

Blue
Sky

CONSULTING GROUP

Licensure or Certification?

A Feasibility Study of Licensure for Massage Therapists in
California

Prepared for

California Massage Therapy Council

In Response to Requirements in Business and Professions Code Section 4620(a)(1)

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1 Executive Summary

Currently, massage therapists in California can choose to be certified by an independent non-profit organization, the California Massage Therapy Council (CAMTC). This report – prepared in response to a legislative requirement for a licensure feasibility study – examines what would be required to implement a licensure model in place of the current certification model, and whether such a move would be desirable.¹

Nationally, licensure represents the most common form of regulation for most occupations and professions, including massage therapists. Under a licensure model, all practitioners are required to receive a license (generally from a governmental entity). In contrast, a certification model provides voluntary certification to those who meet the requirements and choose to become certified. According to one definition, “licensing restricts the practice of an occupation to those who hold a license, while certification restricts the use of the title, but not the practice, to those who are certified.”²

Adopting a licensure model is technically feasible, requiring an act of the legislature and approval by the governor.³ However, the issue which confronts the legislature, consumers, massage therapists, local government officials, and other stakeholders is, which system – licensure or certification – provides the greatest benefits at the lowest cost. In spite of the many benefits of regulation, and the increasing number of occupations and professions governed by such regulations, there has recently been an increasing awareness that these regulations come with a cost, both for consumers and for practitioners. For consumers, research has found that prices are higher in occupations that are licensed. For practitioners, a license can act as a barrier to work, preventing some would-be workers from obtaining a job in their chosen field. The state’s sunrise review process for establishing new occupational licenses explicitly acknowledged this tradeoff, and is guided by the belief that “the public is best served by minimal government intervention.”⁴

1.1 Why Regulate Massage Therapists?

In deciding whether or how to regulate massage therapists, legislators confront many of the same issues that surround regulation of other allied health fields (i.e. protecting the public from physical harm). In addition, however, regulation of massage therapists is often supported as a tool for local governments and law enforcement officials to use in combating prostitution and human trafficking. An examination of available

¹ See Business and Professions Code Section 4620(a)(1).

² Thornton, Robert J. and Edward J. Timmons, Licensing one of the World’s Oldest Professions: Massage.” *Journal of Law and Economics*, vol. 56 (May 2013), p. 371.

³ The primary obstacle to licensure – if the legislature were to determine such a move desirable – is political; when licensure has been proposed in the past, opposition from related professions such as physical therapists and chiropractors, has been an obstacle.

⁴ Assembly Committee on Business and Professions, “Review of Occupational Regulation and the ‘Sunrise’ Process.” <http://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/publications/Description%20of%20Sunrise%20Process-%20Asm.pdf>. Accessed December 5, 2016.

evidence, however, suggests that (a) physical injuries caused by massage therapists are very rare and (b) regulation of massage therapists is only of limited use in combating prostitution.

1.2 What is the Optimal Regulatory Model for Massage Therapists?

Given the relative lack of conclusive evidence supporting the effectiveness of regulation in achieving its most important stated goals, our conclusion is that the additional costs of a licensure model are not warranted. In fact, our review suggests that – while evidence is limited – the certification model is likely superior to a licensure model in accomplishing the goal of distinguishing legitimate practitioners from sex workers. And, a certification model has the capacity to accomplish this goal without raising prices for consumers or costs for the profession or restricting the ability of would-be massage therapists to work in their chosen field.

The primary benefit of California’s certification model as administered by CAMTC is that, because certification is voluntary, it can be revoked much more quickly and easily than can a state-granted license. Under the current approach, certificates can be suspended for reasons that would not be possible under most licensure models. Specifically, CAMTC has the ability to suspend a certificate based on credible allegations of wrongdoing (in the form of an arrest with charges filed for 647(b) or an act punishable as a sexually related crime or a declaration from victims or law enforcement officers). Under a licensure model, an allegation of wrongdoing would typically not be enough to take action.⁵ This ability to react quickly to allegations of wrongdoing is particularly important for purposes of distinguishing legitimate massage therapists from sex workers. Absent this ability, many illicit practitioners could continue to operate for months or years before official action could be taken to revoke or suspend their license. While this delay might not directly increase the extent of prostitution, it might well contribute to the ongoing perception that many massage therapists are really sex workers.

1.3 Conclusions and Recommendations

Regulation of massage therapists has many important goals, including protecting the public from physical harm and combating prostitution and human trafficking. However, our analysis found only limited evidence of harm to consumers caused by massage therapists. With respect to the second goal (combating prostitution), our analysis found that (a) regulation is of only limited value in combating prostitution and (b) to the extent that regulation can be effective, certification, with its ability to respond more efficiently to allegations of wrongdoing, is a better alternative than licensure. It must be noted, however, that this ability to respond more efficiently comes at a cost in terms of reduced due process rights for those accused of wrongdoing and a perceived lack of accountability from which a state licensure model might not suffer. Thus, certification represents the best alternative for regulation of massage therapists in California, but continued attention to accountability and due process is needed to maintain the faith in and therefor the effectiveness of this system.

⁵ In certain cases that pose extreme danger to the public, a government entity can suspend a practitioner’s license immediately.

2 Introduction

Currently, massage therapists in California can be voluntarily certified by an independent non-profit organization, the California Massage Therapy Council (CAMTC). This report examines what would be required to implement a licensure model in place of the current voluntary certification model, and whether such a move would be desirable.

This report was prepared in response to a legislative requirement. Specifically, Business and Professions Code Section 4620(a)(1) requires “a feasibility study of licensure for the massage profession, including a proposed scope of practice, legitimate techniques of massage, and related statutory recommendations.”

2.1 Methodology

In order to aid the legislature in determining the optimal approach for regulating massage therapists, we engaged in a broad stakeholder input process. This process involved structured interviews with important stakeholder groups, including the League of California Cities and California Police Chiefs Association, legislative staff from relevant committees, and representatives of California chiropractors and physical therapists. We also met with local law enforcement officials, individual massage therapists, and representatives from several associations of massage therapists, including the American Massage Therapy Association, Associated Bodywork and Massage Professionals, and the American Massage Council. Finally, we developed an online stakeholder input tool, which reached both certified and uncertified massage therapists, massage therapy school owners, local government and law enforcement officials, members of the massage therapy associations, and others. In total, we received more than 4,000 responses to this request for stakeholder input, which informed our identification of important issues for consideration and our analysis of those issues.

We also evaluated the regulatory approaches used by other states, including states that have recently moved from a certification to a licensure model. And, we conducted a thorough literature review, analyzing the available research on regulation of occupations in general, and massage therapists in particular.

2.2 Mechanisms for Regulating Occupations and Professions: Certification and Licensure

Nationally, licensure represents the most common form of regulation for occupations and professions, including massage therapists. Under a licensure model, legislation creates a practice act thereby allowing a governmental entity to grant a license to qualified individuals to conduct activities specified in a “scope of practice” (i.e. a statutory definition of what the state authorizes individuals to do under the terms of their license). The practice act also specifies a governance board, its duties and powers, and specific types of individuals who may be appointed to that board.

Under a licensure model, all practitioners are required to obtain a license, and anyone without a license (whether due to revocation or other reasons) would not be able to engage in the scope of practice of that regulated profession. In contrast to a licensure model, a certification model provides voluntary certification to

those who meet the requirements and choose to become certified. According to one definition, “licensing restricts the practice of an occupation to those who hold a license, while certification restricts the use of the title, but not the practice, to those who are certified.”⁶

The requirements for certification and licensure can be quite similar, requiring such activities as attending an approved school, receiving a minimum number of hours of didactic and practical training, passing a background check, and passing an exam. However, certification remains voluntary, and individuals wishing to practice massage therapy need not be certified (unless such certification is required by the local jurisdiction in which they operate).

The issue which confronts the legislature, consumers, massage therapists, local government officials, and other stakeholders in California is, which system – licensure or certification – provides the greatest benefits at the lowest cost. The remaining sections of this report explore the potential reasons for regulation of massage therapists, analyze the available data and information (including input from multiple stakeholders) with respect to the costs and benefits of the two systems, assess the systems used by other comparable states and occupations, and present conclusions and recommendations for consideration by the legislature, the California Massage Therapy Council, and stakeholders.

2.3 What’s Involved in Establishing a Licensure Program?

Establishing a statewide licensing program for massage therapists requires an act of the legislature and approval from the Governor. The first step in this process is a “sunrise” review in the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. These committees consider whether new occupational licensing is warranted. This sunrise review process is guided by two important criteria. First is the idea that “the public is best served by minimal governmental intervention” and, second, that “the decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government’s responsibility to protect the public when protection is needed.”⁷

Once the sunrise review process is complete, legislation must be crafted which specifies a scope of practice, identifies the overseeing entity (e.g. a stand-alone board, a committee under an existing board, or a bureau), and details the membership in the entity which will oversee the licensing activities, among other elements. If approved by the legislature and the governor, the bill becomes law and the state agency responsible for overseeing the new regulatory entity (generally the Department of Consumer Affairs) is tasked with assisting in the administrative activities necessary to develop a new entity. This new entity will need to draft regulations

⁶ Thornton, Robert J. and Edward J. Timmons, Licensing one of the World’s Oldest Professions: Massage.” *Journal of Law and Economics*, vol. 56 (May 2013), p. 371.

⁷ Assembly Committee on Business and Professions, “Review of Occupational Regulation and the ‘Sunrise’ Process.” <http://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/publications/Description%20of%20Sunrise%20Process-%20Asm.pdf>. Accessed December 5, 2016.

and hire staff, among other activities. The time necessary for launching a new board or bureau is approximately two years from the time of bill passage to licensing applicants. Once launched, the licensing entity maintains autonomy for policy decisions and relies on the DCA for administrative services, such as budgeting, human resources, information technology, and an investigative division, among other services. Once the board and staff are convened, regulations are drafted and adopted. With these steps complete licenses can be issued. Financing for a new board is typically provided by a loan from the state General Fund. This loan is repaid through application fees paid by licensees as well as through the license fee revenue itself as needed.

The primary obstacle to licensure, then, is not logistical, but rather political. Specifically, opposition from related professions as well as some elected officials can act to slow or stop efforts to create a new category of professional license. During past efforts to develop a licensure program for massage therapists, representative of the physical therapists and the chiropractors (among others) opposed licensure for massage therapists. Whether this opposition could be overcome should licensure again rise as an issue before the legislature is not known. However, the experience of other states (the overwhelming majority of which license massage therapists) suggest that a compromise is achievable.

2.4 History of Regulatory Efforts for Massage Therapists

In 2005, the California legislature debated how best to approach state-level licensure for massage therapists by undertaking a “sunrise review” process. The Joint Committee on Boards, Commissions and Consumer Protection at that time 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. The Committee determined that a state-level approach to regulation would be better.⁸

The recommended regulatory approach was modeled after the approach used for tax preparers and interior designers. Under this model, regulatory oversight is provided by a statutorily authorized nonprofit corporation with the authority to certify qualified individuals. While some massage therapists at that time advocated for a traditional licensure model, an apparent lack of support from the Schwarzenegger Administration and opposition from other professions prevented adoption of this more traditional approach.

Although supported by the Joint Committee, the first two recent efforts to establish a regulatory framework for massage therapists did not succeed. In 1978 and again in 1984, licensing laws were introduced and failed.

⁸ See “Background Paper for the California Massage Therapy Council.” Joint Oversight Hearing, March 14, 2016. Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions.

<http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/CAMTC%202016%20Background%20Paper.pdf>

Again in 2004, Assembly Bill 1388 (Kehoe) would have created a licensing act. This measure also failed. In 2006, Senate Bill 412 (Figueroa) would have established a nonprofit Massage Therapy Organization, but did not pass out of the Assembly. Two years later, in September 2008, Senate Bill 731 (Oropeza) was signed into law, establishing title protection and voluntary certification, and authorizing the creation of the nonprofit governing entity, the Massage Therapy Organization (later renamed the California Massage Therapy Council).

Since the enactment of the Massage Therapy Act, other legislation, most notably, Assembly Bill 1147 (Bonilla, Gomez, and Holden) made changes to the certification process, CAMTC board composition, and the process for certificate denials and discipline. Most recently, Assembly Bill 2194 (Salas) signed into law in September 2016 extends the sunset date for CAMTC by four years. In addition, the new law clarifies the procedures related to certificate denials and discipline and requires local jurisdictions to impose only reasonable fees and regulations.

