.

Seven organizations, each playing a different but complementary role in the profession, a decade ago formed the Coalition of National Massage Therapy Organizations (the Coalition). Undeterred by viewpoint differences, the Coalition undertook a two-year investigation seeking consensus on two questions:

(1) What knowledge and skills should an entrant to the profession possess to be ready to work safely and competently with clients? and

(2) What is the minimum number of instructional hours schools and proficient educators need to prepare their students for entry into the profession?

The project was titled, “Entry-Level Analysis Project” – ELAP for short.

The project workgroup addressed some of the definitional differences by taking an inclusive bridging approach to long-standing professional differences about techniques, approaches, and language with reference to application methods. Rather than choose between Western and Eastern approaches and vocabulary, or among diverse styles and forms, the workgroup organized its recommended content around approaching “application methods and techniques based on ways in which the hands and other anatomical tools ... manipulate ... soft tissue structures.”

In arriving at recommended instructional hours, the workgroup eschewed arbitrary personal estimates, instead looking at each essential skill and knowledge bit and assessing how much time a capable instructor would require to teach that element. A total hour recommendation was derived by summing those bits.

The work product can be accessed at: <http://www.elapmassage.org>

That website comprises 909 pages of description of the research and profession outreach processes undertaken to assure broad profession input, definitions and methodologies adopted, the detailed listing of recommended skills and knowledge to be

taught, associated estimated required instructional hours, and an 8-page supporting summary statement by the Coalition.

Notably, FSMTB, one of the seven Coalition participating organizations, subsequently developed a Model Practice Act for states considering adopting mandatory massage licensing or seeking to improve their existing statutes, drawing substantially upon ELAP recommendations. In turn, the authors of this Sunrise Questionnaire have been guided by the contents of the FSMTB Model Practice Act in our parallel development of proposed implementing legislation for California.

Approximately one-third of the 45 states with mandatory massage licensing have specific massage training institution curriculum content requirements baked into their statutes. For example, the Maryland Practice Act outlines the following required curriculum components: Anatomy, physiology, and kinesiology; Massage theory, techniques, and practice; Contraindications to massage therapy; Professional ethics; Pathology; and Research. Required content in other states that specify curriculum contents tend to be similar.

Finally, the MBLEx, developed and administered by FSMTB, is a national profession entry-level examination that addresses knowledge of agreed-upon key information for the safe and effective practice of massage therapy. Among the 45 states mandating massage therapist licensure, 43 require attainment of a passing score on the MBLEx as a condition for securing a license. Passing that exam is not assured: annual historical pass rates for first-time exam takers have ranged from 68%-74%. FSMTB continues to modify exam questions to assure that the exam reflects evolving profession consensus about what knowledge and skills really matter. MBLEx passage is one excellent way of measuring one's occupational readiness to provide competent, safe massage experiences for clients.

35. ARE INDICATORS OF COMPETENT PRACTICE LISTED IN RESPONSE TO QUESTION #34 MEASURABLE BY OBJECTIVE STANDARDS SUCH AS PEER REVIEW? GIVE EXAMPLES:

To the best of Applicant's knowledge, there is no competency-based review process, based upon objective standards, available broadly in California. Massage therapy state and national exams do not include a practical exam component. The MBLEx is a psychometrically validated exam taken in a Pearson Vue testing center; Pearson Vue has 16 California locations. The MBLEx does not measure kinesthetic competence or client relation skills. It does put strong emphasis on knowledge of anatomy, physiology, safety protocols, and ethical considerations. As with many health care professions,

these exams measure basic intellectual understanding of a core, entry level knowledge base.

The National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) offers a Board Certification credential to individuals meeting application criteria and successfully passing an examination for Board Certification in Therapeutic Massage and Bodywork. Though a predecessor certification process offered by that organization had over a decade ago attracted tens of thousands of successful applicants, only approximately 13,000 individuals (roughly 4% out of 330,000 massage therapists nationally) currently hold Board Certified status, according to a September 2021 statement by NCBTMB's two senior officers. Only 92 individuals (out of 157 examinees) in the U.S. passed the Board Certification exam in 2021; obviously that exam, which is aimed at testing mature profession knowledge rather than entry-level basic skills, is not a viable candidate for profession entry purposes in California.

36. SPECIFY ACTIVITIES OR PRACTICES THAT WOULD SUGGEST THAT A PRACTITIONER IS INCOMPETENT. TO WHAT EXTENT IS PUBLIC HARM CAUSED BY PERSONAL FACTORS SUCH AS DISHONESTY?

Massage Therapy is licensed in 45 states based on public protection. Many states revoke a license for dishonest activities. Some of these activities are located within the bill we are presenting such as false advertising, misrepresentation on an application for licensure, and fraud. §4628.

With no California mandatory licensing for massage therapists, the risk for consumers of an incompetent practitioner posturing as having massage training is substantial. While the three-fourths of massage therapists in the state who have voluntarily secured CAMTC certification had to satisfy training criteria, that is not the case for the other one-quarter of practitioners. Among the potential exposures are dishonesty in describing credentials or training, failure to conduct a thorough intake screening process to discover contraindications, failure to check in during a massage regarding depth of work, and even a risk of a therapist taking advantage of a power relationship imbalance to engage in sexual assault. Absent a defined scope of practice for CAMTC certified therapists, the risk of a practitioner performing work beyond the training she or he obtained is substantial. While not all these potential harms may result in immediate physical or emotional injury, they sometimes do. Sexual assault, taking advantage of a client, inherently has a dishonesty component.

Unscrupulous traffickers try to obtain massage licenses with fake diplomas and false exam scores. Such deception can be tracked by FSMTB through MBLEx controls and stopped by alert state licensing boards.

In addition, certification is often confused with licensure. Some California CAMTC Certified practitioners believe they are licensed. An even larger number of massage clients believe their therapist is licensed. There is also a problem in that the existing CAMTC Act does not have a defined scope of practice, so a client can be exposed to rogue “experimentation” without a point of reference. Potential injury beckons in such situations.

VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER OCCUPATIONS THAT ARE ALREADY REGULATED

37. WHAT SIMILAR OCCPATIONS HAVE BEEN REGULATED IN CALIFORNIA?

California currently has scope of practice and licensing regulation for physical therapy, acupuncture, cosmetology, and chiropractic. These professions include some forms of massage as a portion of their scope of practice; however, massage therapy is not performed as their primary mode of treatment. If a client presents conditions to a professional in one of these other fields that indicates solely massage therapy as a treatment remedy, considerate professionals would refer the client to a massage therapist. Indeed, many physical therapists and chiropractors employ one or more massage therapists in their offices.

The massage portions of practitioner training in those related complementary health care fields does not approach the depth or comprehensiveness of massage therapy training programs of at least 500 hours duration. Massage therapy is a separate branch of complementary health care. It is not fully encompassed by any of these other licensed professions.

The proposed bill would provide a defined scope of practice for massage therapists, one that does not exist in the current CAMTC Act. Having such a defined scope for massage therapists also will benefit these other professionals by acting as a deterrent to massage therapists against trying techniques for which they are not trained.

38. DESCRIBE FUNCTIONS PERFORMED BY PRACTITIONERS THAT DIFFER FROM THOSE PERFORMED BY OCCUPATIONS LISTED IN QUESTION #37.

In Article 1, Section 302 of the Chiropractic Rules and Regulations, the California scope of practice portion of the laws and regulations relating to the practice of chiropractic, the first definition deals with manipulating and adjusting the spinal column and other joints of the human body. It further states that the chiropractor may manipulate the muscle and connective tissue as part of a chiropractic treatment. Massage is listed as a part of

that treatment. The primary mode of treatment listed, however, is manipulation and adjustments of joints, with massage being listed as a secondary or adjunctive treatment in addition to mechanical, hygienic, and sanitary measures incident to the care of the body. This includes, but is not limited to, air, cold, diet, exercise, heat, light, physical culture, rest, ultrasound, water, and physical therapy techniques.

