

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**

BRIEF OVERVIEW OF THE THE CALIFORNIA MASSAGE THERAPY COUNCIL

The California Massage Therapy Council (CAMTC) is a nonprofit organization responsible for the voluntary certification and recertification of massage therapists and the recertification of massage practitioners. The certification law was initially enacted by SB 731(Oropeza) Chapter 384, Statutes of 2008. Because certification is voluntary, non-certified individuals may provide massage services in accordance with local rules and regulations. SB 731 authorized the creation of a governing certification entity, the Massage Therapy Organization which was renamed CAMTC by AB 619 (Halderman) Chapter 162, Statutes of 2011.

Unlike other practice acts in the Business and Professions Code (BPC), the Massage Therapy Act is administered by a private nonprofit organization, not an agency under the Department of Consumer Affairs (DCA). The provision authorizing the establishment of the nonprofit oversight body for the purpose of administering the voluntary massage certification program is specified in BPC Section 4602. As a nonprofit public benefit organization, the CAMTC must abide by nonprofit corporations law as specified, in the Corporations Code. The CAMTC is authorized by statute to take any reasonable actions necessary to carry out its responsibilities and duties, as specified in BPC Section 4600 *et seq.*

This is the CAMTC's second sunset review. The tables, data, and figures referenced in this background paper were provided by the CAMTC.

History of the Regulation of Massage Therapy

On January 6, 2005, the former Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee) were presented with the issue of whether California should establish state-level regulation of massage therapists and what type of regulatory oversight should be provided. This submission was part of a "sunrise review" process which provides that any proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of practice, or create a new licensing board would be referred to specified standing committees of the Legislature, as referenced in Government Code (GC) Section 9147.7. Members have not been appointed to the Joint Committee since 2006.

The Joint Committee found that massage therapy was "regulated in California by a chaotic mish-mash of local vice ordinances primarily aimed at controlling illicit 'massage parlors.' In essence, the current

system seeks to regulate illegal activity under the guise of professional licensing.” The Joint Committee concluded that the current system failed to serve either the public or the profession and that it would be appropriate to regulate massage therapy at the state level in order to create a more uniform standard. On April 12, 2005, the Joint Committee issued its recommendation that the regulation of massage therapists should be shifted from local jurisdictions to a state-based approach.

The recommended regulatory regime for massage therapy was modeled after regulatory regimes for tax preparers (BPC Section 22250, *et seq.*) and interior designers (BPC Section 5800 *et seq.*) which provide for statutorily authorized nonprofit corporations that have the authority to certify qualified individuals in their respective professions. The reasoning for selecting this model over another model, such as the more traditional board or bureau, is not known.

The Role of the CAMTC

The Massage Therapy Act implements a voluntary title act rather than a mandatory practice act. There is an important distinction between regulations which require licensure and those which protect a professional title. Statutes regulating professions in California generally fall into two categories: a “practice act,” or a “title act.” A “practice act” regulates the duties, responsibilities and scope of practice that a licensee can perform upon meeting specific educational, experiential, or training requirements. A “title act” simply regulates the use of the title an individual may use in practice. In order to be permitted to use a title, a state may require proof that an individual has a certain level of experience or education relevant to the particular title being regulated.

A person using the term “certified massage practitioner” or “certified massage therapist” or any other term, such as “licensed,” “certified,” “CMP,” or “CMT,” that implies or suggests that the person is certified as a massage therapist or practitioner, without being certified by the CAMTC, would be considered an unfair business practice under BCP Section 4611.

CAMTC-certified professionals are recognized throughout California to provide massage services but may still be subject to local ordinances and business regulations. GC Section 51034 provides modest restrictions on local ordinances regarding certified massage professionals and massage businesses. For individuals who are not certified by the CAMTC, local jurisdictions may regulate those individuals according to their local ordinances.

The law also authorizes the CAMTC to deny applications and discipline certificate holders by denying an applicant or revoking, suspending, or placing probationary conditions on an individual's certificate.

The CAMTC's Board of Directors (board) is currently comprised of 13 members who are appointed by various entities including, but not limited to, massage trade associations, the League of California Cities, the DCA, the California Police Chiefs Association, the California State Association of Counties, , the Chancellor of the California Community Colleges, the California Association of Private Postsecondary Schools, an anti-human trafficking organization, and the CAMTC itself.

The CAMTC's objective is to: *protect the health and safety of California consumers by promoting and enforcing laws and protocols that serve the public and certified massage professionals.*

The CAMTC's bylaws state the specific purpose of the corporation is:

To enable consumers and local governments to more easily identify certified massage professionals; to provide for consistent statewide certification and oversight of certified massage professionals; to ensure that schools approved by the [CAMTC] that are teaching massage provide a high level of training; and to assist local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders.

The CAMTC's mission as stated in its *2015 Sunset Review Report* is: *To protect the public.*

The CAMTC's authorizing statute called for the program to be administered by a nonprofit organization which did not exist at the time the law was enacted. The only mandate for the organization was that it needed to be a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. As a private 501(c)(3) nonprofit corporation, the CAMTC does not receive any monies from the State.

Since the enactment of the Massage Therapy Act, there have been numerous legislative changes, most notably, AB 1147 (Bonilla, Gomez, and Holden) Chapter 406, Statutes of 2014, pertaining to the certification process, the composition of the CAMTC board, and the CAMTC's denials and discipline.

The Elimination of Preemption

In 2014, the CAMTC underwent its first sunset review which highlighted numerous issues about the operations of the organization and the impact of the massage therapy law – particularly its land use preemption provisions – on local governments. As a result, AB 1147 (Bonilla, Gomez, and Holden) Chapter 406, Statutes of 2014, made numerous changes to the Massage Therapy Act. The CAMTC was granted a two-year sunset extension in order to provide the Legislature with the opportunity to examine the performance of these new provisions related to the operations of the CAMTC and the local government response to the elimination of preemption, and make any needed follow-up changes. Although AB 1147 was signed into law in 2014, the provisions of that bill did not take effect until January 1, 2015. Some of the major changes required by AB 1147 are as follows:

- 1) Limitations on fees. – Established a \$300 cap for the certification and recertification fee, if an annual assessment by the Board determines an increase of the fees, as authorized by CAMTC's bylaws, is warranted. In addition, the CAMTC is required to notify certificate holders by email 90 days prior to a proposed vote on any fee increase, along with a posting on the CAMTC's website within 14 days of the vote to increase the fees.
- 2) Certification tiers – Sunset the CMP certification tier for new applicants, effective January 1, 2015, and now requires all applicants for CMT certification to obtain the required 500 hours of education from an approved school with 100 of those hours in core curriculum subjects and pass an examination.
- 3) Certification revocation, suspension or denial – Expanded the definition of unprofessional conduct to specifically articulate certain prohibited behaviors. These include, but are not limited to, engaging in sexually suggestive advertising, engaging in any form of sexual activity on the premises of a massage establishment, or practicing massage on a suspended certificate or outside the of the conditions on a restricted certificate.

- 4) School approval –Required the CAMTC to develop policies, procedures, rules or bylaws governing the requirements and process for the approval and unapproval of schools, including any corrective action to return a school to approved status, and provided the CAMTC with explicit authority to establish a reasonable fee for the inspection or approval of schools.
- 5) CAMTC board composition – Reconstituted the CAMTC board to reduce the total number of authorized members from 20 to 13, increased the diversity of the CAMTC board by making the seats available to a broader array of stakeholders, including public health representative and an anti-human trafficking advocates, and required all appointees to be residents of California.
- 6) Local control – Gave local governments back their land use authority to regulate all massage establishments and businesses, including those businesses where all persons providing massage for compensation were CAMTC-certified while imposing some narrowly-tailored protections to ensure that the profession is regulated consistently across the state.
- 7) Practice protection for massage professionals – Established a number of new protections for certified massage professionals. As a result, local governments are not permitted to impose a requirement that certified massage professionals are required to take any test, medical examination, or background check, or otherwise comply with any additional educational requirements; impose a requirement that certified massage professionals obtain any other license, permit, certificate or authorization to provide massage for compensation, excluding those normally required to operate a business, such as a business license; impose dress code requirements in excess of what is already considered unprofessional conduct by the CAMTC, and protects certified massage professionals from interference in their performance of legitimate massage techniques approved by the CAMTC.

History of the Certification Process

The legislation that authorized the CAMTC also created a two-tier certification system (CMT & CMP) in order to provide a pathway to certification for many massage professionals who had been practicing in California prior to a statewide voluntary certification program. The CAMTC also offered a Conditional Certified Massage Practitioner (CCMP) certification as a way to “grandfather in” professionals who had been engaged in the massage profession and who had less than 250 hours of education. A CCMP designee was required to provide evidence of completing at least 30 hours of continuing massage education per year until the massage education totaled 250 hours. Once an applicant had completed a minimum of 250 hours of massage education, from an approved school, the applicant would be eligible to apply for certification as a massage practitioner. As of January 2, 2012, the CAMTC no longer accepts applicants into the CCMP system; however, the completion of the specified educational requirements for current CCMP certificate holders will continue to be accepted until December 31, 2016. Effective January 1, 2015, the CAMTC discontinued the CMP (250 hour) tier altogether, as specified in BPC Section 4604.1(a), although applications for recertification as a CMP will continue indefinitely. Previous versions of the Massage Therapy Act also allowed for certification of individuals with only 100 hours of education and proof that they provided specified hours of massage for compensation.