By most accounts, this system appears to be working well. When contacted as part of our stakeholder process, the League of California Cities, one of the most important stakeholders, did not suggest any specific changes to the current system. And, among the more than 4,000 stakeholders who responded to our stakeholder input tool, most of whom were certified massage therapists, only 14 percent disagreed with the statement, “the current system of certifying massage therapists in California is working well.”

2.5 Why Regulate?

Regulating occupations and professions (typically through licensure) has become increasingly common over the past several decades. These policies are often crafted out of a desire to protect the public from harm. This harm is generally thought to be physical in nature, such as a back injury caused by a chiropractor or a chemical burn caused by a cosmetologist, but it can also be financial, such as a loss caused by an accountant. As the Little Hoover Commission noted in a recent report on occupational licensing in California, “Californians rely on occupational regulation to protect them. Doctors must prove proficiency in medical knowledge before they treat patients. Electricians must demonstrate they know their trade before they wire a house.”⁹ Across the country, legislatures have been very receptive to arguments about protecting the public from harm, and have acted both to increase the number of occupations and professions governed by some form of regulation and also to increase the requirements for obtaining a license.

In addition to protecting the public, regulation of occupations and professions has been adopted as a means of standardizing services, ensuring minimum quality standards, improving consumer access to information, increasing the accountability of regulated practitioners, and even to professionalize an occupation or profession.

⁹ Little Hoover Commission, “Jobs for Californians: Strategies to Ease Occupational Licensing Barriers.” October 2016, p. 5.

2.6 Most Occupations and Professions are Regulated Under a Licensure Model

A review of similar allied health occupations and professions indicates that most are regulated under a licensure model, as shown in Figure 1. All but massage therapists and athletic trainers have a practice act, scope of practice, and governing board (or committee) within the California Department of Consumer Affairs. Massage therapists have a title act, protecting the use of the occupational title and requiring minimum educational requirements. Athletic trainers have not been successful at establishing either a title or practice act. All of these similar occupations and professions require biennial renewal with required continuing education units.

Figure 1: Regulation of Similar Occupations and Professions

Profession	Level of Regulation	Entity	Licenses/ Certificate Holders	Renewal & CE Requirements	National Examination Recognition	Reciprocity with Other States
Acupuncture	Licensure. Practice act. Acupuncture Licensure Act	Yes. Acupuncture Board	11,477 (July 2015)	Biennial. 35-45 hours.	No. California Acupuncture Licensure Exam	No.
Athletic Trainers	None.	Title protection bills have been unsuccessful. Governor Brown vetoed two bills in two consecutive years – AB161 (Chau) 2015 and AB1890 (Chau) 2014. Veto message: I vetoed a nearly identical measure last year and continue to believe that the conditions set forth in this bill impose unnecessary burdens on athletic trainers without sufficient evidence that changes are needed.				
Chiropractors	Licensure. Practice act. Chiropractic Initiative Act of California	Yes. Board of Chiropractic Examiners	14,000 (2016)	Annual. 24 hours.	No. California Law and Professional Practice Exam	Yes.
Massage Therapy	Voluntary certification. Title act. Massage Therapy Act	No. California Massage Therapy Council	49,174 (Nov 2015)	Biennial recertification None.	Yes. MBLEx, BCETMB, or New York State Massage Therapy Examination. NCETM or NCETMB if taken prior to Feb 1, 2015.	Yes.
Naturopaths	Licensure. Practice act. Naturopathic Doctors Act	Yes. Naturopathic Medicine Committee	450 (2016)	Biennial. 60 hours.	Yes. Naturopathic Physicians Licensing Examination	No.
Occupational Therapy	Licensure. Practice act. Occupational Therapy Act	Yes. Board of Occupational Therapy	12,164 (Nov 2016)	Biennial. 24 units.	Yes. National Board for Certification in Occupational Therapy Examination	Yes.
Physical Therapy	Licensure. Practice act. Physical Therapy Practice Act	Yes. Physical Therapy Board	21,863 (2016)	Biennial. 15-30 hours.	Yes. National Physical Therapy Examination	Yes.

2.7 Efforts to Limit Regulation of Occupations and Professions

In spite of the many benefits of regulation, and the increasing number of occupations and professions governed by such regulations, there has recently been an increasing awareness that these regulations come with a cost, both for consumers and for practitioners. For consumers, research has found that prices are higher for occupations and professions that are licensed. For practitioners, a license can act as a barrier to work, preventing some would be workers from obtaining a job in their chosen field.

2.7.1 Potential for Higher Costs for Consumers

Research suggests that costs for consumers are higher in licensed occupations. By restricting the supply of available workers, regulation can act to push up prices in the marketplace. Regulation can also increase the level of training and education among workers in a profession or occupation, which also works to increase wages and, ultimately, prices. According to research presented to the Little Hoover Commission, “instituting licenses raised prices by 5 percent to 33 percent.”¹⁰

To the extent that these higher prices are paid in exchange for increased consumer safety, this might well be a price worth paying. Evidence suggests, however, that harm to consumers may be no less common in states with licenses relative to states without licenses. Again, according to the Little Hoover Commission report, “Researchers reported to the Commission that for many occupations, bad outcomes did not increase when licensing restrictions were relaxed to make it easier to enter those occupations.”

2.7.2 Restricted Entry to Employment

To the extent that regulation (particularly licensure) restricts entry to an occupation, the effects may be felt not just by consumers who pay higher prices for services, but also by would-be practitioners who may be denied entry to their chosen line of work. Importantly, these would-be practitioners are frequently among the more vulnerable members of our society. As the Little Hoover Commission report notes: “the impacts of licensing fall hardest on some of the most difficult groups to employ: former offenders, military spouses, veterans, and people who were educated and trained outside of the state.”¹¹ Licensing can also inhibit interstate mobility to the extent that professional licensing standards differ across states or states do not offer reciprocity to those licensed in other states.

¹⁰ Ibid.

¹¹ Little Hoover Commission, *op. cit.*, p. 14.

2.7.3 To Regulate or Not to Regulate?

Given the importance of protecting the public from harm, it is easy to understand why legislators have been willing to approve regulation (generally licensure) for so many occupations and professions; protecting the public from harm is among the most important elements of a lawmaker's job. This desire, however, must be balanced against the potential costs of regulation. While there are no universal standards for determining when regulation is appropriate, the state's sunrise review process for establishing a new occupational license category is guided by several principles. One of these principles is the notion that, "the public is best served by minimal government intervention."¹² Another important principle guiding the establishment of new occupational licenses is that "the decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government's responsibility to protect the public when protection is clearly needed."¹³ Given these relatively high standards for establishing a new licensing category, it seems clear that, (a) regulation must be shown to be effective at protecting the public, and (b) that the harm to the public must be severe or widespread.

3 Occupational Regulation: Special Case of Massage Therapists

In deciding whether or how to regulate massage therapists, legislators confront many of the same issues that surround regulation of other allied health fields: weighing the benefits of protecting the public from harm against the potential costs of regulation in terms of higher prices for consumers and restricted access for would be practitioners. In addition, however, regulation of massage therapists is often supported as a tool for distinguishing legitimate massage therapists from sex workers and for local governments and law enforcement officials to use in combating prostitution and human trafficking. This rationale for regulation is unique among the allied health fields, yet it comprises the most often cited justification for regulation among both massage therapists and law enforcement officials alike.¹⁴

In addition, regulation of massage therapists can also help to provide consistency across the state in terms of the rules with which massage therapists must comply, and can help massage therapists and massage therapy businesses increase their perceived level of "legitimacy" and thereby aid in obtaining needed approvals from local governments. Regulation can also help to identify and prevent from practicing massage therapists who commit crimes such as sexual assault against their clients. Finally, regulation of massage therapists can serve to increase the level of consumer information about individual massage therapists, such as minimum level of education and training, history of complaints, lawsuits filed or evidence of sexual misconduct, and it can provide an indication to consumers of the quality of the massage therapist, among other potential reasons for

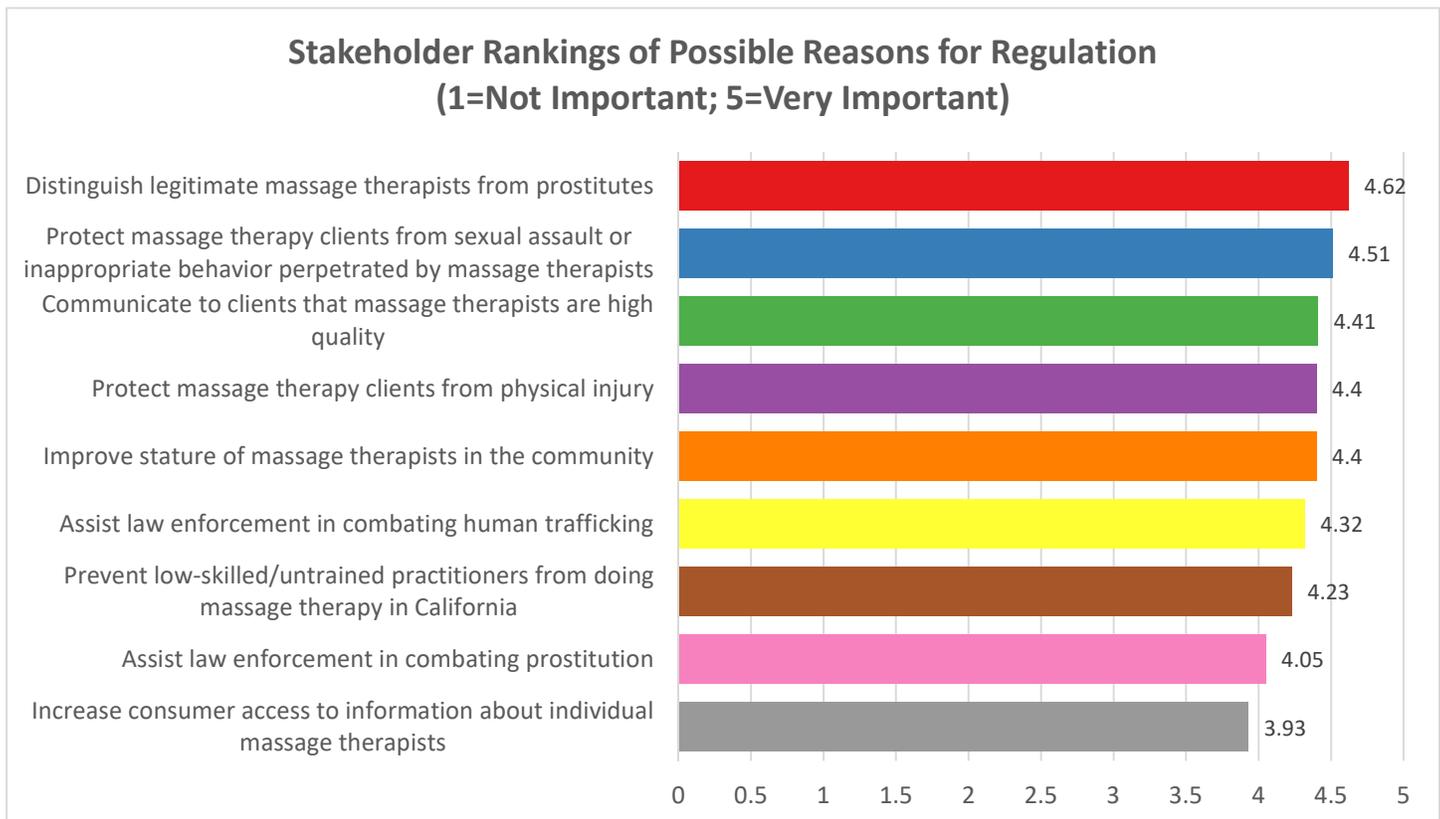
¹² Assembly Committee on Business and Professions, "Review of Occupational Regulation and the 'Sunrise' Process." <http://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/publications/Description%20of%20Sunrise%20Process-%20Asm.pdf>. Accessed December 5, 2016.

¹³ Ibid.

¹⁴ Based on input received from more than 4,000 stakeholders contacted as part of this feasibility study.

regulation. Figure 2 presents stakeholders' rankings of several of the possible reasons for regulation of massage therapists.

Figure 2: Ranking of Possible Reasons for Regulation According to Stakeholders



Most of the stakeholders providing input for this measure were massage therapists (more than 90 percent), so the views represented in Figure 2 generally reflect the perceived benefits of regulation among this group. The most important reason for regulation cited was to distinguish legitimate massage therapists from sex workers. This view reflects the ongoing frustration that many massage therapists have with being mistaken for, or assumed to be, a sex worker. Other reasons for regulation that were believed to be important included protecting massage therapy clients from sexual assault or inappropriate behavior perpetrated by massage therapists, communicating to clients that a massage therapist is of high quality, and protecting massage therapy clients from physical harm.