Under the Business and Professions Code Section 2620 of the California Physical Therapy Board, massage is also listed as part of the modalities included in the scope of treatment. Massage, however, is one of several different modalities used for treatment purposes. Any combination of the modalities may be used for physical, corrective rehabilitation, or for physical or corrective treatment of a bodily or mental condition. It is clear here that massage is not necessarily considered as the primary form of treatment but is to be considered with the use of other modalities involving physical and chemical properties of heat, light, water, electricity, sound, and active, passive, and resistive exercise. Under Sections 2630-2631, massage that is not part of a physical therapy treatment does not require a physical therapy license.

The Business and Professions Code Section 7316 of the California State Board of Barbering and Cosmetology allows massage limited to the face, scalp, neck, arms, hands, upper body, or feet for cosmetologists. Estheticians' scope of practice was expanded with SB 803 in 2021, to allow massage to the human body as a whole in connection with esthetic services. As conceived in the Act, this is a much more limited form of massage, one that is described as an adjunctive portion of barbering and cosmetology. Its provisions are for cleansing, treating, and beautifying; however, again it is considered a secondary form of treatment to cutting and styling hair or administering facials. In addition, per SB 803, estheticians are not allowed to represent themselves as massage therapists.

The Business and Professions Code Section 4937, paragraph b, allows acupuncturists to practice oriental massage but explicitly allows other individuals to engage in such practices.

The purpose of a massage therapy regulatory agency for California would be to regulate those practitioners who perform massage as a primary form of treatment. Massage therapists utilize touch as their primary tool. In most cases, the client is viewed holistically. Low back pain, for example, may be addressed by releasing the posterior leg muscles, if that is found to be the primary region of restriction causing a compensatory pattern resulting in the reported problem. The professions above do not have massage listed within their scope of practice as their primary mode of therapy or purpose.

The proposed scope of practice in the licensing bill at §4600 provides the following:

(f) “Massage” or “massage therapy” means a service involving the external manipulation or pressure of soft tissue for therapeutic purposes, including, but not limited to, the following:

- (1) Assessment, evaluation, or treatment.
- (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration.
- (3) Active or passive stretching of the body within the normal anatomical range of movement.
- (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands.
- (5) Use of topical applications such as lubricants, scrubs, or herbal preparations.
- (6) Use of hot or cold applications.
- (7) Use of hydrotherapy.
- (8) Client education.

This proposed massage therapy scope of practice does not specifically intersect with the Chiropractic or Acupuncture scope of practice.

39. INDICATE THE RELATIONSHIPS AMONG THE GROUPS LISTED IN RESPONSE TO QUESTION #37 AND PRACTITIONERS. CAN PRACTITIONERS BE CONSIDERED A BRANCH OF CURRENTLY REGULATED OCCUPATIONS?

It is not uncommon for massage therapists to work alongside chiropractors, physical therapists, or in salons with cosmetologists. In a comprehensive health care setting, a chiropractor or physical therapist quite often indirectly supervises the massage therapist; the chiropractor or physical therapist recommends massage on particular areas of the body for therapeutic purposes in support of other treatments that medical professional is providing. If a massage therapist is working with cosmetologists, the focus is more on complementary client wellness or health enhancement.

Massage therapy cannot be considered a branch of the above professions as training for massage therapy does not prepare an individual to obtain a chiropractic, physical therapy, or cosmetology license. While some massage is included within their scopes of practice, most physical therapists, chiropractors, and cosmetologists who personally utilize a significant amount of massage in their practices choose to obtain additional specialized massage training.

California already recognizes that massage therapists should be separately regulated through 12+ years of CAMTC experience offering voluntary certification, attracting approximately 50,000 qualifying practitioners. Their massage work has not prevented these other professions from flourishing during those years. Our proposed licensure bill would expand massage regulation statewide.

40. WHAT IMPACT WILL THE REQUESTED REGULATION HAVE UPON THE AUTHORITY AND SCOPES OF PRACTICE OF CURRENTLY REGULATED GROUPS?

California currently recognizes a form of quasi-regulation of massage therapists – voluntary certification – that that has been availed by most California practitioners. Organizations representing these other groups know that these professions work in synchronous fashion with massage therapists. In addition, **the licensing bill provides at Section 4618 that this bill does not prohibit the utilization of massage techniques by members of those other healthcare professions who are working within their respective authorized scopes of practice.**

In sum, adoption of the companion law applicant is proposing will in no way diminish the permitted scope of practice of currently regulated professions referenced in Question 37 or of other health or medical professions.

41. ARE THERE UNREGULATED OCCUPATIONS PERFORMING SERVICES SIMILAR TO THOSE OF THE GROUP TO BE REGULATED? IF SO, IDENTIFY.

There are unlicensed practitioners whose work may involve touching clients or working within a client's energy field, but the adherents of those respective practices clearly articulate that their professional work cannot be considered massage therapy. These would include movement educators, such as those using the Feldenkrais Method, Alexander Technique, Trager Approach to Movement Education, body-mind centering and Ortho-Bionomy. Structural integration and Rolfing undertake in a series of sessions a technique to reorder the major body segments. Others include using touch to affect energy systems, acupoints, or qi meridians, many under the umbrella of Asian bodywork therapy: these include, but are not limited to, acupressure, Jin Shin Do, polarity, qigong, reiki, shiatsu and tuina. Forms of Polarity therapy work with energy fields surrounding the body. Finally, one final group of practitioners apply pressure to reflex points on the feet, hands, and ears to bring the body into balance, thereby promoting the well-being of clients, including but not limited to reflexology.

These professions do not generally confront the same public confusion or local regulation issues as do massage therapists. The number of practitioners of each of these different professions is also substantially smaller than the estimated 65,000 massage therapists practicing in California. As a result, state regulation of these kinds of practice does not seem currently warranted. **Practitioners of each of these professions would be deemed exempt from having to secure a massage therapy license per the contents of our companion proposed language at Section 4619.**

42. DESCRIBE THE SIMILARITIES AND DIFFERENCES BETWEEN PRACTITIONERS AND THE GROUPS IDENTIFIED IN QUESTION 41.

To the typical consumer observing sessions utilizing these other forms, the work involved would not fit their expectation of massage therapy. Feldenkrais Method and Alexander Technique are performed with clothed clients; touch is used incidental to the goal of exploring new patterns of movement and enhancing kinesthetic awareness. In Reflexology, touch is limited to the hands, feet and ears. Jin Shin Do utilizes gentle yet deep finger pressure on acu-points to release physical and emotional tension. Polarity Therapy is among a group of disciplines considered to be working with energy fields which may not involve physical touch; clients are generally fully clothed, and no lubricants are used. Trager work uses gentle rocking and shaking movements along with movement education for the purpose of re-educating the nervous system. While massage therapists encourage repeat client visits, their practices are organized around an ability to provide both relaxation and overall improvement in body functioning in a single appointment. By contrast, Rolfing and Structural Integration practitioners seek client commitment to a planned, coordinated series of sessions.

It is the intent of the sponsor of the proposed regulation to exempt those whose work is not massage. **Language found at Section 4619 exempts licensed members of these professions from being required to have a massage therapy license.**

VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGE, SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND TESTABLE

43. IS THERE A GENERALLY ACCEPTED CORE SET OF KNOWLEDGE, SKILLS AND ABILITIES WITHOUT WHICH A PRACTITIONER MAY CAUSE PUBLIC HARM? PLEASE DESCRIBE AND PROVIDE DOCUMENTATION.