AB 1147 eliminated the two-tier system in favor of a single pathway towards certification as a CMT to raise the professional standards in California. Certifications are valid for two years, at which time certificate holders are required to apply for recertification. Continuing education is not required for

recertification. In addition, beginning January 1, 2015, all new applications received by the CAMTC are required to have a minimum of 500 hours of education from CAMTC approved schools, with 100 of those 500 hours be in core curriculum requirements (anatomy and physiology, contraindications, business and ethics, and health and hygiene) as specified in BPC Section 4604(a)(A), and have passed a CAMTC-approved examination.

At this time, the CAMTC does not certify or regulate massage businesses, establishments or business owners; CAMTC certification is limited to individuals who provide massage for compensation.

The CAMTC reported in its *2015 Sunset Review Report*, that its certified populations was approximately 7,532 CMPs, 42,734 CMTs, and 31 CCMPs.

For new applications received on or after January 1, 2015, the CAMTC now requires the passage of a CAMTC-approved examination for certification. The following have been approved by the CAMTC: the Massage and Bodywork Licensing Examination (“MBlex”); the National Certification Examination for Therapeutic Massage and Bodywork (“NCETMB”) and the National Certification Examination for Therapeutic Massage (“NCETM”) if taken prior to February of 2015; The New York State Licensure Examination, and the Board Certification Examination for Therapeutic Massage and Bodywork (“BCETMB”). The CAMTC is not now, and has never been, involved in the development, scoring, analysis, or administration of any of these examinations. The CAMTC reported that 43 states, the District of Columbia and Puerto Rico require at least one of the above examinations.

The Massage Industry

Massage professionals treat clients by using touch to manipulate the soft-tissue and muscles of the body. Massage therapy may be used to relieve pain, rehabilitate injuries, reduce stress, increase relaxation, and enhance the general wellness of clients. Massage professionals work in a variety of settings, including private offices, spas, hospitals, fitness centers, and shopping malls. It should be noted that the term “massage parlor,” which is viewed by the massage profession as a dated and pejorative term suggesting a place associated with prostitution, is not used throughout this *Background Paper*. The more appropriate term used here to describe a place where the profession of massage therapy is practiced is a massage business or massage establishment.

According to the Bureau of Labor Statistics (BLS), employment of massage professionals nationwide is projected to grow 22% from 2014 to 2022, which is much faster than the average growth for all occupations. The BLS states “as an increasing number of states adopt licensing requirements and standards for therapists, the practice of massage is likely to be respected and accepted by more people as a way to treat pain and improve overall wellness...similarly, as more healthcare providers understand the benefits of massage, demand will likely increase as these services become part of treatment plans.” The BLS also reports that massage therapists held about 168,000 jobs in 2014, and about half of massage therapists are self-employed.

As of May 2015, 45 states and the District of Columbia regulate massage therapy at the state level. Forty states and Puerto Rico require licensure for massage therapy professionals, two states have a license and certification requirement, and three states (California, Indiana and Virginia) require a certification or registration. California offers only a voluntary certification. Of those states with regulatory requirements, 30 have had some form of state oversight for over 15 years. State requirements for licensure and certification vary based on hours of education, continuing education and the requirement of an examination. For example, New York requires 1000 hours of education, 36

hours of continuing education every three years and the passage of a state examination; Nevada requires 500 hours of education, 12 hours of continuing education annually, and the passage of a specified national examination; and, Arizona requires 700 hours of education, 24 hours of continuing education every two years and the passage of a specified national examination.

CAMTC Board Member Composition

The initial CAMTC board consisted of 11 members and was later expanded to 20 members in 2009. In order to make the CAMTC board more responsive to stakeholders, the *2014 Sunset Review Background Paper* recommended that the board be reduced to 15 or fewer members, that local government or local law enforcement representation be increased, and a California residency requirement be imposed. In addition to reducing the number of CAMTC board composition, AB 1147 diversified the membership to include representatives from an anti-human trafficking organization, a city public health official, an appointment by the California Police Chiefs Association, and a city attorney. The CAMTC reported that in the past two-years it was able to hold all meetings with a sufficient quorum.

The previous board was comprised of appointments from the following organizations:

- 1) Two appointees for each Professional Society, Association, or other Entity comprised of massage professionals, established since 2000, with a dues paying membership of at least 1,000 California individuals, with bylaws that require members to comply with a code of ethics (four organizations met this definition – totaling 8 appointments);
- 2) California Association of Private Postsecondary Schools;
- 3) League of California Cities;
- 4) California State Association of Counties;
- 5) Director of the DCA;
- 6) Office of the Chancellor of the California Community Colleges (Appointee may not be a part of any massage therapy certificate or degree program); and
- 7) Other appointments as determined by the CAMTC.

The current board is comprised of appointments from the following organizations:

- 1) League of California Cities;
- 2) California Police Chiefs Association;
- 3) California State Association of Counties;
- 4) Anti-Human Trafficking Organization selected by the CAMTC;
- 5) Office of the Chancellor of the California Community Colleges;
- 6) Director of the DCA (Appointee to be a member of the public);
- 7) California Association of Private Postsecondary Schools;
- 8) American Massage Therapy Association, California Chapter (Appointee must be a California resident, practicing massage for at least three years, and certified by the CAMTC);
- 9) Public Health Official representing a city, county, or city and county, or state health department (city, county, or city and county, or state health department chosen by the CAMTC, and appointee chosen by that entity);
- 10) One rotating seat for a Professional Society, Association, or other Entity comprised of massage professionals, established since 2000, with a dues paying membership of at least

1,000 California individuals, with bylaws that require members to comply with a code of ethics (Currently American Massage Council). Appointee must be a California resident, practicing massage for at least three years, and certified by the CAMTC;

- 11) A California licensed attorney, practicing for at least three years, representing a California city at the time of appointment, selected by the CAMTC;
- 12) Representative of a massage business that has been operating in California for at least three years, selected by the CAMTC; and
- 13) Appointed by the CAMTC Board. Appointee must have knowledge of the massage industry or bring needed expertise to the operation of the CAMTC.

The following is a list of current members of the CAMTC board with a brief biography of each member, their current status, appointment and term expiration date and the appointing authority:

| Member Name | Date First Appointed | Date Re-Appointed | Date Term Expires | Appointing Authority | Profession |
|--|----------------------|-------------------|-------------------|---|---|
| Ronald Bates, Ph.D. | 9/15/2015 | | 9/15/2019 | League of California Cities | Dr. Bates is a Senior Advisor to the League and the International City/County Management Association. Dr. Bates was a former City Manager in Buena Park, South Gate, Pico Rivera, La Habra Heights and Assistant City Manager Anaheim; and a former Mayor and Council Member in Los Alamitos. |
| Allison Budlong | 12/11/2014 | 9/15/2015 | 9/15/2019 | California Association of Private Postsecondary Schools (CAPPS) | Ms. Budlong is the Student and Alumni Services Manager at National Holistic Institute (NHI), a College of Massage Therapy. |
| Michael Callagy | 3/15/2011 | 9/15/2015 | 9/15/2019 | CAMTC Board | Deputy County Manager, San Mateo County. |
| Mark Dixon | 1/14/2010 | 9/15/2015 | 9/15/2019 | American Massage Therapy Association (AMTA-CA) | Mr. Dixon is a Certified Massage Therapist with a private practice in Newport Beach. |
| Shana Faber | 9/15/2015 | - | 9/15/2019 | CAMTC | Ms. Faber has served as the Assistant City Attorney for the City of Vacaville since 2002. |
| Jeff Forman, Ph.D. | 9/30/2014 | 9/15/2015 | 9/15/2019 | California Community Colleges Chancellor's Office | Dr. Forman recently retired as a full time Professor and Director of the Massage Therapy program at DeAnza College in Cupertino. |
| Heather Forshey | 9/15/2015 | - | 9/15/2019 | San Mateo Department of Health | Ms. Forshey serves as Director of Environmental Health in San Mateo County and is directly responsible for permit and inspection oversight of massage establishments. |
| Guy Fuson | 1/18/2011 | 9/15/2015 | 9/15/2019 | California State Association of Counties (CSAC) | Mr. Fuson is an Official with the Finance Office for Sacramento County and is directly involved in the permitting of massage therapists and businesses. |
| Richard Lee Resigned Effective: January 26, 2016 | 9/15/2015 | - | 9/15/2019 | DCA (DCA) | Acting Director of Environmental Health (San Francisco Dept. of Public Health) |

| | | | | | |
|--------------------|------------|-----------|-----------|--------------------------------------|---|
| Michael Marylander | 1/14/2010 | 9/15/2015 | 9/15/2019 | CAMTC | Mr. Marylander owns The Massage Place, a chain of massage therapy clinics. |
| Stephanie Powell | 11/11/2015 | - | 9/15/2019 | Journey Out | Ms. Powell is the Executive Director of Journey Out. |
| Sandra Spagnoli | 9/15/2015 | - | 9/15/2019 | California Police Chiefs Association | Ms. Spagnoli is the Chief of Police for the City of San Leandro |
| Dixie Wall | 12/15/2009 | 9/15/2015 | 9/19/2019 | American Massage Council (AMC) | Ms. Wall is a Licensed Acupuncturist and Certified Massage Therapist with a private practice. |

CAMTC Committees

The CAMTC utilizes two standing committees, the Executive Committee and the Audit Committee. No committees or other advisory bodies are mandated in statute for the CAMTC.