3.1 How Effective is Regulation of Massage Therapists?

The question for legislators and stakeholders alike is, can regulation effectively accomplish the many goals put forth. And, if so, which system – licensure or certification – better serves the public interest?

3.1.1 Protect the Public from Physical Harm

Protecting the public from physical harm is among the most common justifications for regulation of allied health professionals, including massage therapists. Among stakeholders who provided input into our process, most indicated that protecting massage therapy clients from physical injury was an important priority. Specifically, when asked to indicate if protecting massage therapy clients from physical injury was an important goal for regulation, the average response was 4.4, with 4 being “Important” and 5 being “Very Important.”

In spite of the perceived importance of this goal, however, limited evidence exists to support the contention that massage therapy clients are in fact at risk of physical harm. Interviews with legislative staff indicated that no reports of injury caused by massage therapists had been heard as part of the sunrise or legislative review processes establishing or updating California’s current regulatory system. Among local government and law enforcement officials who were contacted through our stakeholder outreach process, less than 3% were aware of any incidents in which a massage therapist had caused physical injury to a client. A search for data or reports nationally on injuries caused by massage therapists similarly failed to turn up evidence of widespread or severe harm caused by massage therapists. And, among the massage therapists who responded to our stakeholder input tool, the overwhelming majority (more than 85 percent) were not aware of any incidents in which a massage therapist had caused physical injury to a client. Many reported comments indicating that injuries caused by massage therapists were rare. One stakeholder, for example, wrote that, “I have never heard of a client being seriously injured.” Another stated that, “in 20 years of practice, I’ve never heard of someone being injured... by a massage therapist.”

Among the less than 15 percent of massage therapists who were aware of examples of physical injury caused by a massage therapist, many reported anecdotal or secondhand information relating to minor injuries. For example, one respondent indicated “just hearsay from clients” when asked about injuries caused by massage therapists. Another wrote, “just a few clients told me they were harmed by a therapist.” Frequently, where stakeholders were aware of injuries caused by massage therapists, these injuries were minor. For example, one stakeholder reported that a, “therapist informed me of an email they received from their client complaining that the therapist had bruised them during their massage.” Another stakeholder reported that a massage therapist “applied too deep of pressure and caused bruising and pain.”

Several stakeholders reported that injuries of which they were aware were caused by massage therapists acting in a manner outside of the normal scope of practice or as a result of willful disregard for a client’s wishes. For example, one stakeholder reported that, “the therapist did stretching techniques (not in the scope of his practice) and ended up pulling a muscle in the client’s neck.” Another reported that, “a client asked the therapist to not use so much pressure in a certain area. The therapist told her she had knots and proceeded to use too much pressure, thus bruising her kidneys.”

While most massage therapists either had not heard of massage related injuries or were aware of only minor injuries, some massage therapists did report hearing of more serious injuries. The most commonly reported types of more serious injuries included minor nerve damage, cracked ribs or other bones, and damage to blood vessels, among other types of injuries reported.

Limited reports of serious injuries from stakeholders are confirmed by data from insurance claims. According to data from the American Massage Council, injury claims for massage therapists are far lower than comparable claims for acupuncturists and chiropractors. Claims rates for massage therapists are just 0.2 percent, as compared with 0.8 percent for acupuncturists and 1.5 percent for chiropractors. These low claims rates are reflected in lower insurance premiums as well, with massage therapists paying, on average, just 3 percent of the cost of the average premium for a chiropractor.¹⁵

Stakeholders were also asked whether additional training would have prevented the injuries about which they were aware. Many stakeholders provided comments such as, “yes, many of the less trained massage therapists did not get adequate training in pathology, anatomy and ethics.” Another responded, “yes, the practitioner had not yet completed more than 200 hours training, but was being allowed to work at a chiropractor's office while she went to school.” Still another wrote, “Yes. Not clear if the therapist had any formal training, otherwise would know better than to walk on clients back with full 150 lb weight.”

Many other stakeholders, however, indicated that additional training would not have prevented injury. One such respondent wrote that, “I have seen proof of fully certified therapists providing poor bruising injurious service, and also massage providers that have been trained ‘in house’ who provide exemplary relaxation service.” Another responded that, “No, this was an error in judgment. The massage therapist was highly trained & experienced, but one wrong move created a lot of pain in the client.” Another stakeholder who agreed that more training was not necessarily needed wrote, “No. They had 1200 hours. If you don’t listen... more training will not help.... More hours doesn’t equal Good Therapist!”

These comments suggest that many stakeholders (largely CAMTC certified massage therapists) believe that at least some training is needed, and that untrained massage therapists can in fact cause harm. The severity and extent of this harm, however, is apparently quite low as evidenced by the low overall injury claim rates, low insurance premium rates, and large majority of therapists who were not aware of any injuries caused by massage therapists.

3.1.2 Addressing Sex Workers Posing as Massage Therapists

While the overwhelming majority of massage therapists are legitimate, sex workers posing as massage therapists or working in “massage parlors” have confounded legitimate massage professionals and law enforcement officials alike. Indeed, combating prostitution was cited by interviewees and local government and law enforcement officials responding to our online stakeholder input tool as the most important purpose of regulation. This first priority was followed closely by distinguishing legitimate massage therapists from sex workers. Massage therapists also believed that prostitution is an important reason for regulation, although their perspective was somewhat different from that of local government and law enforcement officials. Among

¹⁵ Email correspondence with Michael Schroeder, American Massage Council.

massage therapists, aiding law enforcement in combating prostitution was among the least important reasons for regulation (ranking 9th out of 10 possible reasons for regulation listed in the online tool – see Figure 3). However, the most important reason for regulation cited by this group did relate to prostitution: distinguishing massage therapists from sex workers. Thus, while the specific manifestations and characterization of the issues differ among these groups, there is consensus that addressing prostitution is an important reason for regulation.

Figure 3: Ranked Importance of Reason for Regulating Massage Therapists by Group¹⁶

	Local Government Official	Local Law Enforcement	Massage Therapist CAMTC Certified or Licensed in Other State	Massage Schools, Business Owners, or Other Massage Professionals	Uncertified Massage Therapists	Other
Assist law enforcement in combating prostitution	1	2	9	9	10	10
Distinguish legitimate massage therapists from sex workers	3	4	1	1	3	1

An examination of available evidence, however, suggests that regulation of massage therapists is only of limited use in combating prostitution. Interviews with law enforcement officials indicated that this group is generally supportive of regulation. However, when asked how regulation is in fact used to combat prostitution, interviewees acknowledged that regulation on its own does not adequately address the issue of sex workers posing as legitimate massage therapists. One official explained that, even if some of the employees in an establishment are certified, other uncertified personnel such as a receptionist or “towel girl” could still engage in illicit acts while maintaining an apparently legitimate purpose for being on the premises. Furthermore, these officials acknowledged that individuals engaged in prostitution are already breaking the law, so the added threat of legal action for practicing massage therapy without a proper license would be only a minimal deterrent.

An examination of the effect of regulation in other states points to a similar conclusion: regulation is of limited use in combating prostitution and human trafficking. Each of the licensure-model states that we examined continue to endure “massage parlors” that offer illicit services. For example, New York has required statewide licensing of massage therapists since 1967 and requires the largest number of massage therapy training hours in the country (1,000), yet an analysis of the websites that customers use to locate erotic massage parlors

¹⁶ Responses to the question, “Please indicate the extent to which you think the following are important priorities for regulation (either certification or licensure) of massage therapists” organized by self-reported occupational group.

(eroticMP.com) suggests that New York City alone hosts at least 1,200 of these establishments.¹⁷ Similarly, Florida, Texas, Ohio, Washington, and Colorado require statewide licensing, and all continue to contend with illicit massage parlors.¹⁸ In sum, there is no conclusive evidence to suggest that statewide licensing of massage therapists curbs prostitution and human trafficking. In fact, interviews with law enforcement officials in the state of Washington conducted by the Urban Institute suggested that those involved in commercial sex under the guise of massage are moving from a state with voluntary certification (California) to a state with statewide licensing (Washington) because they can make more money in Washington.¹⁹

An examination of (very limited) available research on the impact of regulation of massage therapists on prostitution and human trafficking points to a similar conclusion. A research study by the Urban Institute conducted approximately 250 interviews with law enforcement officials, convicted business owners, pimps, sex workers, and human trafficking victims in eight major U.S. cities. The study found that many of the illicit massage parlors are involved in an organized crime network that traffics women from other countries and forces them to work off debts through the massage parlors. These establishments also employ voluntary sex workers. The women providing these illicit services, both voluntarily and involuntarily, obtain legitimate massage licenses or fake licenses through the black market, or they work without a license.

Another indication that statewide licensing may not significantly reduce the use of massage as a front for prostitution comes from stakeholder feedback from certified massage therapists in California. Some of these therapists live in cities that require all individuals practicing massage to have CAMTC certification, yet many report that massage parlors offering prostitution services continue to operate despite the local requirement for certification.²⁰ Other stakeholders responding to the input tool also wrote about the prevalence of illicit massage businesses, even in cities that require a CAMTC certification. For example, one stakeholder wrote that, “since my time in LA - the ridiculously high amount of trafficked girls & prostitutes operating as massage therapists has actually made my work dangerous.” While it is still possible that certification has reduced the

¹⁷ The analysis does not provide the total number of illicit massage parlors for New York or the country. Other similar websites list additional massage parlors. Dank, Meredith, Bilal Khan, P. Mitchell Downey, et al. “Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities,” The Urban Institute, March 2014. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413047-Estimating-the-Size-and-Structure-of-the-Underground-Commercial-Sex-Economy-in-Eight-Major-US-Cities.PDF> (accessed November 2016); Kemsley, Tamarra and Brad Hamilton, “Inside the \$1 billion business of erotic massage parlors,” *New York Post*, April 5, 2015. <http://nypost.com/2015/04/05/inside-the-1-billion-business-of-erotic-massage-parlors/> (accessed November 2016).

¹⁸ Dank, Meredith, Bilal Khan, P. Mitchell Downey, et al. “Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities,” The Urban Institute, March 2014. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413047-Estimating-the-Size-and-Structure-of-the-Underground-Commercial-Sex-Economy-in-Eight-Major-US-Cities.PDF> (accessed November 2016); Davis, Kathleen YS, “Human Trafficking and Modern Day Slavery in Ohio,” Polaris Project, <http://www.ccv.org/wp-content/uploads/2010/04/Ohio-Report-on-Trafficking.pdf> (accessed November 2016).

¹⁹ Ibid.

²⁰ Comments in response to questions posed and disseminated to CAMTC’s member list through a Massage Therapy Stakeholder Tool in November 2016 created by Blue Sky Consulting Group.

prevalence of illicit massage businesses, there is, at a minimum, limited evidence to support the contention that regulation has made a significant impact on this trade.²¹

Law enforcement can apply resources toward enforcing laws against prostitution by arresting sex workers posing as massage therapists regardless of certification or licensing laws. However, this type of enforcement does not effectively reduce the commercial sex industry. Both trafficked women and voluntary sex workers frequently move from one massage parlor to the next, city to city and state to state, either by being passed involuntarily or moving voluntarily through independent networking. The business strategy of illicit massage parlors involves rotating sex workers to maintain an interested consumer base and maximize profits. Attempting to eradicate prostitution by arresting the sex workers posing as massage therapists does not appear likely to affect the massage parlor business, which appears to have access to a seemingly endless supply of mobile workers.²²

3.1.2.1 DISTINGUISHING MASSAGE THERAPY FROM PROSTITUTION

Although available evidence does not conclusively show that regulating massage therapists is an effective way to reduce prostitution and human trafficking, the related issue of whether regulation can help distinguish sex workers from legitimate massage therapists remains. On this point available evidence is also limited. Numerous stakeholders expressed concern about the safety and protection of massage therapists from clients making sexual advances, harassment, or assault. The problem, they contend, is that the association between massage and prostitution in particular consumers' minds leads men seeking sexual services to indiscriminately solicit legitimate massage therapists. Some massage therapists have felt fear and intimidation from these clients' reaction when their sexual solicitations were rebuffed. Many CAMTC certified massage therapists reported that, their certification notwithstanding, they had been propositioned by clients expecting something other than legitimate massage therapy services. One CAMTC certified massage therapist reported that, "I have encountered too many men who assume I will offer sex acts - and this not only puts me at risk, but tarnishes the reputation of the entire field." Another certified massage therapist wrote that protecting "massage therapists from sexual assault or inappropriate behavior perpetrated by massage therapy clients" was among the most important purposes of regulation. While these are just anecdotes, they nevertheless suggest (a) that sexual advances from massage therapy clients are a serious issue and (b) that certification by itself is not sufficient to distinguish legitimate massage therapists from sex workers (though it may help).