Yes. A Coalition of seven national massage therapy organizations together developed a core set of needed knowledge, skills, and abilities for massage therapists. In parallel, the Federation of State Massage Therapy Boards developed a national profession entry-level examination. A growing number of states have embedded the knowledge, skills, and abilities either in their statutes or implementing regulations.

The massage profession worked together to develop agreed upon core knowledge, skills, and abilities (and, as a second step, assessed how long it should take a capable instructor to teach that information). In concert, the Federation of State Massage Therapy Boards, blending psychometrically validated guidance with inputs from a broad group of massage subject matter experts, developed and administers a national examination (the MBLEx) to assess an applicant's readiness to begin massage practice.

As noted more fully in the answer to Question 34, the Coalition of National Massage Therapy Organizations (the Coalition) undertook in 2012 a two-year project to seek agreement on such a core set of knowledge, skills, and abilities without which the chances of a practitioner causing public harm would be exacerbated. That project was titled the Entry-Level Analysis Project (ELAP).

A blueprint for entry-level massage education resulted from ELAP (<http://www.elapmassage.org>) to define knowledge and skill components of entry-level education and recommend the minimum number of hours schools should teach to prepare graduates for safe and competent practice in the massage profession.

ELAP included broad research, undertaking to access diverse profession information about relevant content and skills, including comprehensive opportunities for all members of the massage profession to comment upon drafts produced by the project working group. Notably helpful was prior work performed by the Commission on Massage Therapy Education (COMTA), an accrediting organization approved by the U.S. Department of Education, to identify core competencies in a comprehensive massage therapy education. COMTA, one of seven member organizations of the Coalition, provides programmatic accreditation for qualifying massage therapy educational institutions.

The MBLEx is the national assessment standard for massage entry-level competence. The licensure exam is developed to support the mission of public protection and stresses the importance of ethical practice and professional judgement in combination with the core knowledge, clinical assessment and applied professional skill sets for safe and competent practice. Information on exam content is available at www.fsmtb.org .

Finally, approximately 17 states acknowledge a generally accepted set of knowledge, skills and abilities include knowledge of anatomy, physiology, contraindications, ethics, client relations, terminology, and business practices as they regulate massage therapy schools in their statutes or rules.

44. WHAT METHODS ARE CURRENTLY USED TO DEFINE THE REQUISITE KNOWLEDGE, SKILLS AND ABILITIES? WHO IS RESPONSIBLE FOR DEFINING THESE KNOWLEDGE, SKILLS AND ABILITIES?

As stated in question 43 and in question 34, the massage therapy curriculum has come into focus over the past ten years. Many states have similar requirements of their massage therapy schools. ELAP identified core knowledge for the profession. The MBLEx, administered by FSMTB and its testing agency Pearson VUE, tests command of this knowledge, skills, and abilities. Every five years FSMTB conducts a fresh Job Task Analysis to make sure the MBLEx remains current and relevant to the practice of massage.

45. ARE THESE KNOWLEDGE, SKILLS AND ABILITIES TESTABLE? IS THE WORK OF THE GROUP SUFFICIENTLY DEFINED THAT COMPETENCE COULD BE EVALUATED BY SOME STANDARD (SUCH AS RATINGS OF EDUCATION, EXPERIENCE OR EXAM PERFORMANCE)?

Yes, the knowledge, skills and abilities are testable through performance on the MBLEx. Yes, the work of massage therapists is sufficiently defined to enable the development of a psychometrically valid test instrument with relevance across the United States.

46. LIST INSTITUTIONS AND PROGRAM TITLES OFFERING ACCREDITED AND NON-ACCREDITED PREPATORY PROGRAMS IN CALIFORNIA. ESTIMATE THE ANNUAL NUMBER OF GRADUATES FROM EACH. IF NO SUCH PREPATORY PROGRAMS EXISTS WITHIN CALIFORNIA, LIST PROGRAMS FOUND ELSEWHERE.

CAMTC has been regulating schools since 2015. Their most recent public records evidence 75 California massage therapy programs approved by CAMTC. Most are private institutions, with just a handful offered by four-year colleges and community colleges. One can find detailed information here: <https://www.camtc.org/schools-info-find-a-school/#approved>. As a result of the pandemic, some schools on the CAMTC list are currently not offering classes or programs. Fewer students are taking massage therapy programs than was the case in 2018 and 2019. It is difficult to identify how many programs with CAMTC approval status continue to offer massage therapy courses. This information is not available through CAMTC public data. It remains premature to speculate whether possible COVID-19 remission may result in more program re-openings, with enrollment restored to pre-pandemic patterns.

In 2021, CAMTC had 2,818 new individual applications for Certification through the initial nine months (4Q data not currently publicly available). One can assume the majority of those applications are from individuals who recently graduated from a massage therapy program. However, that number also includes people moving to California and those in jurisdictions that recently began requiring CAMTC certification. In addition, not everyone in the state applies for CAMTC certification because it is not required by local ordinance.

47. APART FROM THE PROGRAMS LISTED IN QUESTION #46, INDICATE VARIOUS METHODS OF ACQUIRING REQUISITE KNOWLEDGE, SKILL AND ABILITY. EXAMPLES MAY INCLUDE APPRENTICESHIPS, INTERNSHIPS, ON-THE-JOB TRAINING, INDIVIDUAL STUDY, ETC.

While apprenticeships and individual coaching as means of developing massage therapy skills were readily available in California prior to 2000, that era has largely faded (nationally as well as in California). Most massage therapists in California today attended one of the schools identified in question #46 or predecessor schools no longer in operation. Local ordinances may allow various ways to obtain a local license. Apprenticeships and on-the-job-training are not currently allowed under the CAMTC Act, and those experiences would not suffice to qualify one for licensure in language that we have developed.

48. ESTIMATE THE PERCENTAGE OF CURRENT PRACTITIONERS TRAINED BY EACH OF THE METHODS DESCRIBED IN QUESTIONS 46 AND 47.

As CAMTC does not recognize apprenticeships or on-the-job training, it is difficult to identify the percentage of current practitioners who obtained their education through one of these methods. There may be a handful of CAMTC certificate holders who grandfathered in years ago who obtained their knowledge in this manner. We estimate this segment to be under 2% of the CAMTC certification population and the general massage therapist population in California.

49. DOES ANY EXAMINATION OR OTHER MEASURE CURRENTLY EXIST TO TEST FOR FUNCTIONAL COMPETENCE? IF SO, INDICATE HOW AND BY WHOM EACH WAS CONSTRUCTED AND BY WHOM IT IS CURRENTLY ADMINISTERED. IF NOT, INDICATE SEARCH EFFORTS TO LOCATE SUCH MEASURES.

Yes, the Massage & Bodywork Licensing Examination (MBLEx), the national licensing exam for the profession in use since 2007, exists solely to test for functional entry-level competence of massage therapists. It is developed by the Federation of Massage Therapy Boards (FSMTB), the national organization comprised of the state licensing boards and regulatory agencies of massage therapy in the United States and Territories.

Examination items are developed by massage professionals from around the country and are designed to assess entry level competence under the guidance of psychometricians and adherence to testing industry standards. Examination items are reviewed for correctness, entry-level applicability, content validity, and elimination of bias by subject matter experts, including entry-level professionals and committees of massage educators, licensed therapists, and testing experts to assure state regulatory boards that the individuals being tested have the knowledge and skills to practice safely and competently on the consuming public.

The MBLEx is administered by FSMTB at Pearson VUE professional testing centers, which offers the highest security measures to protect the integrity of the examination and licensure process. Pearson VUE is the global leader in electronic testing for regulatory and credentialing boards.