- Executive Committee –This committee consists of the elected officers of the CAMTC board and has the authority to review and recommend changes to the bylaws and to other operating policies. According to the CAMTC, because all of the members of the CAMTC board are so committed and enthusiastic, the Executive Committee does not currently play a strong role in the governance of the organization – i.e. all decisions are made by the full CAMTC board.
- Audit Committee –This committee is charged with oversight of financial reporting and disclosures. The committee interfaces with the auditing firm and the Chief Executive Officer (CEO) and makes recommendations to the CAMTC as to the approval of the annual audit report. This committee also files the organization’s tax returns. From January 1, 2014 through noon on September 15, 2015, this committee was comprised of two members. As a result of the change in board composition, as of September 1, 2015, the committee lost one member and the CAMTC appointed a replacement committee member at its February 25, 2016 meeting.

Disbanded Committees and Advisory Committees

The CAMTC has created and disbanded several committees including: 1) the Credentials Committee; 2) the Public and Profession Outreach Committee; 3) the Public Policy and Local Government Committee; 4) the CEO Search Committee; 4) the Denial and Disciplinary Committee; and, 5) the Schools Committee.

Change in Attendance Policy

At the June 25, 2014, meeting, the CAMTC passed an amendment to their bylaws relating to CAMTC board member attendance. The amendment made at that time was to Article V of the bylaws and the “Attendance” provision for its CAMTC board members. Prior to any change, the bylaws stated that any board member missing three consecutive meetings would automatically lose his or her seat, unless the CAMTC board voted to waive that provision. According to the CAMTC, the strict attendance requirement appeared reasonable at the time the original provision was implemented, because generally there were only four to six meetings per year. However, occasionally, the CAMTC was authorized to call “special meetings” on less than a 10-day notice (sometimes with as little as 48-hour notice). Thus, the section was amended so that attendance at “special” or “emergency” meetings on

less than 10-day notice would not count against a CAMTC board member for the purposes of an automatic removal.

Staff and Consulting Services

The CAMTC reported that it does not have issues with the staffing of CAMTC-employees. The CAMTC directly employs its executive-level positions, including: 1) CEO; 2) Director of Governmental Affairs; 3) Director of Professional Standards Division (PSD); and 4) Director of Education Standards Division (ESD). The CAMTC-hired employees are responsible for the administration of the denial and disciplinary program against individuals and administer the program related to the approval and un-approval of schools. In total, 23 staff are employed directly by the CAMTC. According to the CAMTC, eight staff are assigned to the PSD, including one director, five investigators, and two paralegals; four staff are assigned to the ESD including one director and three investigators; nine staff are assigned to the legal department, including three staff attorneys, four hearing officers, and 2 paralegals. The remaining two staff positions are the Director of Governmental Affairs and the CEO.

The CAMTC has both its own employees and contracts with a variety of service providers to assist with many of the CAMTC's operations, including administrative, website service, media, and legal services including:

- Advocacy and Management Group (AMG) – AMG provides the CAMTC with administrative services, such as: 1) processing applications for certification, re-certification and school approvals; 2) processing payments; 3) providing telephonic and email customer support; 4) maintaining the database, secure sites, and documents; and 5) printing and issuing certificates and ID cards. AMG also employs staff that provides administrative support to the PSD and ESD.
- Law Firm of Jill S. England – CAMTC engages the law firm of Jill S. England, Attorney at Law, in Sacramento, for legal services.
- Pacific Project Management – The CAMTC contracts with Pacific Project Management (“PPM”) for management and oversight of the implementation of the new database.
- Risetime – Support and maintenance of the website currently in use by the CAMTC
- InLumon – The CAMTC contracts with InLumon to develop and create the new database and document management system.
- TalentWise – Recently, the CAMTC began contract services with TalentWise to perform background checks for school owners, administrators, and instructors of those schools that apply for the CAMTC approval.

Fiscal and Fund Analysis

The CAMTC is supported solely by certification and recertification fees. It does not receive any General Fund or special fund monies from the State of California, and has never provided a loan to the General Fund.

The certification and recertification fee for massage therapists and massage practitioners is currently \$150 every two years. Initial and recertification fees are to be established by the CAMTC annually. The certification and recertification fees have not been raised since the program's inception and the CAMTC does not anticipate a fee increase at this time. BPC Section 4602(i) authorizes the CAMTC to establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties, but sets a certification fee cap of no more than \$300.

BPC Sections 4602(k) specifies that prior to a CAMTC vote to increase initial certification and recertification fees, the CAMTC is required to provide at least 90 days' notice of the meeting, including posting a notice on the CAMTC's Internet website (unless at least two-thirds of the CAMTC board concur that there is an active threat to public safety and that voting at a meeting without the 90-day public notice is necessary). In addition, BPC Section 4602(l) specifies that if a fee is increased, affected applicants and certificate holders must be notified by email within 14 days of the action.

The CAMTC charges a late fee for recertification applications between \$25 and \$90 depending on the lapse for applications not received before the date of expiration listed on the certificate holder's ID card. In January 2011, the CAMTC board approved a provision whereby the individual seeking recertification after 180 days or more of the expired certificate will be required to re-apply as a new applicant, meaning they must meet the current requirements for certification which now include 500 hours of education and the passage of a CAMTC-approved examination.

On September 15, 2011, the CAMTC established a fee for oral hearings and consideration of written statements for applicants who have been proposed to have their application for certification denied and for certificate holders who have been proposed to have their certificated disciplined. The initial fee for an oral hearing was \$95 and the fee for consideration of a written statement was \$65. On September 13, 2012, the fees were raised to \$135 and \$90, respectively; these fees have not changed since they were raised at that time. The CAMTC states that it provides fee waivers for indigent individuals who can prove that they were unable to pay the hearing or written consideration fees.

The CAMTC does not have cite and fine authority or the legal authority to engage in cost recovery or restitution against applicants or certificate holders.

The CAMTC reported that as of October 31, 2015, the CAMTC's reserve level was equal to 10.5 months of its current operating budget. There is not a mandated reserve level for the CAMTC. Although the CAMTC reported that its preliminary budget estimates for 2016 showed a deficit, it projects that the final 2016 budget will show a modest surplus. The CAMTC does not foresee any changes to its certification and recertification fees.

Fund Condition

| Fund Condition (dollars in thousands) | 2014 | 1/1/15 - 9/30/15 |
|--|-------------|-------------------------|
| Beginning Balance | \$1,829,917 | \$3,195,772 |
| Cash In/Revenue | \$4,779,307 | \$3,023,677 |
| Total Cash | \$6,609,223 | \$6,219,448 |
| Expenditures (Cash) | \$3,413,451 | \$2,908,806 |
| Fund Balance | \$3,195,772 | \$3,310,642 |
| Months in Reserve | 11 | 10 |

**Note: This table was taken from the CAMTC's 2015 Sunset Review Report.*

Expenditures by Program Component

The CAMTC reported that in 2014, 48.7% of expenditures were for individual denials (for applicants) and discipline (for certificate holders). In the first nine months of 2015, that number dipped slightly to 46%. In 2014, the rest of the expenditures were for administrative costs, both AMG and non-AMG costs. For the first nine months of 2015, these costs were similar, with the new Educational Standards Division (ESD) accounting for 4.8% of total expenditures.

In the CAMTC's *2013 Sunset Review Report*, the CAMTC reported that its expenditures by program component between 2009 and 2013 were on average 37% for the enforcement program, 41% for the certification program, and 22% for administration, legal, outreach, and other expenses.

| Expenditures By Program Component | 2014 | 1/1/2015 - 9/30/2015 |
|--|--------------------|----------------------|
| Individual Denials and Discipline (PSD & Legal)* | \$1,702,692 | \$1,320,266 |
| Educational Standards Division (Schools) | - | \$138,629 |
| Administration (AMG) | \$891,203 | \$686,140 |
| Administration (non-AMG) | \$903,511 | \$727,366 |
| TOTALS | \$3,497,406 | \$2,872,401 |

* Includes a portion of AMG, database development and maintenance, executive staff, and legal.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

Fee Schedule and Revenue

| Fee Schedule and Revenue (dollars in thousands) | | | | | |
|---|--------------------|-------------------|--------------------|--------------------|--------------------|
| FEE TYPE | Current Fee Amount | 2014 Cash Revenue | 2015 Cash Revenue* | TOTAL FEES BY TYPE | % of Total Revenue |
| APPLICATION FEES | \$150 | \$2,111 | \$857 | \$2,968 | 38.2% |
| RECERTIFICATION FEES | \$150 | \$2,518 | \$1,865 | \$4,383 | 56.4% |
| RECERTIFICATION LATE FEES | | | | | |
| 1-10 days | \$25 | | | | |
| 11-29 days | \$40 | | | | |
| 30-179 days | \$90 | | | | |
| Total Late Fees Collected | | \$119 | \$128 | \$247 | 3.2% |
| UPGRADE/MISCELLANEOUS FEES | | | | | |
| Upgrade | \$30 | | | | |
| ID Replacement | \$15 | | | | |
| Certificate Replacement | \$15 | | | | |
| Name Change (New ID & certificate) | \$30 | | | | |
| Total Upgrade/Miscellaneous Fees Collected | | \$4 | \$74 | \$78 | 1.0% |
| HEARING FEES | | | | | |
| Written Hearing | \$90 | | | | |
| Oral Hearing | \$135 | | | | |
| Total Hearing Fees Collected | | \$24 | \$24 | \$48 | 0.6% |
| RETURNED CHECK FEES | \$25 | \$1 | \$1 | \$2 | 0.0% |
| SCHOOL APPLICATION FEES | \$750 | | \$25 | \$25 | 0.3% |
| SCHOOL BACKGROUND CHECK FEES | \$41 | | \$17 | \$17 | 0.2% |
| TOTALS | | \$4,777 | \$2,991 | \$7,768 | 100.0% |