²¹ In many communities throughout the state, prostitution arrests are frequently not prosecuted by local district attorneys, either because limited evidence makes convictions hard to obtain, due to limited resources, or out of a desire not to "blame the victim."

²² Dank, Meredith, Bilal Khan, P. Mitchell Downey, et al. "Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities," The Urban Institute, March 2014. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413047-Estimating-the-Size-and-Structure-of-the-Underground-Commercial-Sex-Economy-in-Eight-Major-US-Cities.PDF> (accessed November 2016)

An examination of other states does not offer much additional support for the notion that regulation can effectively distinguish legitimate massage therapists from sex workers. Some massage therapists from New York believe that New York's system of statewide licensing and preemption over local ordinances effectively creates such a distinction. Yet, there is evidence that illicit massage parlors continue to flourish in New York.²³ Nevertheless, acting on complaints, New York police will arrest unlicensed practitioners, charge them with felonies if appropriate, and close the establishment when possible – something that is less likely to occur in California (outside of those jurisdictions that have allocated sufficient resources for enforcement and have well-crafted ordinances).

One reason why the conflation of sex workers and massage therapists persists may relate to the proliferation of fraudulent diplomas and transcripts from massage therapy schools. If sex workers or victims of human trafficking are able to obtain fraudulent school documents, they may be able to obtain a certificate (or a license under a licensure model) more easily. Therefore, regulation of massage therapy schools represents another potential mechanism for distinguishing massage therapists from sex workers. While no published research exists to document the effectiveness of such an approach, limiting the ability of would-be sex workers to obtain certificates or licenses based on fraudulent documents might well help to further distance legitimate massage therapists from this group.

In spite of the relative lack of evidence supporting the idea that regulation can effectively distinguish legitimate massage therapists from sex workers, using regulation as a tool to try and accomplish this goal remains a high priority among both massage therapists and law enforcement officials alike.

3.1.3 Other Reasons for Regulation

Protecting the public from harm caused by massage therapists and combating prostitution (or distinguishing legitimate massage therapists from sex workers) are by far the most commonly stated reasons for regulation. However, there are several other reasons that are often put forward as a justification for regulation.

3.1.3.1 PROTECTING MASSAGE THERAPY CLIENTS FROM SEXUAL ASSAULT

One of the potential reasons for regulation rated highly by stakeholders was to protect massage therapy clients from sexual assault or inappropriate behavior perpetrated by massage therapists. While no research studies

²³ The analysis does not provide the total number of illicit massage parlors for New York or the country. Other similar websites list additional massage parlors. Dank, Meredith, Bilal Khan, P. Mitchell Downey, et al. "Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities," The Urban Institute, March 2014. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413047-Estimating-the-Size-and-Structure-of-the-Underground-Commercial-Sex-Economy-in-Eight-Major-US-Cities.PDF> (accessed November 2016); Kemsley, Tamarra and Brad Hamilton, "Inside the \$1 billion business of erotic massage parlors," *New York Post*, April 5, 2015. <http://nypost.com/2015/04/05/inside-the-1-billion-business-of-erotic-massage-parlors/> (accessed November 2016).

exist to support the idea that regulation is effective in achieving this goal, removal of certification or licensure can at least make it more difficult for a “bad actor” to continue to interact with clients. In this instance, effective and rapid revocation or suspension of certification or licensure can be effective in removing such individuals from among the ranks of legitimate massage therapists. Unlike a sex worker posing as a massage therapist fearing arrest more than sanctions for unlicensed massage therapy practice, a massage therapist who perpetrates sexual assault or other inappropriate conduct may well fear the consequences of a certification or licensure revocation or suspension.

3.1.3.2 REDUCING DISCRIMINATION AND ZONING RESTRICTIONS

Another potential benefit of statewide regulation is the reduction in discrimination against or opposition to legitimate massage therapists seeking local business licenses. Stakeholders reported that some local ordinances in California contribute to the association of prostitution and massage, such as assigning all massage businesses to areas of town zoned for adult entertainment. Some stakeholders reported that local requirements, such as background screening and fingerprinting, testing for sexually transmitted diseases, and excessive fees indiscriminately target legitimate massage therapists without impacting the illicit practitioners. These stakeholders reported that these requirements have had little if any effect on the presence of illicit “massage parlors” but nonetheless impact legitimate businesses. Respondents, therefore, question the rationale for burdening massage therapists with such local requirements. The following are two examples of the many comments to this effect:

“My city allows the prostitutes and human trafficking places to operate without inspections. Our city just passed legislation that requires CAMTC or be fingerprinted and background checked and approved by the police department in order to practice, at my expense. The city is not addressing the websites that promote sex services and ratings of the providers. The true therapists are paying to prove we are bonafide, but nothing is done about the bigger problem.”

“It seems as though there are many businesses that are not working above board that continue to run their practices as usual.”

Addressing local opposition to massage therapy businesses was an important motivation for the initial regulatory efforts that resulted in creation of CAMTC. In 2011, Assembly Bill 619 was passed, prohibiting local governments from targeting land use restrictions at CAMTC certified professionals or the establishments employing only certified individuals. Any land use restrictions that a local government applied to CAMTC certified professionals or their establishments would have to apply to all other individuals and businesses

providing professional services.²⁴ Strong local opposition to this restriction, however, led to modifications several years later. In 2014, Assembly Bill 1147 amended the Business and Professions Code to allow local governments to impose different land use regulations and reasonable health and safety requirements on massage businesses than those applied to other professional services.²⁵ Most recently, Assembly Bill 2194 (Salas) signed into law in September 2016 prohibits local jurisdictions from imposing unreasonable fees and regulations.

3.1.3.3 OTHER POTENTIAL BENEFITS OF REGULATION

Other potential benefits of regulation include increased consumer information about individual massage therapists, such as history of complaints, lawsuits filed or evidence of sexual misconduct, improved stature for the massage therapy profession, and increased quality of services provided. Limited evidence exists with which to test these additional claims, however, logic dictates that regulation may well provide benefits in these areas.

4 Regulation of Massage Therapy in Other States

California is somewhat unique in terms of its approach to the regulation of massage therapists. California is one of 47 states that regulate massage therapy, but 40 of those states require licensing. The remaining states utilize either registration or certification. In an effort to determine if other states have developed effective ways of accomplishing the primary goals of regulation of massage therapists, we examined two classes of states. First, we researched three large states – Texas, New York, and Florida. Each of these is among the 40 that require a license to practice massage therapy. We also examined two states – Wisconsin and Michigan – that have recently moved from certification to licensure in order to determine if issues that prompted those states to alter their regulatory framework were relevant for California.

4.1 Large States that License Massage Therapists: Texas, New York, and Florida

Texas has required massage therapists to obtain a license to practice since 1985, New York since 1967, and Florida since 1978. The number of massage therapists licensed and practicing in each state varies. Florida has more practicing licensed massage therapists per person than New York. In Florida, 31,601 massage therapists

²⁴ “...these ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, and zoning requirements shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision” Section 4612(b)(2)(B)(4) of the Business and Professions Code http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0601-0650/ab_619_bill_20110803_chaptered.html (accessed December 2016).

²⁵ “(c) This section shall not be construed to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a healing arts professional licensed under Division 2 (commencing with Section 500) or licensed or certified by an entity established under this code or a person or group of persons described in subdivision (a).” Business and Professions Code Section 460(c) http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1147 (accessed December 2016).

constitute a ratio of 1 therapist for each 641 Floridians. In New York, the 15,566 therapists constitute a ratio of 1 therapist for each 1,271 New Yorkers.²⁶ California ranks somewhere between these two states, with one certified massage therapist for each 796 residents. Because certification is voluntary, however, this number understates the true population of massage therapists in the state, since an unknown number of massage therapists are not certified.

The higher ratio in New York compared to Florida may be reflective of more stringent licensing requirements. To obtain a New York massage therapy license requires a practitioner to complete 1,000 hours of training, more than most states. Florida, in contrast, requires 500 hours of training. Both states require background screening and passage of an exam, such as the Massage & Bodywork Licensing Examination (MBLEx) or the New York State Massage Therapy Examination. As for Texas, the number of licensed practitioners is unavailable because the state is transitioning the regulatory functions for massage therapy licensing from the Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation in response to a sunset review that found DSHS ineffective in the regulation of massage therapists.²⁷

Each of these states organizes its regulatory functions in different departments. Florida and Texas administer massage licenses through the state departments of health. New York regulates massage therapy and 53 other occupations through the New York State Education Department (NYSED), which is reflective of the state's stated purpose for occupational licensing: to ensure proper education of the practitioners.

The primary focus and functions of the Florida Department of Health (FLDOH) and NYSED are to protect consumers from harm caused by massage therapists. FLDOH and NYSED respond to complaints with a process that consists of a time-limited preliminary investigation (10 days in Florida and 45 days in New York) and, if probable cause is found, further investigation and adjudication. Most cases are resolved in a matter of months, but complex cases can take two years or more to resolve. Florida attempts to limit the length of time an investigation may take by requiring Board approval to prosecute a case over a year old. To allow for swift action without compromising due process, these states issue emergency orders when necessary. Florida's Surgeon General and NYSED's Board of Regents can immediately suspend a license (until the completion of trial proceedings) in the event of a serious allegation of danger to the public, such as sexual assault.

While both New York and Florida confront problems associated with illicit massage businesses and sex workers posing as legitimate massage therapists, each state has adopted a different approach to addressing the problem. New York maintains a separation between the function of occupational licensing as a mechanism to

²⁶ Based on 2016 state population estimates from the U.S. Census Bureau: Florida (20,271,272) and New York (19,795,791).

²⁷ In 2015, a sunset report found DSHS ineffective and recommended transferring the regulation of 13 occupations to the Texas Department of Licensing and Regulation, which will take place in 2017. Sunset Advisory Commission, "Sunset Staff Report with Final Results: Department of State Health Services," Texas Legislature, July 2015.

<https://www.sunset.texas.gov/public/uploads/DSHS%20Final%20Results.pdf> (accessed November 2016).

ensure proper education of massage therapists and the state's enforcement of laws against prostitution and organized crime. New York defends the distinction between massage therapy and prostitution by not allowing local governments to regulate licensed massage therapists for the purpose of dealing with illegal practitioners and by not allowing local governments to identify massage as adult entertainment. NYSED does not conduct independently initiated investigations into massage businesses or individual massage therapists. Instead, it reacts only to complaints received from the public. In response to complaints about unlicensed activity, NYSED can issue cease and desist orders and support the attorney general in prosecuting the offenders.²⁸

In contrast, FLDOH is more involved in proactively investigating unlicensed activity. Though Florida's Board of Massage therapy only deals with cases involving licensed massage therapists, FLDOH has a unit devoted to unlicensed activity. The Unlicensed Activity Unit has a dedicated hotline for consumers to report this type of violation and works with law enforcement to prosecute individuals practicing without a license. FLDOH's Investigative Services Unit consists of a team of 18 investigators across 11 field offices that conduct their own investigations into allegations of unlicensed activity and prostitution who often work closely with law enforcement.²⁹ Issues involving human trafficking, however, are left to law enforcement and homeland security.

Florida further regulates the industry of massage therapy through statewide licensing of massage therapy establishments. Recent changes in 2013 to the statute on massage establishment licensing first established in 1978 intend to curb prostitution and human trafficking.³⁰ These new requirements prohibit advertisement of or engagement in unlawful sexual misconduct with a client, prohibit operation between the hours of midnight and 5:00 a.m., and prohibit the use of the establishment as a principal domicile. Business owners can lose their license and face criminal penalties for these violations.³¹ In addition, an owner can lose the establishment license for employing an individual that practices massage without a license even if no further crime was committed. FLDOH enforces these regulations by regularly performing unannounced inspections of all establishments. FLDOH also works with local law enforcement to do under cover inspections. Some of these

²⁸ Interview with Kathleen Doyle, Executive Secretary, Office of Professions, New York State Education Department, November 14, 2016.