50. DESCRIBE THE FORMAT AND CONTENT OF EACH EXAMINATION LISTED IN QUESTION 49. DESCRIBE THE SECTIONS OF EACH EXAMINATION. WHAT COMPETENCIES ARE EACH DESIGNED TO MEASURE? HOW DO THESE RELATE TO THE KNOWLEDGE, SKILLS AND ABILITIES LISTED IN QUESTION 43?

MBLEx Content Outline - <https://www.fsmtb.org/media/1681/2018-mblex-content-outline.pdf>

The MBLEx is developed by the profession for the profession. Every five years, FSMTB conducts a Job Task Analysis on behalf of the regulatory boards to verify that the MBLEx remains current and relevant to the practice of massage.

In the first stage, a job analysis is outlined by a panel of expert practitioners from many traditions and schools of thought in the field of massage therapy. These outlines describe the important functions of a practitioner and the knowledge needed to perform those functions. Since massage is such a diverse field and is practiced in a variety of ways, FSMTB takes great care to involve groups of educators and practitioners who are broadly representative of the field as it is practiced in the United States.

The job analysis survey is then validated wherein the profession provides feedback as to what knowledge, skills, and abilities an entry-level practitioner must possess for safe and competent practice. Several thousand practitioners typically participate in each Job Task Analysis. The guiding focus in the development of the MBLEx is to support the

regulatory mission of protecting the public health, safety, and welfare. The MBLEx Content Outline is created from the survey results.

The second, on-going stage of development involves other representative groups of practitioners across the country who work with FSMTB to write examination questions based on the MBLEx Content Outline. These new questions are reviewed by subject matter and testing experts and are edited to ensure that they are clearly written and that there is only one correct answer to each question. In developing the examination, every effort is made to respect and include the various forms of massage practiced in the United States. Reviews of the field are undertaken periodically to ensure that the examination remains relevant to current practice standards

There are seven major topic areas on the MBLEx reflective of the profession's feedback that include the biological sciences, assessment/clinical reasoning skills, along with an emphasis on the ethical and professional conduct of massage therapists.

When examination items are written, they are individually mapped back to the rubric identified by the content outline, thus ensuring psychometric content validity.

51. IF MORE THAN ONE EXAMINATION IS LISTED ABOVE, WHICH STANDARD DO YOU INTEND TO SUPPORT? WHY? IF NONE OF THE ABOVE, WHY NOT, AND WHAT DO YOU PROPOSE AS AN ALTERNATIVE?

The MBLEx is the only massage therapy profession entry-level national examination available currently. No other exams meeting the criteria exist.

IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED

52. HOW MANY PEOPLE ARE EXPOSED ANNUALLY TO THIS OCCUPATION? WILL REGULATION OF THE OCCUPATION AFFECT THIS FIGURE? IF SO, IN WHAT WAY?

For the past 12 years, the California Massage Therapy Council (CAMTC) has offered voluntary certification to qualifying massage therapists. In recent years, the number of therapists securing this credential has remained steady at around 50,000. Other massage therapists in the state have elected not to spend \$200 every two years for this credential, feeling it wasn't necessary in their community or with their stable client roster. We estimate that 15,000 non-CAMTC certified massage therapists are practicing legally in the state. If that projection is correct, the total California massage therapist population is approximately 65,000.

Data does not exist regarding the number of clients being served by those 65,000 massage therapists. Short of requiring every therapist to track client Social Security numbers and to record every session, which would potentially run counter to privacy and consumer protection laws, it would be impossible to know the overlap – of clients securing services from more than one therapist.

A reasonable estimate of members of the public exposed in any year to massage therapy can be derived by multiplying the number of Californians age 21 or above – estimated 28,643,620 (actual total California 2020 population of 39.2 million from U.S. Census, estimated 73% of that population age 21 or older utilizing 2010 age split data) by the proportion of U.S. adults who received one or more massages in 2018 (18%). That percentage is derived from a national survey conducted by Harstad Strategic Research, Inc. in January 2019. That calculation yields 5,155,852 Californians receiving at least one massage annually.

Likely, this is a conservative estimate. Massage use is not uniform across the United States. One granular example: 22% of males 21 or older living in the West received a massage versus only 11% of their counterparts in the rest of the country. California was an early adopter of massage and bodywork and falls within the group of states where massage utilization continues to appear higher than average.

We do not forecast a dramatic increase in massage utilization resulting from the institution of mandatory licensure for massage therapists because massage therapy already is a mature profession with broad awareness and utilization within California. There may be a modest increase in utilization due to a gain in consumer confidence derived from knowing that every massage therapist must be licensed and that they can request to see a copy of such a license wherever they visit for a massage session.

53. WHAT IS THE CURRENT COST OF THE SERVICE PROVIDED? ESTIMATE THE AMOUNT OF MONEY SPENT ANNUALLY IN CALIFORNIA FOR THE SERVICES OF THIS GROUP. HOW WILL THE REGULATION AFFECT THESE COSTS? PROVIDE DOCUMENTATION FOR YOUR ANSWERS.

The cost of an individual massage therapy session varies widely depending upon session time length, practitioner experience, and the degree of ambience of the massage setting. The range goes from a 50-minute massage from a student nearing graduation providing a massage at her school's clinic to a 90-minute massage at a high-end spa such as La Costa. The previously mentioned Harstad survey found a median price of \$70.00 per session in both 2016 and 2018. Average price was 10%-15% higher. Anecdotally, pricing appeared not to change greatly during the past two years of COVID limitations. As to the recent spike in inflation, however, massage therapists are impacted along with everyone else. With literally tens of thousands of California

massage therapists making individual pricing decisions, it is too early to measure how the average session price may have evolved. With rents and equipment costs climbing and massage therapists facing price increases at the grocery store and gas pump, it seems a safe assumption that most massage therapists are raising their prices.

Using an average cost of \$78.40 per massage session, the 5,155,852 estimate of adult Californians receiving at least one massage annually, and a Harstad survey estimate of 5.6 massages received in a year by adults receiving at least one massage that year yields at least \$2.26 billion spent annually in California on massage therapy services.

We do not expect that regulation will materially impact these costs because massage therapy services already are prevalent. Potentially, by mandating massage licensing and bringing roughly one-fourth of practitioners into public visibility, enhanced transparency and visibility could lead to more price competition and a resulting modest per session cost reduction for consumers.

54. OUTLINE THE MAJOR GOVERNMENTAL ACTIVITIES YOU BELIEVE WILL BE NECESSARY TO APPROPRIATELY REGULATE PRACTITIONERS. EXAMPLES MAY INCLUDE SUCH PROGRAM ELEMENTS SUCH AS: QUALIFICATIONS EVALUATION, EXAMINATION DEVELOPMENT OR ADMINISTRATION, ENFORCEMENT, SCHOOL ACCREDITATION, ETC.

We have developed and made public a comprehensive act that would create a “California Board of Massage Therapy,” in the process repealing and adding to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, and amending Section 628.5 of the Penal Code, related to healing arts. The language in the act borrows where appropriate from 12 years of operating experience of CAMTC, language describing responsibilities of other complementary health care boards under jurisdiction of the Department of Consumer Affairs, the decade plus experience of the national Federation of Massage Therapy Boards (FSMTB) (including its Model Practice Act), and the existence of several accrediting organizations for massage therapy programs that operate under approval of the U.S. Department of Education.

Included in the proposed act are:

- profession-specific entry education requirements, largely consistent with those required for voluntary certification by CAMTC;
- ongoing requirements for licensed practitioner continuing education;
- a requirement to earn a passing score on the FSMTB’s national profession entry examination, the MBLEx;
- board monitoring and enforcement of massage school minimum education hours, curriculum and instructor qualification standards, student-teacher ratios, facility

requirements, and schools meeting approval by one or more of listed alternative bodies; and

- a board process, integrated with the California Attorney General's Office, to investigate and act where necessary on allegations of violations by a licensee of requirements set forth in the act.