*2015 data is through 9/30/2015

Table 4 does not include other income such as interest and career opportunity mailings.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

Certification

The certification program aims to provide public protection by ensuring that certification is provided to only those applicants who have met the minimum requirements in current statute, and who have not committed acts that would otherwise be grounds for denial, suspension or revocation. As of September 30, 2015, the CAMTC's total active certification population was just over 50,000.

| Certification Population | | 2014 | 2015* |
|---|----------|-------|-------|
| Certified Massage Therapist (CMT) | Active | 38729 | 42734 |
| | Inactive | 13989 | 13996 |
| Certified Massage Practitioner (CMP) | Active | 6151 | 7532 |
| | Inactive | 2086 | 2087 |
| Conditional Certified Massage Practitioner (CCMP) | Active | 48 | 31 |
| | Inactive | 525 | 525 |
| **Corrections - Additional Inactive | | 1203 | 1203 |

*2015 data is through 9/30/2015

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

The CAMTC states in its *2015 Sunset Review Report* that its goal is to process complete applications, with no outstanding issues, within 30 days. The CAMTC reported that it is currently meeting its internal timeframes for certification. Its current timeframe for processing complete applications with no background or education issues is 15 days.

The CAMTC reported that at the end of 2014, it saw an uptick in the number of applications received for the CMP tier due to the fact that the requirements for certification were changing and the CMP tier would no longer be available effective January 1, 2015. As a result, the CAMTC reported that there were significant processing delays for applicants at the beginning of 2015. The CAMTC responded to the delay by authorizing overtime and utilizing additional staff from AMG. The CAMTC reported that the delays were addressed by approximately March 31, 2015. The average time needed to issue certificates depends largely on the receipt of the items required for certification.

Application Information Verification and Requirements

Pursuant to BPC section 4606, all applicants must be fingerprinted. This has been a statutory requirement since the enabling law became effective, so every applicant (and therefore certificate holder) has submitted fingerprints. Once someone has applied for CAMTC certification and submitted the required fingerprints, the CAMTC will continue to receive subsequent arrest notifications from the DOJ and FBI. Until CAMTC sends a "No Longer Interested" notification to the DOJ, it will continue to receive the notifications. The CAMTC states that it receives continuous updates on applicant and certificate holder's State and Federal level convictions and arrests.

The CAMTC reported that it also communicates with various local jurisdictions and local law enforcement agencies in order to obtain information regarding applicants or certificate holders applying for certification or re-certification. Once an application for certification or re-certification is received, email notices are sent to each city, county, and law enforcement agency where the applicant reported that he or she lived or worked within the past 10 years. Email communication with cities, counties, and law enforcement agencies related to applicants and certificate holders is continuous and on-going, with more than 1.2 million email messages sent from the CAMTC to local agencies since 2009. On average, 10 email messages are sent for each applicant for certification or re-certification to

the cities, counties, and law enforcement agencies where the applicant has lived or worked in the past 10 years, each time they apply for certification or re-certification.

Because certificate holders must apply for re-certification every two years, cities, counties, and law enforcement agencies are contacted about each person at least every two years. The CAMTC provides a minimum of two weeks for local law enforcement and local government staff to submit information related to each applicant. Information received is reviewed and, when warranted, investigated to determine if a violation of the law has occurred.

Reports from the DOJ and FBI are limited to criminal arrests and convictions and do not include administrative citations or civil actions related to a local massage or a massage business permit, as these are commonly civil, not criminal, matters. Additionally, local municipal code violations do not always get reported to the DOJ, as many violations don't require fingerprinting. Local jurisdictions may also provide evidence that an applicant or certificate holder has engaged in conduct that violates the CAMTC's statute. Since the implementation of AB 1147, the CAMTC reported that it has received more reporting from local cities, counties, and law enforcement agencies and hopes that this cooperation will continue to increase in the future.

The CAMTC receives information about applicants and certificate holders from the public and other sources through a complaint link accessible on its website. Additionally, the CAMTC receives information from out-of-state regulatory boards regarding discipline against massage professionals.

Fingerprinting of Applicants and Certificate Holders

The CAMTC reported that every applicant and certificate holder has submitted fingerprints.

National Databank

Currently there is not a functional national databank related to disciplinary actions against massage professionals. While one is currently in development, it is not operational at this time, and therefore the exact manner in which it will operate, the cost to query a record, or the quality of the data it will provide is unknown.

Primary Source Documentation

The CAMTC requires primary source documentation. The CAMTC requires schools that are currently open to directly submit transcripts, and the CAMTC does not accept transcripts submitted by students. For schools that have closed, and no independent verification of education exists, the CAMTC **may** accept compelling evidence of attendance and graduation submitted by the applicant. Applicants may also be required to pass an interview with a CAMTC curriculum expert regarding attendance of a closed school.

Test scores from the CAMTC approved examinations (NCETMB, NCETM, BCETMB and MBLEx) are also sent directly to the CAMTC. If an examination has been taken prior to submission of an application for certification and is being used as part of the application, the CAMTC staff will verify the score with the testing provider.

Out-of-State Applicants

BPC Section 4604(a)(6) provides the CAMTC with authority to issue a certificate to an applicant who meets the specified qualifications if he or she holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within the Massage Therapy Act, BPC Sections 4600 *et seq.*

If an applicant received education at a school that is outside of California, the CAMTC has the discretion to give credit for comparable academic work completed at that school.

When the CAMTC receives an application from an individual who is licensed, registered, or certified in another state, the CAMTC first assesses whether the license is from a state that meets or exceeds the educational requirements specified in current California law. These applicants are further assessed to determine whether they meet the other background requirements in California statute and must also pass CAMTC's background check. The CAMTC is currently reviewing the requirements for licensure in other states to determine which state's requirements for licensure meet or exceed the CAMTC's educational requirements.

For applicants who have licenses from states that do not meet or exceed the educational requirements specified in current law, or have education completed in other states, their education is considered on a case-by-case basis. The CAMTC states that it has the statutory authority to give credit for comparable work completed outside of California.

Out-of-Country Applicants

Current law does not specifically authorize the CAMTC to accept or evaluate licenses from other countries. The CAMTC reported that it evaluates the education received from out-of-country schools by having the applicant send his or her transcripts to a foreign evaluation service approved by the CAMTC. Currently, the CAMTC has approved two foreign evaluation services that translate and assess massage transcripts. The applicant is required to pay the costs of the translations services.

Uncertified Activity and Discipline

Since certification is voluntary, uncertified activity is not an issue. An individual is able to practice massage therapy without a certification from the CAMTC according to his or her local jurisdiction's rules or regulations. The CAMTC does not have authority to take disciplinary action against those individuals practicing massage without certification.

The CAMTC states that it considers "enforcement" and "discipline" as action against certificate holders, not applicants—CAMTC denies applications and disciplines certificate holders.

As part of that process, the CAMTC established its Professional Standards Division (PSD) which has primary jurisdiction over denial and disciplinary matters for both applicants and certificate holders. Those applications with background (excluding education-only issues) are sent to the PSD for further review, as are cases involving certificate holder discipline.

As a non-governmental certifying organization, the CAMTC is not statutorily required to adhere to or provide strict enforcement data and reporting guidelines, unlike other boards, bureaus, and committees under the jurisdiction of the DCA, except as specified in BPC Section 4620.

Under current law the CAMTC is not required to have a specific timeline for the completion of enforcement related activities. However, the issue of enforcement timeframes was raised during the CAMTC's last sunset review; as a result, the CAMTC reported that it established target performance measures for disciplinary actions in July 2015 and began reporting performance metrics starting with the second quarter of 2015. In addition, the CAMTC notes that because certificate holders are only certified for a two-year period (at which time they are required to reapply for recertification), no case can take longer than two years to discipline a certificate holder, as it loses jurisdiction over a certificate holder once a certificate is expired. The Massage Therapy Act does not prevent an individual, who has been disciplined by the CAMTC, from providing massage for compensation pursuant to the requirements of a local ordinance.

The CAMTC reported that its enforcement statistics demonstrate a significant increase in disciplinary action since the CAMTC's previous sunset review. In 2012, the CAMTC sent only 49 proposed revocation or discipline letters to certificate holders. In the first nine months of 2013, the CAMTC issued 42 proposed revocations or discipline letters to certificate holders; in 2014 CAMTC issued 94 proposed revocation or discipline letters to certificate holders; and, in the first nine months of 2015, CAMTC issued 82 proposed revocation or discipline letters to certificate holders.