²⁹ Interview with Kama Monroe, Executive Director of the Florida Board of Massage Therapy, and Brad Dalton, Deputy Press Secretary, Florida Department of Health, November 1, 2016. Email correspondence with Brad Dalton, Deputy Press Secretary, Florida Department of Health, November 1, 2016. Florida Department of Health, "Enforcement Units," <http://www.floridahealth.gov/newsroom/media-resources/healthcare-licensing/enforcement-units.html> (accessed November 2016); Florida Department of Health, "Investigative Services Unit," <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/isu-brochure1.pdf> (accessed November 2016).

³⁰ Florida's 2013 legislative session saw the passage of House Bill 7005, and with it significant changes to massage establishment regulation. This language became effective October 1, 2013.

³¹ The Florida Senate, "CS/CS/CS/HB 7005 – Massage Establishments," Bill Summary prepared by Regulated Industries Committee, <http://www.flsenate.gov/Committees/BillSummaries/2013/html/456> (accessed November 2016).

FLDOH staff members support the state's efforts against human trafficking by participating in the state's human trafficking task force.³²

New York State does not license massage establishments, though massage businesses employing an unlicensed individual practicing massage may be prosecuted by the attorney general. New York issues cease and desist orders in response to complaints of businesses advertising as massage that do not employ licensed practitioners. False advertising is a misdemeanor.

Limited data prevents making a definitive assessment of the effectiveness of these two approaches to regulating massage therapists. No clear evidence exists to determine if one manner of regulating message therapy is superior to others, and no data exists to suggest that one form of regulation was superior in terms of reducing injury or sexual assault perpetrated by massage therapists, the prevalence of prostitution, or the extent of human trafficking.

Available administrative data do suggest that licensed massage therapists receive disciplinary action infrequently. Of the 31,601 licensed massage therapists in Florida, FLDOH received 1,157 complaints against licensed practitioners, issued 12 emergency orders, and took disciplinary actions against 60 licensed practitioners, including the revocation of 15 licenses in Fiscal Year 2015-16. Additionally, FLDOH received 344 complaints of unlicensed activity, used 154 cease and desist orders, and made 151 referrals to law enforcement.³³ Of the 15,566 licensed massage therapists in New York, NYSED estimated they received 40-70 complaints annually and took disciplinary action against 5 to 15 licensed practitioners each year. The number of complaints was small in each state relative to the number of licensed practitioners as were the number of complaints that required a disciplinary action. Neither state typically received complaints for violations of the scope of practice, but further information was unavailable because Florida and New York do not publish a breakdown of the nature of complaint against licensed practitioners.

4.1.1 States that Moved from Certification to Licensure

Most states require statewide licensing for massage therapists and have done so for an extended period. However, two states – Wisconsin and Michigan – recently passed legislation to change from a voluntary system of certification (similar to California's) to one requiring mandatory licensure. We examined the testimony surrounding these changes to determine if specific problems with a certification model or benefits of a licensure model prompted legislative action.

³² Interview with Kama Monroe, Executive Director of the Florida Board of Massage Therapy, and Brad Dalton, Deputy Press Secretary, Florida Department of Health, November 1, 2016. Email correspondence with Brad Dalton, Deputy Press Secretary, Florida Department of Health, November 1, 2016.

³³ Florida Department of Health, "Annual Report and Long-Range Plan: Fiscal Year 2015-2016," Division of Medical Quality Assurance, <http://mqawebteam.com/annualreports/1516/#33/z> (accessed November 2016).

Our review found that the impetus for legislating statewide licensing for massage therapists often originates from an association or coalition of certified massage therapists who are very involved with the drafting of the legislation. Bill sponsors and others who testified in support of the bills emphasized the importance of licensing for the protection of consumers, but the cases we examined did not provide clear evidence demonstrating that untrained massage therapists had harmed consumers. In both states, an argument used in support of licensing was simply that most states require it. In neither state did specific events such as serious or widespread harm to the public appear to be the catalyst for legislative action.

4.1.1.1 WISCONSIN

Wisconsin passed legislation in 2010 to replace voluntary certification with statewide licensing of massage therapists. Prior to 2010, Wisconsin required practitioners using the titles “Massage Therapist” and “Bodyworker” to obtain certification from the Wisconsin Department of Regulation and Licensing, but allowed others who did not use those titles to practice massage therapy or bodywork without certification.³⁴ The passage of Assembly Bill 588 restricted practice to only those licensed by the state.

Legislative interest in statewide licensure began in 2007 when a representative from the Wisconsin chapter of the American Massage Therapy Association (AMTA-WI) presented state representatives with results from a survey that showed most certified massage therapists and bodyworkers wanted the state to license their occupations.³⁵ Representatives of the AMTA-WI chapter believed the survey results were instrumental in persuading legislators to sponsor a bill for statewide licensure.³⁶

AMTA-WI representatives contributed to the process of drafting the bill co-sponsored by Representative Terese Berceau and Senator Dave Hansen. In 2009, Representative Berceau and Senator Hansen circulated letters and submitted testimony during committee hearings that articulated reasons for passing statewide licensure. These letters argued that massage therapy was increasingly being used for treatment of health conditions and it was therefore necessary to implement standards of care to enhance consumer confidence and consumer protection. Testimony from a massage therapist reinforced these points. The therapist testified that her training protected clients in two instances. In one instance, the therapist did not perform a massage on a very insistent pregnant client because she suffered from varicose veins. The therapist stated that in such a case massage could endanger the health of the mother and baby. In another instance, the therapist discovered an abnormality in an elderly client’s anatomy, stopped the massage, and recommended he seek medical care. A

³⁴ Email correspondence with staff member from the Office of Wisconsin State Senator Dave Hansen, August 19, 2016.

³⁵ AMTA-WI, Associated Bodywork and Massage Professionals, the National Association of Massage Therapists (formerly the International Massage Association), and American Organization for Bodywork Therapies of Asia and AOBTA

³⁶ Email correspondence with AMTA-WI representative, Betsy Krisenesky on November 3, 2016; Ron Precht and Joe Roth, “Wisconsin Governor Signs Massage and Bodywork Therapy Licensing Act,” American Massage Therapy Association, May 17, 2010 <https://www.amtamassage.org/articles/2/PressRelease/detail/2140> (accessed November 2016).

medical doctor subsequently diagnosed the client with an aortic aneurism. The therapist credited her training with preventing massage-induced harm to these clients.³⁷ Although these health-related claims were not verified or supported by specific medical evidence, a staff member from Senator Hansen's office present at the hearings recalled that these accounts appeared to influence the committee members' opinions in support of the bill.³⁸

In addition to the witness testimony, the bill's co-sponsors reasoned that most other states licensed massage therapy. Representative Berceau's office preserved a document from AMTA-WI as background for the bill that described voluntary certification as out of date and out of step with regulation in the rest of the country.³⁹ Representatives from massage therapy schools supported these points by testifying that licensure would protect the public and improve standards of the profession.⁴⁰

In addition to arguments of public safety and credibility of the profession, Representative Berceau and Senator Hansen also argued that statewide licensure would make it more difficult for human trafficking and prostitution rings to front as massage therapy operations and referenced sting operations that uncovered these crimes from the preceding year.⁴¹ The sting operations provided evidence that sex workers and human traffickers used massage parlors as legitimate fronts for illegal activities, but did not specify how licensure would aid law enforcement in eradicating prostitution and human trafficking.

³⁷ Wisconsin State Legislature, "Record of Committee Proceedings," Committee on health, Health Insurance, Privacy, Property Tax Relief, and Revenue, March 24, 2010.

http://docs.legis.wisconsin.gov/2009/related/public_hearing_records/sc_health_health_insurance_privacy_property_tax_relief_and_revenue/bills_resolutions/09hr_sc_hhipptrr_sb0388_pt01.pdf (accessed November 2016). Letter from Representative Berceau to Legislative Assembly and Senate list serves sent October 14, 2009 entitled, "Co-sponsorship of LRB 0273/7 – relating to changes to the regulation of massage therapy and bodywork, creating the Massage Therapy and Bodywork Therapy Examining Board, and granting rulemaking authority," received via email correspondence with the Office of Representative Berceau August 16, 2016.

³⁸ Interview with Jay Wadd, staff member from the Office of Wisconsin State Senator Dave Hansen, August 19, 2016.

³⁹ The background paper noted, "As of September 2008, 41 states now regulate the massage therapy profession. Thirty-six states take a licensure approach, and only five (including Wisconsin) take the older registration or certification approach." Krizenesky, Betsy, Tony Driessen, and Tom Fonrara, "Updating Wisconsin's Massage Therapy Licensing Law," March 13, 2009, provided via email correspondence with Traci Peloquin, Research Assistance, Office of State Representative Terese Berceau on August 16, 2016.

⁴⁰ Wisconsin State Legislature, "Record of Committee Proceedings," Committee on health, Health Insurance, Privacy, Property Tax Relief, and Revenue, March 24, 2010.

http://docs.legis.wisconsin.gov/2009/related/public_hearing_records/sc_health_health_insurance_privacy_property_tax_relief_and_revenue/bills_resolutions/09hr_sc_hhipptrr_sb0388_pt01.pdf (accessed November 2016).

⁴¹ Wisconsin State Legislature, "Record of Committee Proceedings," Committee on health, Health Insurance, Privacy, Property Tax Relief, and Revenue, March 24, 2010.

http://docs.legis.wisconsin.gov/2009/related/public_hearing_records/sc_health_health_insurance_privacy_property_tax_relief_and_revenue/bills_resolutions/09hr_sc_hhipptrr_sb0388_pt01.pdf (accessed November 2016). Letter from Representative Berceau to Legislative Assembly and Senate list serves sent October 14, 2009 entitled, "Co-sponsorship of LRB 0273/7 – relating to changes to the regulation of massage therapy and bodywork, creating the Massage Therapy and Bodywork Therapy Examining Board, and granting rulemaking authority," received via email correspondence with the Office of Representative Berceau August 16, 2016.

The bill faced essentially no opposition during committee hearings, and no witnesses appeared to testify in opposition to the bill.⁴² Ultimately, the bill passed unanimously and was signed into law on May 17, 2010. As of 2016, the Wisconsin Board of Massage Therapy and Bodywork licenses 6,700 practitioners.

4.1.1.2 MICHIGAN

Similar to Wisconsin, a coalition of massage associations and schools in Michigan, including the local chapter of AMTA and the Associated Bodywork and Massage Professionals (ABMP), were instrumental in developing the draft of a bill to require statewide licensing of massage therapists.⁴³ Representative Paul Condino sponsored House Bill 5651 in 2008 to require state licensing of massage therapists. The House Committee on Regulatory Reform held a public hearing on March 4, 2008 where 13 individuals gave oral testimony in support of the bill, including the bill's sponsor, a representative from the American Medical Massage Association, a representative from ABMP, six massage therapy schools, two massage therapy business owners, and two massage therapists. One representative of the Michigan Department of Community Health testified in opposition and one representative from the Michigan Municipal League testified with a neutral position.⁴⁴

Oral testimony was not preserved, but 13 letters in support of the bill were available for review. These letters submitted by associations of massage therapists, massage schools and massage business owners articulated some of the arguments in support of the bill. The most prominent theme among these letters revolved around local ordinances. The letters argued that an increase in the use of "massage" by prostitution and human trafficking rings had led to a rash of local ordinances regulating massage therapy as a strategy to curb prostitution, not regulate a health profession. Massage therapists perceived these local ordinances as harsh and unfair. For example, at least one local ordinance required an annual physician's note clearing the therapist of communicable diseases. Some therapists perceived this requirement as a test for sexually transmitted diseases that targeted sex workers. The requirement was a heavy burden for many therapists because the annual visit and tests were not covered by health insurance. Supporters of the bill wanted a state board with expertise about the massage therapy industry to regulate practitioners as a health profession and help local officials distinguish between legitimate massage therapists and sex workers rather than treat all therapists as suspected prostitutes. In addition, supporters believed statewide licensing would help consumers better distinguish between legitimate massage therapists and sex workers.⁴⁵

⁴² Wisconsin State Legislature, "Record of Committee Proceedings," Committee on health, Health Insurance, Privacy, Property Tax Relief, and Revenue, March 24, 2010. http://docs.legis.wisconsin.gov/2009/related/public_hearing_records/sc_health_health_insurance_privacy_property_tax_relief_and_revenue/bills_resolutions/09hr_sc_hhipptr_sb0388_pt01.pdf (accessed November 2016).