There is no need to develop or administer an examination as the MBLEx was created in 2007 for the precise purpose of assessing readiness of individuals to practice massage therapy safely and knowledgeably. One of the foundations upon which the MBLEx rests is a periodic Job Task Analysis (JTA). California therapists led the nation in participation (13% of all participants) during the most recent JTA. The MBLEx is rigorous: initial test takers, all of whom either are attending or have graduated from a massage program of at least 500 hours of instruction, have averaged only a 72% pass rate in recent years. Passage of the MBLEx helps facilitate mobility and portability both within California and between states.

As it relates to discipline requirements, CAMTC has operated such a function for 12 years. Over the past few years, 0.40% of its approximately 50,000 certified therapists, i.e. just north of 200 individuals a year, have had complaints against them adjudicated.

55. PROVIDE A COST ANALYSIS FOR SUPPORTING REGULATORY SERVICES TO THIS OCCUPATION. INCLUDE COSTS TO PROVIDE ADEQUATE REGULATORY FUNCTIONS DURING THE FIRST THREE YEARS FOLLOWING IMPLEMENTATION OF THIS REGULATION. ASSURE THAT AT LEAST THE FOLLOWING HAVE BEEN INCLUDED:

- A) COSTS OF PROGRAM ADMINISTRATION, INCLUDING STAFFING**
- B) COSTS OF DEVELOPING AND/OR ADMINISTERING EXAMINATIONS**
- C) COSTS OF EFFECTIVE ENFORCEMENT PROGRAMS**

The principal reason for requiring licensing of California massage therapists is to improve protection for members of the public seeking and receiving massage therapy services.

A strong secondary consideration is to institute licensing in a way that does not impose unreasonable economic burdens on individuals desiring to engage in massage therapy practice.

There's a balance to be struck – requiring enough but not excessive specialized education, describing an authorized scope of practice and assuring that each individual therapist's practice falls within those boundaries, and making sure the cost of the administrative apparatus – which appropriately is borne by licensed practitioners – is reasonable in relationship to income a competent massage practitioner can earn.

For the past 12 years, California has had in place an incomplete and somewhat confusing voluntary certification program accessed by a portion of massage therapists in the state. It offers title protection but does not define an authorized scope of practice. Many citizens inaccurately conflate a certification from the California Massage Therapy Council (CAMTC) as a state license.

Massage therapy is generally not a lucrative profession. Its physical demands, coupled with a work-life balance preference exhibited by many practitioners, lead to 15 or fewer hours of hands-on massage work per week being a norm. Average earnings from massage therapy sessions amount to approximately \$25,000 per year for a mature practitioner – typically quite a bit less for many individuals in their initial year of practice. Many practitioners – 39% in a previously referenced 2021 national survey – couple massage work with a second less physically demanding job.

The economic burden posed by required licensing is felt most sharply by individuals just out of massage school, about to embark in practice. Many enter the profession with debt from paying for 500 or more hours of training at an approved massage school. If an individual elects to establish an independent practice, purchase of approximately \$1,000-\$2,000 of equipment looms. In most states, a prerequisite to securing a license is successful passing of the MBLEx examination. The exam fee is \$265. The median fee for an initial state massage therapy license (in the 44 states that license the profession), covering two years of practice, is \$140. CAMTC currently charges \$200 for a two-year certification.

The Legislators who have been asked to consider requiring massage therapists to be licensed appropriately inquire, “How large would the licensing burden need to be if a new agency, the California Board of Massage Therapy, is created as part of the Department of Consumer Affairs?”

To develop such economic conclusions, we looked at the revenue and cost experience of two somewhat relevant entities – CAMTC and an existing professional licensing entity under DCA’s wing. For the latter, we selected the Physical Therapy Board of California (PTBC), partly because its licensees are also complementary health practitioners, partly because its purview over 35,823 professionals is somewhat similar in size to the approximately 50,000 individuals currently issued certifications by CAMTC.

The comparisons posed challenges. CAMTC is a private, non-profit 501 (c) (3) corporation with a fiscal year ending 12/31. PTBC is a state agency with a fiscal year ending 6/30. Public data on the two entities reflects different accounting categories, with in many cases less than sharply clear classification criteria. For CAMTC, we utilized the latest public information, which is for the fiscal year ending 12/31/20. For PTBC, we used board meeting published data for the year ending 6/30/21. To get at expenses by

functional activities, we allocated large lump-sum overall compensation based upon the number of individuals shown assigned to those functions by published organizational tables.

Numerous footnotes are attached to the following summary table. The comparison data is clearly imperfect, but we think directionally instructive. The objective here is not to produce a detailed full-year budget for a new DCA agency; that will necessarily await input from DCA and early decisions by a new massage board. Rather, this analysis aims to provide a rough analysis of what fees would need to be charged to individual licensees to defray costs of a massage therapy licensing regime.

Major Assumptions

1) Online enrollment will be required to secure an initial license, renew a license, change a name, cancel a license, or take other license status actions. Partially in response to COVID, CAMTC states they are 100% online in processing and issuing certifications. PTBC reported in August 2021 that 96% of initial applications and 87% of renewal requests were handled online.

2) As is most common practice in the massage regulatory world, a single entry-level examination, the MBLEx, administered by the Federation of State Massage Therapy Boards (FSMTB), will be required for new licensure applicants. Individuals pay \$265 to take the examination; none of those dollars go to the state massage board. For a number of years, CAMTC utilized the MBLEx. That requirement lapsed at the end of 2018. Absent any change in legislation, that requirement will become effective once again on 1/1/23. PTBC's exam result monitoring requirements are more complex because their purview over both Physical Therapists and Physical Therapy Assistants involves monitoring results from two different exams. In addition, they monitor results both from a national Federation entry exam and a California Law exam.

3) CAMTC hired an outside vendor to design a proprietary database system to support applications, certification status, address information, and disciplinary data. CAMTC owns that system and permits a major vendor, Advocacy & Management Group (AMG), to utilize the system in performance of its membership processing duties. PTBC utilizes the BreEZe database system for comparable purposes in addition to utilizing other software for financial, administrative, and personnel purposes. As DCA also utilizes BreEZe for other boards under its purview, we assume the new massage board will be initially directed to use BreEZe. It is worth noting, however, that PTBC's Executive Officer, Jason Kaiser, suggested in a January 12, 2022 interview that BreEZe is showing its age and that DCA might be ready to adopt a more contemporary system for a new board. For now, we build for the 1/1/23-6/30/24 time frame BreEZe costs for a massage regulatory board utilizing IT costs per licensee at PTBC. We assume active investigation of more contemporary systems occurs during those 18 months and that a

new system is substituted, at an initial annual savings of \$100,000, in the year beginning 7/1/24.

4) Assume for the initial 1/1/23-6/30/23 period one flat fee of \$160 covering 24-months of initial license coverage for individuals not previously granted certification by CAMTC. That cohort would encompass recent massage school graduates, California practitioners who never elected to be certified, and individuals moving to California from another state. Individuals whose CAMTC certification converts to licensure on 1/1/23 and whose license then expires before July 1, 2023 would pay \$190 for a 24-month renewal. Thereafter, the single flat fee would be \$190 for all initial and renewing applicants. No initial application fee, consistent with still prevalent practice nationally: 15 of 44 states with massage licensing charge both an application fee and an initial licensing fee, but 29 do not. The PTBC by contrast charges an initial applicant \$300 to apply plus an additional \$150 to cover the initial 24-month licensing period.