Based on performance targets of various programs under the DCA, the CAMTC established the following performance targets for its programs on July 15, 2015:

| Performance Measure (PM) | Description | Timeframe |
|--|---|-----------|
| PM2 – Intake Target Average | Average cycle time from complaint receipt to the date the complaint was assigned to an investigator | 9 days |
| PM 3 – Intake and Investigation Target Average | Average cycle time from complaint receipt to closure of the investigative process; does not include cases forwarded for formal discipline | 180 days |
| PM 4 – Formal Discipline Target Average | Average number of days to complete the entire enforcement process for cases resulting in formal discipline | 480 days |

**Note: The data used in this table was taken from the CAMTC's 2015 Sunset Review Report.*

Since these performance targets are newly established, the CAMTC only has performance metrics data for the second and third quarters of calendar year 2015.

| Performance Measure (PM) and Description | 2 nd Quarter 2015 | 3 rd Quarter 2015 |
|--|------------------------------|------------------------------|
| PM 1 – Volume of Complaints Against Certificate Holders | 26 per month | 28 per month |
| PM 2 – Intake Actual Average (from date of complaint receipt to date the complaint was assigned to an investigator) | 0 days* | 0 days* |
| PM3 - Intake and Investigation Actual Average (from date of complaint receipt to closure of the investigative process) | 12 days** | 14 days** |
| PM4 - Formal Discipline Actual Average (number of days to complete the entire enforcement process for cases resulting in formal discipline against certificate holders) | 189 days | 117 days |

*Average cycle time is nine days. Quarterly averages were zero days because complaints are immediately assigned.

**Average cycle time is 180 days. Quarterly averages do not include cases forwarded for formal discipline.

***Average cycle time is 480 days.

**Note: This table was taken from the CAMTC's 2015 Sunset Review Report.*

The CAMTC reported that its ability to meet or exceed established performance targets is based on its statutory authority, legal standards, and the design of its program.

No Longer Interested Notifications

The CAMTC sends electronically “No Longer Interested” notifications to the DOJ on a regular and ongoing basis. There is currently a backlog due to the fact that the DOJ does not allow the CAMTC to send these notices in batches. Instead, the CAMTC notes that it must send one email for each individual for which a “No Longer Interested” notification is required.

Enforcement Statistics

The CAMTC considers “enforcement” to be action against certificate holders, not applicants; however it has included data about both applicants and certificate holders in some of the following tables in order to match the data provided during its last sunset review. Applicants who were sent Proposed Denial Letters in one year, may have their outcomes become final and effective in a later year, or may have their hearing occur in a later year.

| Enforcement Statistics – Applications and Applications for Re-certification | 2014 | 2015* |
|--|-------------|--------------|
| Sent to PSD for Review** (includes Applications and Re-certifications) | 1,648 | 1,288 |
| Cleared by PSD (includes Applications and Re-certifications) | 1,409 | 1,167 |
| Background Issue Proposed Denial Letters | 287 | 123 |
| Education Only Proposed Denial Letters | 156 | 773 |
| Oral hearings / Written Statements | 84/102 | 38/46 |
| Pending *** | 0 | 715 |
| Approved | 21 | 19 |
| Denied | 434 | 158 |
| Prob. terms or Suspension Imposed | 23 | 8 |

*2015 is through 9/30/2015

**Does not include applicants with “education only” issues.

*** Pending means that a proposed denial letter has been sent but the applicant is still in process in that the final outcome for the matter has not yet occurred as of 9/30/15. The majority of those “pending” have been sent an “education only” proposed denial letter.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

| Enforcement Statistics – Certificate Holder Revocation and Discipline | 2014 | 2015* |
|--|-------------|--------------|
| Sent to PSD for Review | 945 | 724 |
| Cleared by PSD | 820 | 556 |
| Permanent Revocation | 14 | 22 |
| Proposed Revocation./ Discipline Letters | 94 | 82 |
| Oral hearings / Written Statements | 31/22 | 17/23 |
| Pending ** | 0 | 27 |
| No Action | 0 | 1 |
| Revoked | 81 | 55 |
| Prob. terms or Suspension Imposed | 8 | 9 |

*2015 is through 9/30/2015

** Pending means that a proposed revocation/discipline letter has been sent but the certificate holder is still in process in that the final outcome for the matter has not yet occurred as of 9/30/15.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

| Enforcement Statistics – Certificate Holder Suspensions | 2014 | 2015* |
|--|-------------|--------------|
| Suspensions based on operation of law (4610(f)) | 122 | 97 |
| Reinstatements/ lifting of suspension (4610(f)) | 53 | 45 |
| Suspensions based on evidence (4610(g)) | 10 | 91 |
| Oral hearings / Written Statements (4610(g)) | 4/0 | 33/4 |
| Pending** (4610(g)) | 0 | 1 |
| Suspension lifted after hearing (4610(g)) | 2 | 4 |
| Suspension upheld after hearing (4610(g)) | 2 | 32 |

*2015 is through 9/30/2015

** Pending means that a certificate holder has requested an oral hearing or consideration of a written statement for their suspension based on evidence, but the individual is still in process in that no final outcome has occurred as of 9/30/15.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

| Enforcement Statistics – Complaints | Total received 1/1/15 – 9/30/15 | 2015* monthly average |
|--|--|----------------------------------|
| Total Complaints Received – ALL ** | 322 | 35.77 |
| Complaints Against Certificate Holders | 207 | 23 |
| Complaints Against Certificate Holders submitted by Law Enforcement Agencies | 142 | 15.77 |

*2015 data is through 9/30/2015. CAMTC began tracking these numbers in 2015, and therefore it does not have reliable data to include for 2014.

** “Total complaints” includes all complaints received, including those that were not against CAMTC applicants or certificate holders.

*Note: This table was taken from the CAMTC's 2015 Sunset Review Report.

Professional Standards Division

The CAMTC's enforcement program is administered by PSD and the legal department. The PSD is staffed exclusively by CAMTC employees. Those employees include the Division Director, the Chief of Investigations, the Senior Investigator, two other investigators, and a background investigator. One part-time paralegal works exclusively on PSD matters and the Senior Paralegal splits her time between PSD matters, ESD matters, and Legal matters. In addition, there are four hearing officers that work exclusively on matters related to individual certification (denial and discipline). The hearing officers are also CAMTC employees.

The CAMTC reported that in accordance with the Massage Therapy Act and its procedures for denial and discipline, when PSD makes a proposed decision to deny an applicant or discipline a certificate holder, a letter must be sent to that individual notifying them that CAMTC is proposing to take action against them and identifying the legal and factual basis for the proposed denial or disciplinary action. The letter delineates the Denial Procedures provisions that the PSD believes have been violated. Accompanying every letter is a copy of the operative Denial Procedures. If the proposed denial or discipline is based on a declaration, the declaration(s) is also sent to the applicant or certificate holder. It is important to note that at this point, the action is only proposed. Before action is actually taken against an individual, he or she is given notice and the opportunity to be heard.

The notification letter contains the following information:

- The individual’s right to request, in writing (email preferred), an oral telephonic hearing or consideration of a written statement (individual’s choice);
- The date of the hearing (approximately 30 days from the date the letter is mailed, though the law only requires 15 days);
- The effective date of the denial or discipline (generally 21 days from the date of the hearing, though the law only requires 5 days);
- The last day to request a fee waiver;
- The last day to request an oral hearing or consideration of a written statement;
- The last day to submit documents; and
- The last day to pay the hearing fee and the amount of the hearing fee (\$90 for consideration of a written statement and \$135 for an oral hearing).

Each person who timely requests an oral hearing or consideration of a written statement and pays the fee is heard and considered by the hearing officers on their hearing date by telephone conference. To access the oral telephonic hearing, all individuals call into a conference line using a passcode unique to

the hearing. Telephonic hearings are recorded by the telephone conference provider, and the recordings are kept for 30 days. Hearings are generally held on Thursdays.

Telephonic hearings and consideration of written statements are attended by at least one staff attorney, at least two hearing officers, and one paralegal to take notes. The hearing officers are the individuals who make the decision to uphold the proposed denial or discipline, determine that the proposed denial or discipline not be imposed, or determine that other disciplinary measures are more appropriate. Decisions are required to be made by a majority, and there must be a minimum of two hearing officers to make a decision in each particular case, though generally there are three or more hearing officers on each matter.

If a decision is made to either approve an applicant or not take action against a certificate holder, both the individual and AMG are notified of the decision. If a decision is made to uphold the proposed denial or discipline or impose a different discipline, the individual is sent a letter notifying them of that decision, the legal and factual basis of the denial or discipline, the final effective date of the denial or discipline, and the fact that they must wait two years from the effective date of denial or discipline before reapplying for certification. The decision at this point is final, and there is no further review through the CAMTC.

Case Prioritization

As a non-state agency, the CAMTC is not subject to the DCA's *Complaint Prioritization Guidelines for Health Care Agencies*.

The CAMTC reported that it makes its best effort to quickly address all complaints received. When a complaint is received through the CAMTC website, an email is automatically sent to the individual confirming receipt of the complaint. Complaints received are sent to the PSD for initial review and assignment. The CAMTC reported that the majority of matters considered by the PSD are not generated by complaints.

The CAMTC reported the following system for addressing disciplinary matters for both applicants and certificate holders:

In-House Clearance

Applicants for certification and recertification and certificate holders sent by AMG to PSD for review are first reviewed on a weekly basis to determine if they qualify for in-house clearance or not. Straightforward certification or re-certification cases that can be quickly cleared after review by a PSD employee are, and then are, returned to AMG for further processing. Cases that qualify for in-house clearance are generally those with commonly occurring criminal convictions that on their face are not substantially related to the qualifications, functions, or duties of a certificate holder, such as convictions for check fraud, DUIs, vandalism, and petty theft. Cases that do not meet the qualifications for in-house clearance are then sorted into two separate categories: minimal review cases and other cases, which are prioritized in the manner discussed below. These cases are sent directly to a regular PSD weekly meeting for review.