⁴³ Michigan House of Representatives, "Minutes of the Standing Committee on Regulatory Reform," March 4, 2008. Received via email correspondence with Angie Lake, Michigan House Committee Clerks Director on November 14, 2016.

⁴⁴ *ibid*

⁴⁵ *ibid*

The letters in support of licensure emphasized the confusion, high municipal fees, and time burden of meeting multiple local requirements that prohibited therapists from working in multiple cities. Some therapists stated that they would like to rotate locations and respond to outcalls. Even for less mobile practitioners, letters argued that the local fees were unusually high, making them cost prohibitive for practitioners to earn a living.⁴⁶

The associations and schools also argued that statewide licensing would provide consumers assurance that their massage therapist had received a minimum level of education about ethics and contraindications. Standardizing school quality by requiring all schools to provide 500 hours of education and setting minimum standards for entry would increase the credibility of the profession.⁴⁷

Records show that at least one individual opposed the bill from the Michigan Department of Community Health, however the arguments presented in opposition are unknown since oral statements were not preserved. Perhaps some of the arguments from the opposition resonated with legislators because the House recorded 23 votes against the bill and 78 votes in favor. Ultimately the bill passed with an additional 37 yes votes and zero no votes in the Senate on December 18, 2008. The Governor signed the bill into law on December 31, 2008.⁴⁸

4.1.1.3 LESSONS FROM WISCONSIN AND MICHIGAN

In two states that recently passed statewide licensing of massage therapy, efforts from massage therapy associations advanced statewide licensing on the legislative agenda. The early involvement of the associations and many of the arguments presented in committee hearings indicated that representatives of certified massage therapists and massage therapy schools promoted that statewide licensure best served their interests as well as those of the public. State legislatures passed bills requiring licensing to practice massage therapy based on these arguments.

However, an analysis of the materials presented to legislators suggests that, while the arguments presented were compelling, relatively little evidence of harm caused by uncertified massage therapists was reviewed as part of the legislative processes in each of these states. Legislators seemed compelled to align their state with the national regulatory norm, differentiate massage therapists from sex workers with a statewide rather than local approach, and support the advancement of the massage therapy profession.

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ *Ibid*; Michigan Legislature, "House Bill 5651 (2008)" Bill History, [http://www.legislature.mi.gov/\(S\(rybfnaagg5qnbepksowlegjw\)\)/mileg.aspx?page=getobject&objectname=2008-HB-5651](http://www.legislature.mi.gov/(S(rybfnaagg5qnbepksowlegjw))/mileg.aspx?page=getobject&objectname=2008-HB-5651) (accessed November 2016).

5 Licensure versus Certification

In addition to the decision about whether to regulate massage therapists, policy makers face a decision about what is the most effective means of regulation – certification or licensure.

Certification offers some of the benefits of licensure – at least for those who elect to be certified – in terms of identifying the practitioner as legitimate, communicating a minimum quality standard to consumers, and attesting that certified practitioners have attained a minimum level of education and training. Certification, however, does not prevent would-be practitioners from working as massage therapists, and thereby limits prices from rising and workers from being unable to engage in their trade.

Licensure offers the benefit of consistency and universality. All individuals seeking to engage in massage therapy need a license, so consumers and law enforcement officials know that anyone with a (legitimate) license has met the minimum standards.

The choice for policy makers, then, is whether the benefits of licensure outweigh the costs for consumers and massage providers.

5.1.1 Benefits of Certification

Certification offers a number of benefits relative to a licensure model. Because certification is voluntary, it does not prevent would be massage therapists from practicing their trade. Those who have experience but lack training, have recently moved from another state, or otherwise choose not to or are not eligible to be certified can still have the opportunity to earn a living as a massage therapist.

In addition to providing benefits to would-be massage therapists, evidence suggests that certification of massage therapists does not raise prices for consumers in the same way that a licensure model does. Writing in the *Journal of Law and Economics*, Robert Thornton and Edward Timmons found that, “licensing [of massage therapists] restricts entry at the expense of consumers.”⁴⁹ Specifically, Thornton and Timmons empirical examination found that massage therapists, “working in states with licensing statutes receive an earnings premium that may be as high as 15.6 percent.” These higher wages (though a benefit for the licensed massage therapists) act to increase prices for consumers.

Of particular relevance for this feasibility study, Thornton and Timmons compared the effects of licensure to certification, and found “no strong evidence that certification either increased wages or reduced the practicing number of MTs.”⁵⁰

⁴⁹ Thornton, Robert J. and Edward J. Timmons, Licensing one of the World’s Oldest Professions: Massage.” *Journal of Law and Economics*, vol. 56 (May 2013), p. 371.

⁵⁰ Ibid.

Perhaps most importantly, however, certification offers the ability to respond more quickly and nimbly relative to a licensure approach. Because certificate holders have made a voluntary choice to pursue certification, they have also agreed to have their certification revoked if they violate the terms set out by the not-for-profit entity setting the standards (i.e. CAMTC). As a result, certification can be revoked much more quickly and easily relative to a licensure revocation process, which can often take months or years to resolve complaints against licensed professionals. Figure 4 compares the average time it takes for CAMTC and the Department of Consumer Affairs (DCA) to respond to complaints. While DCA has the ability to respond quickly in the case of certain exigent circumstances, the data in Figure 4 clearly show that CAMTC is able to respond to complaints much more quickly relative to the DCA entities shown as a result of the more extensive due process requirements inherent in the DCA-based licensure process.

Figure 4: Efficiency of CAMTC Compared to DCA Boards

	CAMTC	DCA				
	Massage Therapy	DCA Average	Occupational Therapy	Chiropractic	Physical Therapy	Acupuncture
Number of complaints per quarter	20	110	127	125	140	47
Number of days from complaint to assignment	7	6	1	11	4	6
Number of days to complete intake and investigation for cases not resulting in discipline	83	174	145	146	174	232
Number of days to complete intake and investigation for cases resulting in discipline	153	1,024	668	1,374	854	1,203

Note: Results are quarterly, averaged over three quarters in 2015: April – June, July – September, and October – December.

In addition to responding more quickly to allegations of wrong-doing, under a voluntary certification model, certificates can be suspended for reasons that would not be possible under most licensure models. For example, under California’s certification model, CAMTC has the authority to suspend a certificate if a certificate holder is arrested for solicitation of prostitution (among other reasons). In some cases, CAMTC can even suspend a certificate or take other disciplinary action in the absence of an arrest, if there is a declaration from victims or law enforcement officers. Under a licensure model, an allegation of wrongdoing (whether supported by an arrest or declaration) would typically not be enough to take quick action.

This ability to react quickly to allegations of wrongdoing is particularly important for the purpose of distinguishing legitimate massage therapists from sex workers. In many communities throughout the state, prostitution arrests are frequently not prosecuted by local district attorneys, either because limited evidence makes convictions hard to obtain, due to limited resources, or out of a desire not to “blame the victim.” Regardless of the reasons, if a prostitution arrest is not followed by a prosecution and conviction, a licensing board would have limited ability to suspend or revoke a license. As a result, the voluntary nature of certification – and the correspondingly increased ability to suspend a certificate – means that certification is

likely a more effective tool relative to licensure in terms of its ability to distinguish legitimate massage therapists from sex workers.

This ability to respond quickly may also be effective in cases of sexual assault perpetrated by massage therapists against their clients. Whereas a licensing body might well require a conviction and a lengthy hearing process before a license could be removed, a certificate can be suspended much more quickly and with relatively less evidence.

California's certification model also provides CAMTC with the authority to take action against owners and operators of massage establishments if there is evidence that criminal activity or unprofessional conduct occurred on the premises. In such cases, CAMTC can revoke the massage business owner's certificate based on a lower evidentiary standard relative to what might be required under a licensure model. Specifically, state agencies would generally be limited to taking action only when the conduct results in a criminal conviction. Some jurisdictions will deny a massage establishment permit to an applicant who has had their CAMTC certificate revoked, so the ability to take action against a massage establishment owner can help to prevent these owners from continuing to operate.

This ability to respond quickly to allegations of wrongdoing is highly valued by local law enforcement officials, as evidenced by responses to our stakeholder input tool. These officials noted that, most importantly, responding quickly prevents further harm to the public. In addition, however, local law enforcement officials believe that the nimble nature of the prostitution and human trafficking trade means that responding quickly to allegations of wrongdoing (and alerting local law enforcement when such complaints are received) can help to more effectively combat the organized crime networks that drive much of this illicit activity. Local law enforcement officials also noted that a swift response sends an important message to both the victims and to the community that wrongdoing will not be tolerated. This can help to preserve faith in the criminal justice system and also to act as a deterrent against future activity.⁵¹ Finally, California's certification model also provides CAMTC with the authority to approve massage therapy schools and thereby prevent or slow the proliferation of fraudulent diplomas and transcripts. These fraudulent documents can be used to obtain a massage therapy certificate, and thereby allow sex workers or victims of human trafficking to pose as legitimate massage therapists. By reacting quickly to allegations of fraudulent activity at massage therapy schools, a certification model has the potential to slow this activity. CAMTC has unapproved approximately 70 massage schools that were previously approved by the Bureau of Private Postsecondary Education (BPPE). Of

⁵¹ We note that, although local law enforcement officials highly value the ability to respond quickly to allegations of wrongdoing, there is only limited evidence that regulation is in fact effective in reducing the extent of prostitution or human trafficking.

those schools that remained in operation after CAMTC unapproved them, all but one remains BPPE approved, suggesting that a state-based rather than private regulatory approach may be slower in responding.⁵²

In the majority of cities and counties, individuals providing massage for compensation must have either a permit from the city or be certified. Prior to implementation of California's certification model, many massage professionals had been practicing underground, either due to restrictive business and zoning laws or because they chose to ignore regulations that treated massage as adult entertainment. Certification provided an avenue for these individuals to come into the open and obtain business licenses. To the extent that certification limits or supersedes locally-imposed regulation of land use and massage therapy business requirements, certified professionals will be able to more easily work in multiple jurisdictions. In addition, certification may be viewed as a desirable credential by employers, but its voluntary nature ensures that it is not a barrier to work.

5.1.2 Benefits of Licensure

While certification has an advantage in terms of responding quickly and efficiently to allegations of wrongdoing, licensure has one important advantage relative to certification: universality. The universal nature of licensure offers several benefits. Under a licensure system, consumers can have confidence that, wherever they go for a massage, regardless of the jurisdiction, the massage therapist would have met certain minimum standards for education and proficiency sufficient to pass an exam. And, local government and law enforcement officials might be able to more easily distinguish legitimate massage therapists, since everyone would be required to have a license. Licensure would offer an added degree of predictability for massage therapists, who would face the same requirements for practicing massage therapy regardless of where they went in the state. Some massage therapists have reported that variation in local requirements is complicated, confusing, and burdensome in terms of time and financial resources. While some of the conflicting requirements mentioned by stakeholders relate to regulation of their business establishment and zoning rather than to the individual, the variation makes it very challenging for massage therapists to remain in compliance with differing local requirements when working in multiple cities. Statewide licensing that supersedes local

⁵² We note that one potential downside of this rapid school un-approval process is that some potentially legitimate students may be inadvertently denied a certificate or face a delay in receiving one (although there is a hearing process that is designed to address this issue). Many of the stakeholders responding to our stakeholder input tool complained that their school had been un-approved by CAMTC, and that as a result they faced additional obstacles in obtaining a certificate even though they had paid for and received the required number of training hours. Further, some stakeholders criticized the process as not clear and transparent with little regard for the needs of schools. For example, one respondent commented "The CAMTC has acted with very little regard to the needs of schools. Timetables have been set that are unreasonable for businesses; approvals have been delayed repeatedly; policies have been changed without warning." Another respondent commented, "Look at how many schools sit in limbo for months waiting to have their status clarified - truly inexcusable - there aren't even clear guidelines about how the schools are reviewed." (Additional information about the school approval process is available in the CAMTC document "Policies and Procedures for School Approvals.")

regulations could reduce the barriers to work for massage therapists who want to work in multiple cities that currently have local regulations.

Finally, licensure administered by a state entity may have an advantage in terms of perceived fairness, statutorily defined due process requirements, and accountability. The additional due process requirements inherent in a licensure model offer more opportunities for those accused of wrongdoing to make a case in their own defense. In addition, as public entities, DCA boards are required to adhere to public meeting and notice requirements, which may also act to increase the perceived legitimacy and accountability of the process.⁵³

Licensure also offers benefits to the massage therapy profession in terms of increased perceived professional stature. As discussed earlier, licensure might also bring the benefit of increased wages, as entry to practice would be more restrictive than under a voluntary certification model. While these are not benefits to the public per se, they are promoted as benefits by organized massage therapy groups and other stakeholders.