5) Proposed legislation that would establish a massage board under DCA calls for a transfer of net funds left over at CAMTC, when it would sunset at 12/31/22, to the new massage board. CAMTC's Form 990 filed with U.S Treasury includes a 12/31/20 balance sheet showing \$2,872,279 of cash and savings, partially offset by \$540,243 of accounts payable and accrued expenses. The net amount is \$2,332,036. A CAMTC Treasurer's report addressing the balance sheet at 9/30/21 showed improvement of cash and savings to \$3,936,982. A new massage board will also assume liability for deferred income – primarily certification fees already paid that on average have 12 months left until expiration. The largest related assumed future expense likely will be for disciplinary costs for a small proportion of certified individuals; under proposed legislation, the new massage board would assume responsibility for disciplinary cases already in process and for already incurred but not yet reported incidents (IBNR). Where CAMTC's net funds balance will be at 12/31/22 is unknowable today; we assume \$3.1 million – almost \$1 million of that due to the benefits of COVID-related PPP loans and an EIDL grant.

6) Executive staff and board salaries. Per CAMTC's Form 990 for the 2020 year, its CEO was paid \$421,000 in W-2 compensation plus \$28,300 in estimated other compensation from the organization. CAMTC board members received no compensation for their board service. It is not clear what the other approximately \$80,000 in executive compensation was for. At PTBC, one staff member, Executive Officer Kaiser, is singled out as Statutory Exempt. In addition, that board's seven board members collectively earned \$42,036 in compensation. As the contemplated massage board would be of similar size and composition, we budget a similar amount for board compensation. As to appropriate CEO compensation, the staff Background Paper for the March 9, 2021 CAMTC Joint Sunset Review Oversight Hearing noted that the CAMTC's CEO had earned 2019 compensation and benefits totaling \$346,611. It found "major flaws" in a CEO Compensation Study commissioned by CAMTC. Instead,

committee staff felt that a 2019 Department of Consumer Affairs salary study of regulatory board Executive Officers (EOs) was more relevant to what CAMTC's CEO should be paid. "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 \$125,000 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." (Note: that comparison was using \$369,048 for CAMTC's CEO. CAMTC meanwhile had increased its CEO compensation to \$449,300 in 2020.)

7) Employee benefits are broadly different. Absent access to detailed employee benefits account information at CAMTC's major contractor AMG (whose employee benefits fall within a lump sum contract total amount), we can only look to CAMTC salaries and benefits. As evidenced in the 2020 Form 990, CAMTC benefits and payroll taxes amounted to 17.5% of salaries. At Associated Bodywork & Massage Professionals (ABMP), sponsor of the new legislative initiative, the comparable number is 19.2%. By contrast, PTBC benefit costs – apparently typical for predominantly white-collar California state government agencies – are 58.4% of salaries. That is a challenging burden, but we need to assume a similar percentage for a new massage board under DCA jurisdiction.

8) CAMTC made a substantial investment over several years to tailor a database software program to meet their record-keeping requirements. By 2020, their income statement showed the benefits of that earlier investment: IT expenditures were only \$24,482 (likely supplemented indirectly by accounting for a substantial portion of \$42,532 in depreciation expense). By contrast, PTBC was allocated \$752,541 in IT charges from other state agencies. A substantial portion was attributable to PTBC's utilization of BreEZe for license applications and renewals. There is a certain random quality to the accounting timing of these allocations: all the dollars show up in two quarters, zero in the other two quarters. Similar accounting inconsistency shows up on Administrative Services Division charges from DCA to PTBC. This is another challenging burden, but again we must assume similar annual costs, adjusted for differences in numbers of licensees supported.

9) These projections assume a cooperative, well-coordinated approach by CAMTC in transferring information – full contact information and history on each current and past applicant and certified individual, files on all disciplinary cases still in process on 12/31/22, and certification expiration dates for all currently certified individuals – to a new massage board.

Here follow income statement actuals for CAMTC 2020 and PTBC for fiscal 2020-2021 plus projections for a new message board for a six-month transitional period from January-June 2023 followed by a full fiscal year 2023-2024 ending on June 30, 2024 and for a full fiscal year ending on June 30, 2025.

Note that the aforementioned CAMTC and PTBC statements reflect published dollar amounts, in some cases with sums reallocated to improve clarity as described in table footnotes. The three projection columns include formulas that permit adjustments in variables such as fees charged to test impact upon overall financial results.

Projected Income Statement For Massage Therapy Board of California

	CAMTC Year ending 12/31/20	Footnotes: 1)	Physical Therapy Board of California year ending 6/30/21	Footnotes: 2)	Projected California Board of Massage Therapy 1/1/23 - 6/30/23	Footnotes: 3)	Projected California Board of Massage Therapy 7/1/23 - 6/30/24	Footnotes: 4)	Projected California Board of Massage Therapy 7/1/24 - 6/30/25	Footnotes: 5)
# of licensees or certified persons at year end	50,224		35,823		56,000		61,000		63,000	
# of certificates converted to licenses 1/1/23	0		0		49,859	2)	0		0	
# of new licenses/certifications issued	4,200	3)	3,394	15)	7,388		6,222	15)	5,200	
New: application fee + initial 2-year license fee	\$200		\$450		\$190		\$190		\$190	
# of renewal licenses/certifications issued	22,500	4)	17,177		11,230		22,460		25,620	
Renewal: 2-year renewal fee	\$200		\$300		\$190		\$190		\$190	
# of employees	62	5)	27.1		26		27		29 20)	
# complaints initiated against licensees/certificants	201	6)	227		112		244		252	
% of licensees/certificants complained about	0.40%	6)	0.63%		0.40%		0.40%		0.40%	
Revenue										
Initial application and license	\$743,457		\$1,028,327		\$1,182,080		\$1,182,180		\$988,000	
License renewal (incl. delinquent)	\$4,207,968		\$5,196,252		\$2,133,700		\$4,267,400		\$4,867,800	
Funds transfer from CAMTC to new massage board					\$3,100,000					
Miscellaneous	\$245,898	7)	\$217,958		\$100,650		\$201,299		\$201,299	
Total Revenue	\$5,197,323		\$6,442,537		\$6,516,430		\$5,650,879		\$6,057,099	
Expenditures										
Executive staff & board salaries	\$529,985	8)	\$141,508		\$82,500		\$165,000		\$169,000	
Investigations/disciplinary/enforcement/internal legal salaries	\$1,035,330		\$334,764		\$165,170	16)	\$359,834	16)	\$382,780	
Other staff salaries	\$355,629		\$0	9)	\$0		\$0		\$0	
Employee benefits incl. retirement & payroll taxes	\$449,196	10)	\$962,809	10)	\$443,312		\$818,276		\$917,787	
Application processing and issuance	\$1,709,499	11)	\$613,734		\$306,861	17)	\$613,723	17)	\$747,134 20)	
Information services	\$24,482	12)	\$752,541		\$588,000		\$1,281,000		\$1,152,900 21)	
Investigations/disciplinary/enforcement/external legal	\$572,023	12)	\$1,489,884	12)	\$740,350	18)	\$1,612,906	18)	\$1,693,510	
Administrative Services Division			\$743,208	13)	\$217,379	19)	\$334,758	19)	\$345	
Credit card fees	\$115,527		\$80,262		\$72,610		\$111,860		\$119,899	
Rent	\$32,510	14)	\$182,545		\$135,218		\$270,437		\$304,993	
Other operating expenditures	\$621,640		\$120,410		\$89,193		\$178,385		\$183,737	
Total Expenditures	\$5,445,821		\$5,421,665		\$2,840,593		\$5,746,179		\$5,672,085	
Surplus or Deficit										
Net	-\$248,498		\$1,020,872		\$3,675,837		-\$95,300		\$385,014	