Minimal Review Cases

PSD employees consider applicants and certificate holders who have issues that PSD believes can easily be cleared but don't meet the qualifications for in-house clearance at monthly Minimal Review Case meetings. Issues that are reviewed at these meetings include, but are not limited to, non-criminal issues such as: 1) a complaint that a certificate holder smells like cigarettes; 2) a citation by a city for too many garage sales in a calendar year; 3) a complaint about the price charged for a massage; or 4) a complaint that a 60 minute massage only lasted 58 minutes. They may also include things like reported but unrelated and uncommon criminal convictions, such as a certificate holder conviction for poaching salmon. The issues reviewed are generally unrelated to the qualifications, functions, or duties of a certificate holder, or are non-actionable, but still need to be reviewed and considered by the PSD. The majority of people considered at a Minimal Review Case meeting are cleared and sent **on** to AMG for processing (applicants are certified or re-certified and no action is taken against certificate holders). The very small numbers of people who are not cleared after review are sent to a regular PSD Monday meeting for review.

Denial and Disciplinary Cases

PSD addresses and investigates both applicants and certificate holders. The CAMTC states that it prioritizes complaints as follows: 1) cases against certificate holders; 2) cases against applicants for re-certification; and, 3) cases against applicants seeking certification. All efforts are made to quickly address disciplinary/denial matters in as short a time frame as possible.

The CAMTC receives complaints against individuals or entities that are not applicants or certificate holders, and some complaints may be non-actionable issues such as complaints about a "Groupon."

Suspensions and Disciplinary Action

Suspension based on "*operation of law*"

Suspensions based on *operation of law* do not follow the standard PSD process. BPC Section 4610(f) specifies that when the CAMTC receives a notification that a certificate holder has been arrested and charges have been filed for a violation of Penal Code (PC) Section 647(b) (the solicitation of, agreement to, or the engagement in the activities of prostitution), or another act punishable as a sexually related crime, his or her certificate is immediately suspended. In these instances, there is no need for a PSD review. It is important to note that in order to suspend a certificate holder in this situation, in addition to the arrest, charges must have been filed. Without charges filed, the certificate holder will be subject to the current PSD process.

Suspension based on "*evidence*"

Pursuant to BPC Section 4610(g) the CAMTC may immediately suspend the certificate of a certificate holder if it determines that the individual has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder. As specified in BPC section 4610(g)(2), if the CAMTC suspends a certificate holder's certificate based on *evidence*, the certificate holder "has the right to request, in writing, a hearing to challenge the factual basis for the suspension." BPC Section 4610(g)(2) requires the hearing to be held within 30 calendar days after receipt of the request. A certificate holder who is suspended under this provision is sent a letter notifying the individual of the suspension and that he or she may request an oral telephonic hearing or consideration of a written statement. If an oral hearing or consideration of a written

statement is requested, the same process described above is followed. In the first nine months of 2015, the CAMTC suspended 91 certificates under this provision. Of those 91 certificates suspended, 37 certificate holders requested hearings within that timeframe; one case is pending, four suspensions were lifted, and 32 suspensions were upheld.

Overall Cost of Program Compared to its Success

The CAMTC reported in its *2015 Sunset Review Report* that its hearing process works very well and is cost effective. The hearing officers, staff attorneys, and paralegals each work from their own location and meet telephonically. Before sending a proposed denial or proposed revocation or discipline letter, the CAMTC makes sure that there is sufficient evidence to take action against the individual. This results in a very high number of proposed denials and proposed certificate holder disciplines being upheld. This system is simple, and provides for adequate due process while expending only necessary resources. The CAMTC notes that it has dedicated staff attorneys, paralegals, and hearing officers that work exclusively on denial and disciplinary matters, which allows for an efficient process.

School Approval

Educational Standards Division

In November 2014, the ESD was created and a Division Director was hired. The ESD Division Director's first task was to draft the *Proposed Policies and Procedures for Approval of Schools*. These proposed procedures were shared publically so that interested parties could provide feedback. The Division Director also hired staff and developed an application for school approval which is available on the CAMTC's website.

Applications for school approval were posted on the CAMTC's website on April 1, 2014, and as of December 8, 2015, 112 schools have applied for approval. The ESD is now focused on inspecting schools, reviewing information submitted, and making initial determinations as to whether schools meet the requirements for approval. For applications for certification and recertification received on or after July 1, 2016, all education must be from a CAMTC-approved school.

Additional Background Information

For more detailed information regarding the responsibilities, operation and functions of the CAMTC, please refer to the CAMTC's *2015 Sunset Review Report*. The report is available on the Assembly Committee on Business and Profession's website at: <http://abp.assembly.ca.gov/reports>.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The CAMTC was last reviewed by the Assembly Committee on Business, Professions and Consumer Protection and the Senate Committee on Business, Professions and Economic Development in 2014. During the previous sunset review, the Committees raised 20 issues. Below are actions that have been taken during the last year to address a number of these issues, as reported by the CAMTC. Issues that

were not addressed and may still be of concern are addressed and more fully discussed under the *Current Sunset Review Issues for the California Massage Therapy Council* section.

Recommendation 1: While there is no current indication of financial difficulty, the Committees may wish to discuss whether or not CAMTC should be required by statute to maintain a minimum operating fund reserve, such as 3 or 6 months, similar to other boards, bureaus and committees under the jurisdiction of the DCA.

CAMTC Response: *The CAMTC reported that during the last Sunset period, the Legislature did not impose a minimum operating fund reserve. The CAMTC agrees with this decision. The CAMTC does not believe that there needs to be a statutory requirement to maintain a minimum monetary reserve. The CAMTC needs to have the financial flexibility to roll out new programs without having to unnecessarily raise fees. The CAMTC receives funds in a cyclical manner due to the cycle of re-certifications and payment of fees for the two-year certification period. The CAMTC would not want to be in the position where it would have to raise fees in order to address a dip in its funding to satisfy a statutory minimum requirement, when that dip is based merely on the cycle of fee payments. The CAMTC has demonstrated a high level of fiscal acumen and it is important to give the CAMTC the flexibility to have appropriate reserves at different times for different purposes.*

Recommendation 2: The Committees may wish to discuss whether or not a statutory cap on certification and recertification fees would help provide greater fee certainty for the profession in the future. In addition, the CAMTC should update the Committees as to its standards, processes, and its calculation of the reasonable costs of certification and recertification in order to ensure that fees are as low as is reasonably possible.

CAMTC Response: *The CAMTC stated that AB 1147 addressed this issue and capped the certification and re-certification fees at \$300 for a two-year certification period. The fee for certification and re-certification has remained unchanged since inception. It is \$150 for two years (\$75 per year). AB 1147 also generally provided for 90-day advanced notice prior to a meeting of the Board where a vote to increase the fee will take place. AB 1147 further provided that after any approval for an increase in certification fees, within 14 days of the Board's action, CAMTC must notify all certificate holders and affected applicants by email of the fee increase.*

Recommendation 3: The Committees may wish to discuss whether or not charging a fee for due process procedures is appropriate, and if so, how the fee amounts compare with other boards and bureaus under the DCA.

CAMTC Response: *The CAMTC reported that during the prior Sunset period, the Legislature did not require changes to the CAMTC's policy of charging fees for oral telephonic hearings and consideration of written statements, and the granting of fee waivers to indigent individuals. The CAMTC agrees with this decision.*

The CAMTC fees for hearings are analogous to court filing fees. They are meant to cover a portion of the administrative costs for oral hearings and consideration of written statements. These fees are directly related to the costs to provide oral hearings and consideration of written statements, including the costs to provide the telephone conferencing service, payment for the hearing officers' time, staff time to communicate with applicants, certificate holders, and their representatives, and assemble and upload documents in relation to each specific case, staff attorney time, etc. The CAMTC believes that the imposition of a small administrative fee for oral hearings and consideration of written statements

is appropriate and reasonable, and the fee itself is directly related to the costs of providing those services.

The CAMTC currently grants fee waivers to indigent individuals based on proof of income, using the same financial limits that California Superior Courts do. (Please see Section 13, Attachment 19, for the form of the CAMTC's fee waiver.) The CAMTC believes that granting these fee waivers is a matter of fundamental fairness. The CAMTC would not want an indigent individual to be unable to have an oral hearing or consideration of a written statement due to a documented inability to pay.

Recommendation 4: The Committees may wish to discuss the possibility of requiring a Certified Massage Therapist to obtain 100 hours of instruction in anatomy and physiology, contraindications, health and hygiene, and business ethics within the currently required 500 hours, as is currently required for Certified Massage Practitioners.

The Committees may also wish to consider removing the second-tier pathway for certification as a Certified Massage Practitioner beginning January 1, 2015, and instead require all applicants for certification to complete 500 hours of Board-approved education and training, in addition to the completion of a Board-approved national examination.

Additionally, CAMTC should update the Committees on any need to continue or reinstate a grandfathering provision for those massage therapists who have already been in practice but did not obtain certification prior to 2013.

CAMTC Response: *The CAMTC reported that AB 1147 addressed these issues. AB 1147 added the 100-hour requirement for core curriculum in anatomy and physiology, contraindications, health and hygiene, and business ethics to the 500-hour Massage Therapist certification tier and phased out the Certified Massage Practitioner (250 hour) tier for applications received on or after January 1, 2015.*

The CAMTC does not believe that there needs to be a grandfathering tier for applicants that have been in practice but have not yet obtained certification. CAMTC certification is voluntary; therefore massage providers may practice their profession without CAMTC certification. Additionally, the CAMTC's grandfathering provisions expired in 2013. The CAMTC has received very few contacts from individuals wishing to be grandfathered into certification. There is no need to reinstate this provision.