5.1.3 Costs to Practitioners of Certification and Licensure

Another important dimension in terms of evaluating the relative merits of licensure versus certification is the cost of the two systems for the practitioners themselves. In both cases, the costs of regulation are covered by fees charged to practitioners, whether administered by CAMTC or California's Department of Consumer Affairs (DCA). A comparison of fees charged by DCA for similar professions to those charged by CAMTC is presented in Figure 5.

⁵³ Although CAMTC is statutorily required to comply with the Bagley-Keene Open Meeting Act, which requires public meetings and notice requirements, concerns were raised by multiple stakeholders about the need for a continued emphasis on accountability.

Figure 5: CAMTC Certification and DCA Licensing Fees⁵⁴

Fees	Massage Therapy	DCA Average	Occupational Therapy	Chiropractic Examiners	Physical Therapy	Acupuncture
Application	N/A	\$131	\$50	\$100	\$300	\$75
Initial Certification/License	\$150	\$181	\$150	\$100	\$150	\$325
Biennial Renewal	\$150	\$231	\$150	\$250	\$200	\$325
Fingerprinting ¹	\$70-\$90	\$50-\$90	\$49-\$90	\$51-\$90	\$49-\$90	\$49-\$90
Late Fee	\$25-\$90	\$67	\$75	N/A	\$100	\$25
Oral Hearing	\$135	N/A	Cost Recovery	Cost Recovery	Cost Recovery	Cost Recovery
Consideration of written statement	\$90	N/A	Cost Recovery	Cost Recovery	Cost Recovery	Cost Recovery

¹ Applicants to a DCA board can submit fingerprints on cards provided by the board along with processing fees charged by the FBI and DOJ (around \$50) or send fingerprints via Live Scan from a private vendor and pay the accompanying fees to the vendor. Applicants to CAMTC send fingerprints via Live Scan. The estimates for the Live Scan for CAMTC and the boards are based on CAMTC data.

Estimating the precise level of fees and total costs for message therapists under a licensure system is not possible absent specific information about the regulatory regime such as the extent and type of enforcement activities that a future board might engage in, the scope of the regulatory activities, and a host of other factors. However, the information presented in Figure 5 provides a good starting point for estimating the likely range of costs under a licensure model. These data suggest that, to the extent licensed massage therapists pay in fees what the average similar professional currently pays, the biannual costs for massage therapists would increase by approximately 54 percent, from \$150 to \$231. This amount, however, is likely toward the high end of the range of possible license fees. To the extent that the current CAMTC model, enforcement approach, and other policies were adopted by a new licensing board, the current CAMTC fee level of \$150 may provide a more reasonable basis for estimating costs. One important difference between the current CAMTC model and a licensing model relates to the extent of due process afforded licensees accused of violations or wrongdoing.

⁵⁴ DCA Boards may charge other fees not shown, such as \$15 for a duplicate license, a \$75 fee for a limited permit while awaiting exam results, or a \$25 fee for retirement status. Naturopaths are excluded from this table because the very small number of licensed practitioners (450) means that the fees/license are not comparable to the other occupations shown. Naturopath fees are \$400 for the initial application, \$433 for the first license, and \$800 for the biennial renewal fee.

The higher level due process requirements of a DCA based licensing board would likely act to increase costs above the current CAMTC level. (In fact, the added due process related costs likely explain at least a portion of the differential between the current CAMTC fee and the average fee charged by the comparison DCA boards). On the other hand, the number of licensed massage therapists would likely exceed the number of certified massage therapists. As a result, increased economies of scale might allow fees to be somewhat lower relative to the current CAMTC level, other things equal.

It is also important to note that massage therapists under a licensure system could also face higher costs associated with disciplinary processes. Currently, for certified massage therapists, these costs are limited to a \$90 consideration of written statement fee and a \$135 oral hearing fee. Under a licensure model, a small number of massage therapists facing disciplinary proceedings could experience substantially higher costs. Specifically, licensees that run afoul of a DCA board may be responsible for administrative fines commensurate with the violation or cost recovery for the Board's expenses for investigation and enforcement.⁵⁵ Fines for citations can range from as little as \$100 to as much as \$5000, and cost recovery orders can range from a few thousand dollars to tens of thousands of dollars.⁵⁶ These costs, however, apply to very few individuals and comprise a relatively small share of DCA board budgets. For example, during fiscal year 2014-15 the Board of Acupuncture had 11,477 active in-state practitioners, received 175 complaints, and issued 65 citations. Of these, cost recovery was ordered in just six cases.⁵⁷ The citations averaged \$920 each and totaled \$57,900. The Board spent a total of \$309,947 on enforcement of cases involving a violation of the license practice act, ordered a total of \$41,022 in cost recovery, and collected \$17,099 in cost recovery, with license fees covering the remainder of the expenditure on enforcement.⁵⁸ While it is not possible to predict with any specificity the extent to which a future massage therapy board would issue citations and seek to recover costs from licensees, the experience of other DCA boards and the level of complaints currently received by CAMTC suggest that these would be relatively infrequent occurrences with a limited impact on the board's budget.

In addition to the costs for license renewal and disciplinary processes, massage therapists under a licensure system would also likely be required to pay application fees (and finger printing costs). These application fees could be used to cover the start-up costs associated with implementing a new regulatory system. These costs largely consist of one-time costs for staff during the period prior to accepting applications, as well as costs for information technology infrastructure to manage the new program, among other costs. Typically, start-up costs would be covered by a loan from the state General Fund, which would be repaid with application fees and licensing revenues as needed.

⁵⁵ Boards use citations for cases that do not pose a risk to the public, which are generally administrative violations, such as failure to keep adequate records. (see the Board of Acupuncture Sunset Report, http://www.acupuncture.ca.gov/about_us/materials/20151117_sunsetreport.pdf)

⁵⁶ Examples of cost recovery amounts were obtained from the Board of Acupuncture, http://www.acupuncture.ca.gov/public/ac-2716__2014_05_07_dec.pdf

⁵⁷ The number of cases that involve cost recovery tend to be low: there were 30 such cases over 4 years.

⁵⁸ California Acupuncture Board, "Sunset Review Report 2016," http://www.acupuncture.ca.gov/about_us/materials/20151117_sunsetreport.pdf

5.1.3.1 COSTS FOR SPECIFIC SUB-GROUPS

As the data in Figure 5 and the analysis presented above suggest, the costs for licensing would likely be somewhat higher than the current costs for certification. This overall change in costs, however, masks some important variations. For certified massage professionals with a business in a city that does not charge massage professionals for additional local permits for the operation of their business, the costs for certified massage professionals would likely increase modestly under a licensure model to the extent that massage professionals paid the average fee for other DCA regulated occupations. For certified massage professionals with a business in a city that charges their business for additional local permits, statewide licensure could preempt local ordinances and result in a reduction in overall costs. For those massage providers who are currently uncertified and living in a city that does not have significant permit costs or an education requirement, the costs of practicing would increase substantially. These uncertified providers would have to pay fees similar to those in Figure 5 in addition to the cost of 500 hours (assuming a 500 hour requirement is adopted by the new board) of schooling (\$5,000-\$10,000) and the examination (\$195-\$250) in order to obtain a license. For uncertified providers living in cities that require massage providers to pay for local permits and education, the costs of licensure could be similar or less than the amount providers currently pay to practice.

5.1.4 Certification versus Licensure: Comparison of Effectiveness

The relative effectiveness of achieving regulatory goals through certification or licensure, presented above in this report, is summarized in

Figure 6 (check marks indicate our assessment of which performs more effectively):

Figure 6: Certification, Licensure and Regulatory Goals

Goal of Regulation	Certification	Licensure
Distinguish legitimate massage therapists from sex workers	✓ Ability of a certification model to respond quickly to allegations of wrong doing means illicit actors cannot maintain certification	Due process requirements prevent most licensure models from responding effectively
Protect massage therapy clients from sexual assault or inappropriate behavior perpetrated by massage therapists	✓ Ability of a certification model to respond quickly to allegations of wrong doing means illicit actors cannot maintain certification	Due process requirements prevent most licensure models from responding effectively
Communicate to clients that massage therapists are high quality	Because certification is not universal, some consumers may be confused about status of practitioners	✓ Universal nature of licensure means that it can be more effective in ensuring minimum training and quality standards
Protect massage therapy clients from physical injury	✓ Limited evidence of harm suggests that non-universal certification is adequate	✓ Universal nature of licensure means that it can be more effective in ensuring minimum training and quality standards
Improve stature of massage therapists in the community	Because certification is not universal, some consumers may be confused about status of practitioners	✓ Universal nature of licensure means that it can be more effective in ensuring minimum training and quality standards
Assist law enforcement in combating human trafficking	✓ Ability of a certification model to respond quickly to allegations of wrong doing means illicit actors cannot maintain certification	Due process requirements prevent most licensure models from responding effectively
Prevent low-skilled/untrained practitioners from doing massage therapy in California	Because certification is not universal, some practitioners with limited skills will continue to practice	✓ Universal nature of licensure means that it can be more effective in ensuring minimum training and quality standards
Assist law enforcement in combating prostitution	✓ Ability of a certification model to respond quickly to allegations of wrong doing means illicit actors cannot maintain certification	Due process requirements prevent most licensure models from responding effectively
Increase consumer access to information about individual massage therapists	Because certification is not universal, consumers will not be able to obtain information about some uncertified practitioners	✓ Universal nature of licensure means that it can be more effective in providing information to consumers about all practitioners

5.2 Scope of Practice and Legitimate Techniques for Massage Therapy in California

States that regulate massage therapy through licensure define a scope of practice in order to delineate those activities and modalities that require a license. The language in these scopes of practice varies from state to state, but typically uses broad descriptions of the practice such as, “a system of structured touch, palpation, or movement of the soft tissue” (Colorado) or “the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow” (Florida). Some states (about 40 percent) also define massage therapy in terms of what it is not. For example, Illinois stipulates, “‘massage’ does not include the diagnosis of a specific pathology” and Nevada excludes “(a) Diagnosis, adjustment, mobilization or manipulation of any articulations of the body or spine.” To develop language in a scope of practice act, legislators and stakeholders negotiate the boundaries of the practice through public hearings to ensure the definition does not infringe on the rights of practitioners of other similar occupations, such as physical therapists or chiropractors.

In California, early efforts to regulate massage therapists encountered opposition from physical therapists and chiropractors among others, in part due to disagreements over the appropriate scope of practice for massage therapists.⁵⁹ By adopting a system of voluntary certification rather than licensure, California was able to partially circumvent these political obstacles by avoiding the need for a formal practice act and scope of practice therein.

5.2.1 Legitimate Techniques of Massage

Most states define massage therapy using broad descriptions of the practice rather than specific techniques and modalities. Given the large number of individual modalities and techniques, specifically enumerating each would be impractical. In addition, there is some concern that specifically listing each technique and modality would limit innovation in an evolving field.

Many respondents to the massage therapy stakeholder input tool thought modalities too numerous and varied in philosophy and approach to specify in a definition of the practice. For example, one comment explained, “there are too many different descriptions and techniques to lump it all in to one ‘scope of practice.’” Another stakeholder wrote that, “massage is a diverse and multi-faceted profession. One definition could not cover all modalities.” Another respondent described how practices diverge even after consistent educational curricula: “there are infinite modalities and not all therapist choose to use the same modalities (even though therapists might have received the exact same education). To only describe certain modalities would exclude some practitioners.” Respondents emphasized that massage therapy currently involves too many techniques to list exhaustively.

⁵⁹ We interviewed California representatives of the physical therapists and chiropractors. These interviews indicated that, should the legislature choose to pursue licensure for massage therapists, continued negotiations with these two groups would be required.

Massage therapists and other massage industry professionals also expressed concern that techniques used in the practice of massage therapy rapidly evolve over time. For example, one stakeholder explained that there are “way too many (modalities) to list here plus more modalities are developed on a regular basis. By listing them you restrict the industry and therapist from advancing and furthering the massage industry.” Another respondent commented based on experience, “I would stay very far away from using names of modalities. I've watched too much change in the last 30 years.” Another stakeholder compared massage therapy to medicine, noting that innovation occurs in both: “just as medical practices change from year to year so do modalities and methodologies” in massage. Still another stakeholder wrote that, “massage therapy modalities are dynamic and holistic and should stay that way.” Comments from these stakeholders make clear that limiting the practice of massage to a specific list of techniques could potentially stifle innovation or inappropriately exclude some practices that might be beneficial to consumers. At a minimum, including such a list in a scope of practice act would place an enormous burden on the regulatory body to keep the list up to date.