FOOTNOTES TO PROJECTED INCOME STATEMENT

1. Based upon 9/30/20 CAMTC board packet data.
2. Based upon 9/30/20 CAMTC board packet data.
3. Estimated.
4. Estimated.
5. Utilizing 7/1/19 CAMTC Organizational Chart, the latest publicly published, including Advocacy & Management Group (AMG) employees exclusively performing CAMTC functions, excluding outside Auditor, General Counsel, and Special Counsel.
6. Each organization receives complaints from the public, some of which are general in nature or apply to individuals not licensed or certified. While each complaint requires some staff time, allegations against individuals licensed or certified by the listed organization require primary focus; only these are listed here. For CAMTC, the period covered is Q4 of 2020 through Q3 2021, the closest 12-month period to 2020 for which public data is available.
7. Excludes federal government loan/grant (PPP loan) of \$469,200 from the Small Business Administration. While these dollars were real for CAMTC in 2020, we are using CAMTC results that year for future projection purposes and it is highly unlikely something akin to a PPP loan converting to a grant will be available in 2023 or 2024.
8. Per Form 990, CAMTC's CEO W-2 compensation was \$421,000 plus \$28,300 estimated other compensation from the organization.
9. A total of \$1,709,499 is shown for all PTBC salaries other than the Executive Officer in the 8/25/21 PTBC Budget Report covering the year ended 6/30/21. These dollars have been allocated to respective functions – a combination of disciplinary, application intake and processing, monitoring of examination and continuing competency attainment, and administrative functions.
10. CAMTC benefits are 17.5% of salaries versus 58.4% of salaries for PTBC.
11. While CAMTC expensed in earlier years the development cost of a tailored database system, PTBC is saddled with exorbitant charges for information services provided by other state government entities.
12. As CAMTC states that 86% of its external legal costs are for disciplinary activities, we allocated the full amount of such charges to this account.
13. Includes \$185,268 in administrative charges from other state government agencies plus \$557,940 in PTBC salaries (excluding the Executive Officer) tagged as Administration.
14. Half the CAMTC "staff" in fact are employees of AMG, which rents office space in downtown Sacramento. That rent is melded into overall AMG fees, so is not here separately identifiable. Other CAMTC staff have mostly worked from home, even prior to COVID. By contrast, PTBC rents Sacramento office space for essentially all its employees, which we assume will be the case for a new massage board under DCA.
15. Estimates of the pace at which currently not certified massage practitioners will "come out of the woodwork" to become licensed. A slightly lower proposed fee for new applicants for the initial six months of 2023 should modestly help. Projected new licensees also include new graduates from California massage schools and therapists relocating from other states; such categories are estimated to have accounted for 4,200 newly certified individuals in 2020.

16. Modeled after PTBC costs, adjusted for modest differences in case volume.

17. Use PTBC application processing costs (\$17.13 in salaries per licensee versus \$34.04 for CAMTC) as a starting point, then adjust for a single license type as opposed to two, a single exam requirement as opposed to two, and limited continuing education monitoring in the initial two years of a massage licensing requirement. While converting 49,859 CAMTC certificates to new board licenses in January-March 2023 should be a straightforward computer task, some modest extra dollars are budgeted for the six-month stub period in January-June 2023 to cover transition expenses.

18. Modeled after PTBC charges from the Division of Investigation / Attorney General's office, adjusted for modest differences in case volume.

19) Based upon a reduction in administrative positions as described in the major assumptions section. Also, no provision is made for some other state government entity sending costs into this account since communication, education, and HR functions now embraced within PTBC's own administrative division would be among the elements retained by the administrative component of a new massage board.

20) Two additional positions in Application Processing and Issuance to address growth in applications and monitoring of continuing education attainment. Follow PTBC approach of sample auditing as enforcement mechanism for continuing education.

21) Assume 10% reduction in information systems costs as outmoded systems replaced; effort begun in late 2023, but benefits not realized until fiscal 2024-25.

We expected enforcement costs to be high – and they are at \$975,000 from the Division of Investigation (DOI) in the 2021-22 DCA Distributed Costs Report. Indeed, DCA Director Kimberly Kirchmeyer’s July 23, 2021 transmittal letter to Senator Roth and Assembly Member Low spotlighted PTBC as one of four among 37 boards and bureaus that have “higher than average [DCA allocated] costs of 30 percent or more of their annual budget.” For 2021-22, the total allocations to PTBC amount to \$1,998,000.

Three other key cost aspects – addressing the other half of the nearly \$2 million total – make regulation by licensing boards (at least the case at PTBC) under DCA significantly more expensive than is the pattern at massage licensing boards in other states:

- high information technology charges
- stunningly high employee benefits costs as a percentage of salaries
- hefty additional administrative costs

The Distributed Costs Report shows \$163,000 allocated in 2021-22 to PTBC for their use of BreEZe and \$304,000 for other information and communication technology services. Metrics such as authorized position count, number of transactions, number of licensees served, and number of steps in the application process appear to be considered. Weighing in at \$21.00 per covered licensee, PTBC information costs clearly are above costs at other states and in other private organizations that manage large numbers of members or persons qualifying for a particular professional status. While our calculations assume no relief in information systems costs for the new board’s initial 18 operating months, this appears to be an area ripe for reductions as systems and processes are chosen for a new board.

Benefits costs for California civil servants are not something individual boards or their senior officers are able to influence.

It appears from the PTBC income statement for the 2020-2021 year that \$185,268 was spent in the 3rd and 4th fiscal quarters against a full year budget of \$456,000 for an “Administrative Services Division.” Basically, these amounts cover DCA charges for human resource type services provided to PTBC. The expenditure timing is baffling. It also seems likely that these dollars do not include the portion of PTBC salary dollars allocable by function – an estimated \$557,940 – to Administrative.

The PTBC Administrative shop currently includes three executives (Executive Officer, Assistant Executive Officer, and Administrative Manager) plus eight junior positions. The shorthand job descriptions for the eight junior positions are:

Communication & Education
Regulations/Special Projects

Budget/Contracts/Facility/Purchasing
Personnel/Training/Travel

Legislation/Regulation/Legal Affairs
Board Relations Support

Receptionist/Purchasing (office supplies)
Cashiering/Purchasing

Why an organization with 27 authorized positions requires 11 persons in administrative functions, including three senior managers, to support 16 others is mystifying. That is especially the case when DCA's Administrative & Information Services Division (AISD) is allocating \$477,000 (excluding Information Services) to PTBC in the 2021-22 year for similar types of services. Mr. Kaiser notes that his management approach and responsibility assignments differ from choices by many of his contemporaries. Certain key human resource functions seem well covered within PTBC job descriptions above that enjoy the highest priority to be replicated at a massage board. With an opportunity to start fresh with a more careful delineation of administrative needs and role split between DCA and the new board, projections for a new massage board reflect leaner administrative staffing.

Given these financial and policy constraints, it is unsurprising that full-year costs for a new California massage board come in around \$5.7 million for the full years ending in July 2024 and 2025, which works out to \$183.00 per covered licensee for a two-year license. We suggest rounding to a \$190 fee as a hedge against further inflation than what is already factored in.

Earlier mention was made that such a cost analysis focuses on new entrants to the massage profession, those who face the most challenging economic realities. While the recommended California individual fee at \$190 would be well above the national median of \$140 (and notably above those states with the next largest massage therapist populations – Texas \$100 and Florida \$155), another comparison is apt.

Over and above discharging debt from professional schooling, what career entry charges do massage therapists and other complementary health care profession entrants face?