Recommendation 5: The Committees may wish to discuss requiring CAMTC to query the NPDB as part of its vetting of applicants for certification. In addition, when the national MTL D is operational, the Committees may wish to consider requiring CAMTC to query the MTL D for applicants for certification as well.

CAMTC Response: *The CAMTC states that during the prior Sunset period, the Legislature did not require CAMTC to query the National Practitioner Data Bank ("NPDB"). The CAMTC agrees with this decision. Only licensed health care providers are required to report to the NPDB. Because the NPDB is limited to licensed health care providers, and most states do not consider massage providers to be "licensed health care providers," there is very little information in the NPDB related to massage providers. Even states such as Missouri, which are mandated reporters to the NPDB (their law defines a massage provider as a health care provider), do not query the NPDB when reviewing applications for licensure as a massage professional. Additionally, it is very expensive to query the NPDB and the*

CAMTC does not believe that it is appropriate to require applicants to pay for these queries when they are not likely to return relevant information.

Recommendation 6: The Committees may wish to discuss the merits of registering massage businesses themselves, and may wish to inquire of the CAMTC how it might implement a business registry, and what additional level of resources it might require, including fees for registrants.

CAMTC Response: *The CAMTC stated that this issue was addressed during the prior Sunset review. The Legislature decided not to provide the CAMTC with the statutory authority to register massage establishments during that review. Some cities and counties opposed the proposal to have the CAMTC provide voluntary certification/registration of massage establishments. The CAMTC agrees with and supports the Legislature's previous decision on this issue at this time. However, the CAMTC is open to working with the Committees to explore this issue, should they wish to.*

Recommendation 7: The Committees may wish to consider establishing a certificate program for an owner or operator of a massage business, and requiring a certificated owner/operator at the establishment as a prerequisite for preemption. The Committees may also wish to inquire of CAMTC what level of education and training might be appropriate for an owner/operator certificate. Finally, the Committees may wish to clarify the ownership requirements related to the background check so that they apply to all non-owner operators.

CAMTC Response: *The CAMTC reported that this issue was addressed during the prior sunset review. The Legislature decided not to provide the CAMTC with the statutory authority to certify massage business owners and/or operators during that review. The CAMTC agrees with and supports the Legislature's previous decision on this issue at this time. However, the CAMTC is open to working with the Committees to explore this issue, should they wish to.*

Recommendation 8: The CAMTC should update the Committees as to how it ensures the safety and integrity of the certification process and the certification material, including identification cards. In addition, the Committees may wish to inquire of CAMTC as to whether or not current penalties for forgery or fraud are sufficient to deter wrongdoing.

CAMTC Response: *The CAMTC reported that during the prior Sunset period, the Legislature did not change the penalties for forgery or fraud. The CAMTC does not believe that any change to address these issues is necessary.*

The CAMTC takes great efforts to ensure that its certificates and identification (ID) cards cannot be easily duplicated. Certificates are created using a special proprietary ink that looks significantly different if it is copied. Additionally, all certificates have a distinctive watermark that would not appear on a copy. Special proprietary colored paper with a distinctive background design is also used for original certificates. These features ensure that color copies will not look the same as originals. CAMTC ID cards also have a special watermark and are printed on a distinctive special grade of plastic. The CAMTC ensures the safety of the certificate and ID card materials by keeping all of the supplies in a locked cabinet behind two locked doors, with two video cameras recording the entrance to the room and any activity taking place in the room 24 hours a day, seven days a week. Only the supervisor and the Operations Manager have keys to the door to the locked room and the locked cabinet. The printer and assistant printer are the only staff people who know how to print the certificates and ID cards, and are the only staff people who print the certificates and ID cards.

The CAMTC staff has seen very few instances of fraudulent certificates or ID cards. For the ones they have seen, the fact that the certificates or ID cards were fraudulent was readily apparent. The fact that status as a certificate holder can be verified online helps to curtail this potential problem.

Recommendation 9: The CAMTC should clarify for the Committees its policies and procedures for reviewing criminal and background cases and clearly identify the criteria for granting, denying or revoking certification for individuals with background and criminal issues. In addition, the CAMTC should update the Committees as to where the Professional Standards Division is physically located and how it conducts its operations.

CAMTC Response: *The CAMTC's general process for applicant denials and certificate holder discipline based on background issues is essentially the same. The CAMTC does consider "enforcement" and "discipline" to be taking action against certificate holders, not applicants. The CAMTC denies applications and disciplines certificate holders. The CAMTC's program is unique in that certificate holders are only certified for a two-year period. After the two-year certification period expires, certificate holders become applicants for re-certification and are required to complete an application for re-certification and put through another background check before they can be re-certified (this background check does not require submitting new fingerprints as CAMTC continues to receive DOJ and FBI updates on expired certificate holders seeking re-certification). Former certificate holders seeking re-certification are considered to be "applicants" before they are re-certified. The CAMTC does not "renew" certificates.*

When a complete application or application for re-certification is received and there is information indicating that the person might have violated a provision of the CAMTC's statute, or information is received regarding a certificate holder indicating that the person might have violated a provision of CAMTC's statute, AMG sends that person to PSD for review. The PSD is then charged with the task of reviewing information, performing investigations and gathering evidence related to applicants and certificate holders when warranted, and eventually making proposed decisions to deny applications and discipline certificate holders. Please see responses to Questions 32 and 49, Table 6, of the Sunset Review Report 2015, and Section 13, Attachment 20.b. for additional information.

Recommendation 10: The Committees may wish to inquire of the CAMTC as to what efforts it has made to improve its information collection from local governments. The CAMTC should update the Committees about its procedures for tracking its effectiveness in communications with local government, and explain its plans, if any, to collect better data on the effectiveness of those communications. It should also address which local entities with large numbers of applicants have been the most, and the least, responsive to its inquiries. The Committees may also wish to inquire of representatives from local government and law enforcement as to the effect of CAMTC's outreach efforts, and what kinds of information local jurisdictions need most from CAMTC. Finally, the Committees may wish to inquire of all parties how information sharing between CAMTC and local agencies can be improved.

CAMTC Response: *Pursuant to the BPC Section 4606, all applicants must be fingerprinted. This has been a statutory requirement since the enabling law became effective, so every applicant (and therefore certificate holder) has submitted fingerprints. Once someone has applied for CAMTC certification, CAMTC continues to receive subsequent arrest notifications from the DOJ and the FBI, unless and until CAMTC sends a "no longer interested" notification. In this manner, CAMTC is*

continually updated on applicant and certificate holder State and Federal level convictions and arrests.

CAMTC also communicates with local cities, counties, and law enforcement agencies to gather information about local disciplinary actions taken against an applicant or certificate holder applying for certification or re-certification. Once an application for certification or re-certification is received, email notices are sent to each city, county, and law enforcement agency where the applicant has reported that they have lived or worked within the past ten years. Email communication with cities, counties, and law enforcement agencies related to applicants and certificate holders is continuous and on-going, with more than 1.2 million email messages sent from CAMTC to local agencies since inception. On average, ten email messages are sent for each applicant for certification or re-certification to the cities, counties, and law enforcement agencies where the applicant has lived or worked in the past ten years, each time they apply for certification or re-certification. Because certificate holders must apply for re-certification every two years, cities, counties, and law enforcement agencies are contacted about each person at least every two years. A minimum of two weeks is provided for local law enforcement and local government staff to submit information related to each applicant. Information received is reviewed and, when warranted, investigated to determine if a violation of CAMTC's statute has occurred. The receipt of this information from local jurisdictions is critical. The DOJ and FBI reports are limited to criminal arrests and convictions and do not include administrative citations or civil actions related to a local massage or business permit, as these are commonly civil, not criminal, matters. Additionally, local municipal code violations don't always show up on the DOJ, since in many cases these violations don't require fingerprinting, so there is no DOJ reporting. Local jurisdictions may also provide evidence that an applicant or certificate holder has engaged in conduct that violates the CAMTC's statute. Since the implementation of AB 1147, the CAMTC has received more reporting from local cities, counties, and law enforcement agencies and hopes that this cooperation will continue to increase in the future. For additional information, Please see the Executive Summary, responses to Question 3 – Strategic Priorities, Question 18, and Question 31 – Performance Barriers, in this 2015 Sunset Review Report, for additional information.

Recommendation 11: The Committees may wish to inquire of stakeholders how best to expand the legal authorization for local government and law enforcement, including the addition of the CAMTC to the CADOJ's Authorized Agency list if need be, to share arrest information or declarations of misconduct by certificate holders or applicants in order to expedite the CAMTC's disciplinary and review process.

The Committees may also wish to discuss expanding the definition of unprofessional conduct to include behaviors such as gender discrimination in accepting clients and advertising in "adult" media or sexually explicit forums.

The Committees may also wish to explore requiring CAMTC to abide by a designated timeframe for completing enforcement actions.

CAMTC Response: *The CAMTC reported that many of these issues have been addressed by AB 1147. The definition for unprofessional conduct was expanded in BPC Section 4609 and additional conduct based violations were added. As discussed during the last sunset review, the CA DOJ's "Authorized Agency" list is no longer maintained by that agency, and has not been maintained since 2009, so the CAMTC cannot be added to this defunct list. During the last sunset review, the*

Legislature did not require the imposition of enforcement timelines, and the CAMTC agrees with this decision.