Scopes of practice in other states navigate this issue of identifying specific modalities by either describing massage therapy in general terms or by listing a few modalities with the caveat “includes, but is not limited to....” For example, Colorado explains that a system of structure touch “includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydromassage; and thermal massage.” In the same vein, some scopes of practice describe massage therapy as practiced “with or without” aiding materials. For example, Illinois allows that “these techniques may be applied by a licensed massage therapist with or without the aid of lubricants, salt or herbal preparations, hydromassage, thermal massage, or a massage device that mimics or enhances the actions possible by human hands.”

5.2.2 Scope of Practice for Massage Therapy in California

Although California’s pursuit of a certification model largely avoided the need to adopt a scope of practice, the state’s Massage Therapy Act does include a definition of the practice of massage: “‘Massage’ means the scientific manipulation of the soft tissues.”⁶⁰ This definition does not, however, constitute a practice act that delineates a specific scope of practice for massage therapy. Instead, the Massage Therapy Act is a title act that, among other things, defines requirements for a voluntary certification.

One of the required elements in this statutorily required feasibility study of massage therapy licensure is development of recommendations for a scope of practice for massage therapists. In order to develop a

⁶⁰ California Business and Professions Code §4600. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=04001-05000&file=4600-4621>

recommended scope of practice, we solicited input from stakeholders, more than 4,000 of whom responded to our online stakeholder input tool.

The primary mechanism for soliciting this stakeholder input was to ask whether the model scope of practice proposed by the Federation of State Massage Therapy Boards (FSMTB) was a complete and accurate description of massage therapy suitable for use as an official scope of practice. The FSMTB model practice act states, in part:⁶¹

(A) The practice of Massage Therapy means the manual application of a system of structured touch to the soft tissues of the human body, including but not limited to: (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.”

Most stakeholders replied that this FSMTB model scope of practice was complete, accurate, and suitable for use as an official scope of practice (84 percent). Many stakeholders, however, also proposed edits or alternative language.

Some stakeholders expressed concern with inclusion of the word “treatment” as resembling diagnostic practices, which massage therapists generally do not perform. In lieu of treatment, stakeholders made the following suggestions, “*help in alleviating pain, facilitation of the body in healing and relaxation, and enhancement or restoration of health and wellness.*” Stakeholders also reacted to words perceived as having a sexual connotation (stroking, gliding, vibration, and lubricants) and recommended alternatives, such as effleurage, petrissage, and oils and lotions. To further distinguish the practice of massage therapy from sexual activity, some stakeholders recommended adding a description of draping sensitive or private areas on the client's body.

Many stakeholders recommended removal of the phrase “*mechanical or electrical devices or tools*” in section (4) as beyond the scope of massage therapy because massage training does not include devices or tools. Some expressed concern that use of these items without training could pose a hazard to clients. Likewise, many stakeholders expressed concern that “*scrubs and herbal preparations*” and “*hydrotherapy*” are not included in massage training and therefore should be excluded.

Responses regarding sections 6 and 8 (“Use of hot or cold applications” and “Client education”) were mixed. Most of the comments expressing misgivings about the mention of hot or cold applications and wanted to

⁶¹ Federal of State Massage Therapy Boards. Model Massage Therapy Practice Act. First Edition. 2014. https://www.fsmtb.org/media/1126/model_message_therapy_practice_act.pdf

specifically include or exclude hot stones. As for client education, some respondents found it unnecessary and proposed that it be removed. Others felt that it could be more detailed and include such language as, “*client education to facilitate body awareness and self-care*” or “*client education as to the benefits of massage therapy and the techniques used with the exception of giving specific medical advice.*”

Several stakeholders recommended adding a section concerning evolving or emerging modalities and technology. For example, several stakeholders suggested that the scope be flexible enough to include new modalities in the future and revisited periodically to keep it up to date.

If the scope of practice were to describe what is not included in the practice of massage, many respondents recommended the exclusion of sexual touch to distinguish massage therapy from sex work. In addition, respondents thought it useful to emphasize that massage therapists do not diagnose or treat illnesses, nor do they practice any modalities that require a license under another occupation, such as chiropractic or physical therapy.

As for primarily defining massage therapy by what it is not, a common theme emerged in the comments that massage overlapped with excluded professions (e.g. some physical therapists perform massage modalities), and that there were many “gray areas” thereby making defining the practice by exclusion difficult. Some respondents suggested language that could exclude specific aspects of other professions, for example, “*The practice does not include: (a) The diagnosis of illness or disease; (b) Medical procedures, high-velocity low-amplitude chiropractic adjustive procedures, or prescription of medicines. (c) The use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture or podiatry is required by law; or (d) Sexual activity of any kind.*”

General comments and reactions to the model scope of practice underscored the need for public hearings during the process of defining a scope of practice in California. Public hearings are necessary to include voices from other occupations that may inadvertently be included in the scope of practice for massage therapy. For example, one respondent believed that the model scope “is overly broad and covers more professions besides massage therapy.” Another respondent expressed concern that the model scope would require manicurists and barbers to meet regulatory requirements for massage therapy, “If the purpose of regulation is the public safety, then this is a frivolous list of various items that have nothing to do with public safety, but it will prevent cosmetologists, manicurists and barbers to practice an application of touch that is perfectly safe for them to practice on their clients.” Whether or not the model act truly infringes on the practices of other occupations, these issues would need to be explored and resolved during public hearings.

6 Conclusions and Recommendations

Regulation of massage therapists has many important goals, including protecting the public from harm and combating prostitution and human trafficking. The question before policy makers is whether the state would be better served by a new regulatory framework involving licensure, or if the current system of voluntary certification is superior. Our analysis found only limited evidence of harm to consumers caused by massage therapists. Most massage therapists were not aware of any injuries caused by their peers, and insurance claims

for such injuries are very low. As a result, additional regulation based on protecting the public from physical harm is not warranted.

With respect to the second goal (combating prostitution), our analysis found that (a) regulation is of only limited value in combating prostitution and (b) to the extent that regulation can be effective (at least in terms of distinguishing legitimate massage therapists from sex workers), certification, with its ability to respond more efficiently to allegations of wrongdoing (both among massage therapists and massage therapy schools), is a better alternative than licensure. It must be noted, however, that this ability to respond more efficiently comes at a cost in terms of reduced due process rights for those accused of wrongdoing and a perceived lack of accountability from which a state licensure model might not suffer. Thus, certification represents the best alternative for regulation of massage therapists in California, but continued attention to accountability and due process is needed to maintain the faith in and therefore the effectiveness of this system.

With respect to the other goals of regulation, such as improving consumer access to information, increasing the stature of massage therapists, and preventing untrained massage therapists from practicing, licensure offers more advantages owing to its universality. However, these goals are less important, according to stakeholders. In addition, certification has been shown not to increase costs for consumers and does not restrict entry into the occupation for would-be practitioners. As a result, our conclusion is that – while many opportunities exist to improve the current system – a move to statewide mandatory licensure is not warranted, and the current system of voluntary certification should be maintained.

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8 Appendix A: Interviews

- 1) David Swanikin and Becky LeBuhn, Citizen Advocacy Center, August 2, 2016
- 2) Brian Stiger, Director, Los Angeles Department of Consumer and Business Affairs, former Director of California Department of Consumer Affairs, August 16, 2016
- 3) Jay Wadd, Staff Member, Office of Wisconsin Senator Dave Hansen, August 19, 2016
- 4) David Beier, Commissioner, Little Hoover Commission, August 22, 2016
- 5) Ron Joseph, Former Director, California Board of Medicine, August 22, 2016
- 6) Bill Gage, Chief Consultant, Business, Professions and Economic Development Committee, California Senate, August 22, 2016
- 7) Julianne Fellmeth, Administrative Director, Center for Public Interest Law, University of San Diego. August 30, 2016
- 8) Hank Dempsey and Brandon Bjerke, formerly with California State Assembly Committee on Business and Professions. August 31, 2016
- 9) Elissa Silva, California State Assembly Committee on Business and Professions, August 31, 2016
- 10) Kathleen Hamilton, former Executive Director. California Department of Consumer Affairs. September 13, 2016
- 11) Chris McKenzie, Dan Carrigg, and Jason Rhine, League of California Cities. September 27, 2016
- 12) Ron Bates, CAMTC Board Member, October 1, 2016
- 13) Bob Benson, Chairman, Associated Bodywork and Massage Professionals, October 3, 2016
- 14) Jeannie Martin, American Massage Therapy Association, October 3, 2016
- 15) Bob Benson, Associated Bodywork and Massage Professionals, October 3, 2016
- 16) Guy Fuson, Former CAMTC Board Member, October 5, 2016
- 17) Mike Callagy, CAMTC Board Member, October 12, 2016
- 18) Bernadette Murray, CAMTC certified massage therapist, October 12, 2016
- 19) Mike Schroeder, American Massage Council, October 18, 2016
- 20) Tony Siacotos, American Massage Therapy Association, October 27, 2016
- 21) Kama Monroe, Executive Director of the Florida Board of Massage Therapy, and Brad Dalton, Deputy Press Secretary, Florida Department of Health, November 1, 2016

- 22) Kathleen Doyle, Executive Secretary, Office of Professions, New York State Education Department, November 14, 2016
- 23) Russell Rust, President, American Massage Therapy Association Texas Chapter, November 14, 2016
- 24) Monica Miller and Cris Forsyth, California Chiropractors Association, November 28, 2016
- 25) Carl London, legislative advocate, California Physical Therapists, December 5, 2016
- 26) Adam Quinonez, Deputy Director, Legislation. Julie Bishop and John Perry. California Department of Consumer Affairs. December 7, 2016

9 Appendix B: Stakeholder Input Tool Methodology

Blue Sky Consulting Group gathered feedback about regulation of massage therapy in California from stakeholders using a tool referred to throughout this report as the “stakeholder input tool.” CAMTC, ABMP, and AMTA, and AMC disseminated the input tool to individuals on their respective email lists and explained that the purpose of the tool was to inform a feasibility study required by the California Business and Professions Code Section 4620(a)(1). A link to the tool was also sent to police chiefs and city government officials via the California Police Chiefs Association and the League of California Cities.⁶² The input tool was open to receive responses from October 17 until November 14, 2016. The input tool collected the bulk of responses during the initial two-week period. A total of 4,064 individuals responded.

The tool was designed for broad dissemination by allowing anyone with the weblink access to the tool.⁶³ Recipients of the original email could forward it to others. Although the tool was utilized by a large number of individuals, the responses do not constitute a representative sample of all individuals potentially affected by regulation of massage therapy in California. Most notably, relatively few uncertified massage therapists (100) and individuals practicing occupations similar to massage therapy (123) responded to the input tool, with CAMTC certified massage therapists comprised the bulk of respondents (88 percent). As an input tool and not a survey, the tool did not poll stakeholders for their preferences. Rather, the 20-question tool posed mostly open-ended questions in order to allow Blue Sky Consulting Group to identify important themes and issues for analysis. Blue Sky Consulting Group used self-identified groupings (e.g. CAMTC certified massage therapists, local law enforcement official, etc.) to analyze themes relevant to each group. Individual responses were anonymous unless respondents chose to provide their contact information, in which case, Blue Sky Consulting Group kept those individual responses confidential.

Figure 7 (next page) presents the respondents to the stakeholder input tool by type of respondent.

⁶² Requests for feedback were also sent to the county administrative officers and county sheriffs, but both groups declined to participate.

⁶³ The tool minimized the potential for fraudulent entries by allowing an individual to fill out the tool only once from the same device, though subsequent modifications to responses were permitted.

Figure 7: Respondents to Stakeholder Input Tool by Type

	Number	Percent
CAMTC Certified Massage Therapist	3,568	88%
Massage therapy business owner	705	18%
Other (please specify)	372	9%
Massage Therapist licensed in another state	179	4%
Other health professional	123	3%
Other massage therapy industry professional	111	3%
Massage therapy school owner or staff	102	3%
Massage Therapist (not Certified in California)	100	2%
Local law enforcement official	46	1%
Local government official	37	1%
Total selections in response to the question	5,343	132%
Total individual respondents	4,064	100%