	Live scan fingerprint & background check	Entry examination fees	Application fee	Initial 2-year license	TOTALS
Massage therapy	\$80 (average)	\$265	\$0	\$190	\$535
Physical therapy	\$80 (average)	\$490	\$300	\$150	\$1,020
Chiropractic	\$80 (average)	\$2,609	\$371	\$186	\$3,246
Occupational therapy	\$80 (average)	\$515	\$50	\$270	\$915

This comparison suggests the overall up-front cost burden on novice massage therapists, while still a challenge, is reasonable compared to similar complementary health professions.

The fact that a massage table, a starting complement of lotions and linens, a laptop, plus quite basic furniture can be secured for around \$1,500 altogether is a relatively modest sum to get oneself started as an independent professional business service provider. These equipment costs are substantially less if a massage profession entrant begins by working as an employee for an established massage business.

CODA: This Sunrise questionnaire calls for economic projections for a new regulatory body's initial three years of operation. In a typical case, a new regulatory board reviewing licensing applications and issuing licenses would set up procedures, communicate them to members of the profession being licensed, gradually start issuing licenses, and even more slowly taking on disciplinary cases.

The proposed new massage therapy act, should it become law, likely will be signed into law by the Governor in September 2022 and would become effective January 1, 2023.

What is different here is that the act calls for immediate conversion January 1 of approximately 50,000 CAMTC certifications to board issued massage therapy licenses and simultaneous assumption by the new board of CAMTC's responsibility for outstanding disciplinary cases.

Logic cries out for the California Board of Massage Therapy to be able to hit the deck running on January 1, 2023. That would include having its Board seated, its Executive Officer and at least skeleton staff hired, initial IT systems selected, a website in place and populated with core information, and initial communications outreach information drafted – all during the final three months of calendar 2022. Perhaps a loan from DCA or an existing DCA supervised Board, which our financial projections suggest the new board would be in position to pay back early in 2023, would solve this timing challenge.

56. HOW MANY PRACTITIONERS ARE LIKELY TO APPLY EACH YEAR FOR CERTIFICATION IF THIS REGULATION IS ADOPTED? IF SMALL NUMBERS WILL APPLY, HOW ARE COSTS JUSTIFIED?

Per the information provided in the answer to Question #55, the answer is both more certain and more complex than a typical profession moving from not being state regulated to required licensure. An integral part of what we are proposing is that all massage therapists holding a currently valid CAMTC certification at December 31, 2022 would automatically have that certification converted to a state license the next day. The most current public figure as to that audience size is 49,859. That corpus alone puts massage therapy beyond the “small numbers” concern posed in the second half of the question above.

Going forward from January 1, 2023, the dynamic each year will be having approximately half of existing licensees come up for renewal, with likely somewhat over 90% of them electing to renew and qualifying to do so, supplemented by an infusion of new members that replace those electing to depart the profession. The renewal proportion is supported by CAMTC renewal experience over its 12-year history and experience in numerous other states. With licensing being required, the renewal rate if anything different likely would be a bit higher for a state massage license than for voluntary certification. Only those electing to cease practice would choose not to renew.

The steady portion of new licensees will come primarily from recent massage school graduates, secondarily from transplants to California – individuals who bring with them a history of massage license qualification and practice experience from a prior residence in another state. We estimate that combined number is about 4,200 per year currently, again leaning on CAMTC experience.

Over the three years for which financial projections were made in response to question 55, the ranks of new license applicants will also initially swell as the one-quarter of California massage therapists not voluntarily certified by CAMTC come to terms with the new licensing mandate. We project an initial burst of about 3,200 such individuals in the six months ending June 30, 2023, another 2,200 in the full fiscal year ending June 30, 2024, and about 1,000 more the following year. It is possible more such individuals will quickly apply for licensure as soon as the application portal opens. We elected to keep our projections more conservative, believing that some resisters will lay low rather than coming into compliance.

In table terms, the number of successful applicants for a two-year California massage therapy license is projected to be:

Estimated Successful Applicants for Massage Therapy Licenses

	Period Beginning	License Renewals	New Licenses	Period End
1/1/23-6/30/23	49,859	11,230	7,388	56,000
7/1/23-6/30/24	56,000	22,460	6,222	61,000
7/1/24-6/30/25	61,000	25,620	5,200	63,000

The Sunrise question speaks to application volume, which is addressed in the table above. While attrition occurs in every profession, the inability to account for potential attrition ebbs and flows are the reason the numbers do not foot horizontally. Despite all these possibilities, projected annual application volumes are sufficient to support a licensing administrative apparatus.

57. DOES ADOPTION OF THE REQUESTED REGULATION REPRESENT THE MOST COST-EFFECTIVE FORM OF REGULATION? INDICATE ALTERNATIVES CONSIDERED AND COSTS ASSOCIATED WITH EACH.

Three chapters of California massage regulation in the 21st century, two historical and one prospective, are addressed in this Sunrise document. During the initial 8+ years of this century, a hodge-podge of mostly hostile city and county regulations of massage, much of it designed to deter therapists from setting up shop in their town, impacted the provision of massage therapy in the state despite burgeoning consumer interest. Business fees and local licensing fees varied widely. A therapist splitting her practice between venues in different communities faced having to secure multiple licenses.

A 2005 Sunrise process, chaired by Senator Liz Figueroa, concluded that the public would benefit from a more consistent, more equitable statewide approach to massage regulation and that such a system would lower costs. The preferred approach, mandatory licensure for the massage profession, was broadly supported at the Sunrise hearing.

Political realities, notably the election of Governor Schwarzenegger with his focus toward lessening the number of state boards and commissions, intervened. The hybrid structure that emerged, authorizing creation of a private, non-profit board (which became CAMTC in 2009) to offer voluntary statewide certification was viewed as a temporary expedient. To most massage professionals, it felt like half a loaf, leaving out adoption of a scope of practice and not requiring all practitioners to be subject to common regulations. Consumers benefitted from more practitioners emerging publicly, but the fact that not all therapists were certified left a confusing picture as to how to evaluate those who were not. Costs to therapists declined due to elimination of duplicate and triplicate local government fees.

Meanwhile, institutionally, senior officers of CAMTC elected to focus personal energies on primarily addressing human trafficking rather than massage regulation broadly. In parallel, insiders worked from earning nothing from Board voluntary service to receiving attractive six-figure salaries for administering aspects of CAMTC operations. Certification fees for individual massage therapists climbed 33% in part to find funds to cover senior officer salaries. In our judgment, CAMTC leadership lost its way.

A change from voluntary certification, reaching three-fourths of massage therapists, to required licensure covering all practicing massage therapists is now being proposed for adoption in 2022 in place of CAMTC's role the past 12 years. Cost projections for licensure provided in answers to earlier Sunrise economic questions suggest a modest reduction in fees charged to practitioners as compared with CAMTC current fees. Notably, the revenues and costs being projected are in terms of 2023-2024-2025 dollars. The public is unaware as to how CAMTC, if its franchise is extended, will adjust its pricing to recent spikes in inflation.

The central advantages offered by licensure remain consistency, clarity for the public, clear delineations about scope of practice for therapists, and much cleaner, more certain enforcement protocols for peace officers.

IX. ECONOMIC IMPACT OF LEGISLATION IS JUSTIFIED _____
LOW: ECONOMIC IMPACT NOT FULLY CONSIDERED. DOLLAR AND STAFFING COST ESTIMATES INACCURATE OR POORLY DONE.
HIGH: FULL ANALYSIS OF ALL COSTS INDICATE NET BENEFIT OF REGULATION.

We believe we have provided a thorough, thoughtful analysis of regulatory alternatives being considered, but would of course be happy to work with the Assembly and Senate Business and Professions Committee Consultants and Members to address any perceived shortcomings. That route feels more appropriate than us, as the applicant, evaluating our own work. Should reviewing parties find it necessary for us to provide more information for this section, we will do our best to be responsive to that direction.