Recommendation 12: CAMTC should immediately update its list of approved examinations and past meeting minutes on its Web site. Additionally, CAMTC should add biographical and appointment related data for its Board members to its Web site, or explain to the Committees why it does not. CAMTC should also post online a fuller explanation of its operational procedures.

CAMTC Response: *The CAMTC lists and has listed CAMTC approved exams and meeting minutes on its website. The CAMTC's Board voted to add biographical and appointment related data for its Board members to its website. The list of approved exams can be found at <https://www.camtc.org/FormDownloads/CAMTCApplicationFlatForm.pdf>; meeting minutes can be found at <https://www.camtc.org/Meetings.aspx>; and, CAMTC information can be found at <https://www.camtc.org/Board.aspx>.*

Recommendation 13: The Committees may wish to explore requiring the CAMTC to record or webcast its meetings to increase transparency and ensure that stakeholders, schools, law enforcement, and local government entities across the State are able to view and participate in CAMTC meetings. All approved meeting minutes should be posted to the CAMTC's Web site to ensure that all recorded votes and meeting information is accessible and identifiable to the general public.

CAMTC Response: *The CAMTC reported that during the past sunset review, the Legislature did not require the CAMTC to webcast its meetings. The CAMTC agrees with this decision. Staff has looked into the cost to webcast meetings and it is prohibitively expensive. The CAMTC does not want to have to increase fees to cover these additional costs.*

The CAMTC currently audio records and posts its meetings to the website. The meeting minutes and votes on issues are also posted to the website. The CAMTC's Board meetings are open to the public; agendas, dates and location of meetings are posted on the website at least 10 days in advance; there is always an opportunity for public comment at meetings. The audio recordings of CAMTC meetings can be found at: <https://www.camtc.org/Meetings.aspx>.

Recommendation 14: The CAMTC should update the Committees on its plan to utilize customer satisfaction surveys beyond 2014 and explain how the survey will be conducted and how the outcomes will be assessed. More importantly, the CAMTC should explain to the Committees its understanding of who their "customers" are, and discuss whether stakeholders such as local governments or law enforcement would be included in those surveys.

CAMTC Response: *The CAMTC reported that it is funded only by payments from applicants and certificate holders, so technically they are our customers. The CAMTC has requested feedback from certificate holders regarding AB 1147 –The results of this request will be shared with the Legislature when they have been compiled. The CAMTC has received more than 700 responses to this request. Additionally, the CAMTC will be sending out a general survey by the end of the year. CAMTC also considers local government, schools, law enforcement, business owners and others as our stakeholders. Their input is important to us and information from these parties comes into the CAMTC in a different way. Our primary focus has been to protect the public; for this reason we have conducted a survey of those posting complaints on the complaint link on our website.*

Recommendation 15: The CAMTC should provide aggregate compensation totals (salary and bonuses) for its entire staff, as well as breakdowns for benefits including health care and retirement, and explain its guidelines for awarding bonuses. The CAMTC should explain why it has a COO position listed but not filled, and how that situation impacts the work of the CEO. It should also provide a more detailed accounting of its payments for legal fees and contracting with AMG.

CAMTC Response: *The CAMTC reported that for purposes of transparency, compensation policies are posted on the website at <https://www.camtc.org/Compensation.aspx>*

Recommendation 16: The Committees may wish to inquire of the CAMTC as to why it has chosen to engage in a complaint-driven form of school review rather than a proactive and more complete approval process. If the CAMTC were given more explicit direction to proactively review and approve massage schools, it should provide a forecast of the additional time and staff requirements needed to develop more robust standards and inspect all relevant schools.

Additionally, the CAMTC should update the Committees on its current working relationship with BPPE and any active efforts to improve coordination. The Committees may wish to explore amending current statute to clarify that the approval of a school by BPPE is contingent upon approval of a program by the CAMTC.

CAMTC Response: *In 2015, the CAMTC began the process of proactively approving schools.*

Recommendation 17: The Committees may wish to discuss the merits of restructuring the CAMTC to more closely reflect other healing arts boards under the jurisdiction of DCA in the following ways: reducing the total number of Board members to 15 or less; placing the appointment powers with the Governor, the Speaker of the Assembly, the Speaker Pro Tempore or the Senate Rules Committee; requiring a substantial number or even a majority of public members; instituting rigorous Board member training; requiring local government and law enforcement representatives among the Board members; and imposing a California residency requirement on all Board members.

In addition, given the high level of interest from local governments and law enforcement in the regulation of the massage therapy industry, as well as questions about the effectiveness of communications between CAMTC and those stakeholders, the Committees may wish to consider requiring the creation of a local government or law enforcement advisory committee to help ensure proper communications between the CAMTC and stakeholders.

CAMTC Response: *The CAMTC reported that AB 1147 changed the composition of CAMTC effective noon on September 15, 2015. Due to the significant changes in CAMTC composition, there is a much higher percentage of representatives from local government and local law enforcement on the new CAMTC. The CAMTC will consider reinstatement of a local government and local law enforcement agency advisory committee.*

Recommendation 18: The CAMTC should update the Committees on how it intends to develop and maintain better performance metrics for the collection and dissemination of information about applicants and certificate holders, and its communications with key stakeholders such as local governments.

CAMTC Response: *The CAMTC reported that AB 1147 addressed this issue. The BPC section 4620 specifically requests very detailed information in relation to denials, discipline, complaints, and suspensions. The CAMTC is also in the process of getting a new database that will allow it to more easily track, provide, and analyze the requested information.*

Recommendation 19: The Committees may wish to discuss how the preemption language might be revised in order to return a greater degree of control to local governments in regulating massage businesses while maintaining the integrity of the statewide certification process and ensuring that massage professionals do not face undue burdens or discrimination in their practices.

CAMTC Response: *The CAMTC reported that AB 1147 addressed this issue. The previous “pre-emption” language in the statute was significantly revised and the authority to regulate massage businesses that only use CAMTC certified individuals to provide massage for compensation was removed from the law and returned to cities and counties with some exceptions in GC Section 51034 and BPC Section 460. However, the CAMTC has been receiving numerous reports from sole practitioners that the statutory changes in AB 1147 have been applied and interpreted by cities and counties in a manner that is harming them.*

Recommendation 20: The Committees may wish to discuss the relative merits of continuing the nonprofit model of regulation, deregulating the industry completely, or transitioning to a board or bureau overseen by DCA. Of course, the creation of a new board or bureau should be done only with the agreement of the Governor's Administration. If it is determined that the current nonprofit model remains desirable, CAMTC should be continued with a two-year extension of its sunset date so that the Legislature may review its progress in addressing the identified issues of concern.

The Committees may also wish to request that the CAMTC provide it with an updated briefing to explain how it might implement the above recommendations, including expanded school inspection and approval, including estimates of both additional cost and time.

CAMTC Response: *During the prior sunset review, the Legislature addressed this issue and decided that the CAMTC should be allowed to continue to operate in its current form. The CAMTC agrees with this decision.*

Major Changes Since the CAMTC’s Last Sunset Review

The CAMTC reported several major changes since its last sunset review including:

- 1) Established the ESD.
- 2) Changed the composition of the CAMTC board by reducing the number from 20 to 13.
- 3) Updated bylaws
- 4) Developed Strategic Priorities which include:
 - Creating disciplinary Performance Measures;
 - Strengthening the collaboration with law enforcement and other enforcement agencies;
 - Strengthened local government relationships;
 - Conducting surveys of certificate holders;
 - Maximizing the speed by which the CAMTC disciplines certificate holders;
 - Fully implementing the CAMTC’s school approval program and inspecting all schools seeking approval;

- Initiating the development of a Memorandum of Understanding with the Bureau of Private Postsecondary Education; and,
- Conducting a study to examine the feasibility of, and protocols for, providing a foreign language examination.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA MASSAGE THERAPY COUNCIL

The following are unresolved issues pertaining to the CAMTC, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff has made regarding particular issues or problem areas which need to be addressed. The CAMTC and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: *Please explain, as a nonprofit entity, how the CAMTC prepares its annual budgets? How is budget planning different from other state-regulatory boards?*

Background: The CAMTC reported that as of September 30, 2015, its reserve level was equal to 10.5 months of its current operating budget. The CAMTC states that its goal is to maintain a 6-month reserve. According to the CAMTC, early estimates of the 2016 budget show a deficit, but the CAMTC projects that the final 2016 budget will show a modest surplus.

Typically, the CAMTC votes on its preliminary budget at its last meeting of the calendar year and a final vote to approve the budget is taken at the CAMTC's first meeting of the New Year. The CAMTC operates on a calendar year budget and not a Fiscal Year budget which is common for the majority of state programs.

In its *2015 Sunset Review Report*, the CAMTC provided the following information regarding its fund condition for 2014 and 2015. However, the report did not include a projected or final 2016 budget in its report, as the final budget was recently approved at the CAMTC's February 25, 2016 board meeting.

| Fund Condition (dollars in thousands) | 2014 | 1/1/2015 - 9/30/2015 |
|---------------------------------------|-------------|----------------------|
| Beginning Balance | \$1,829,917 | \$3,195,772 |
| Cash In/Revenue | \$4,779,307 | \$3,023,677 |
| Total Cash | \$6,609,223 | \$6,219,448 |
| Expenditures (Cash) | \$3,413,451 | \$2,908,806 |
| Fund Balance | \$3,195,772 | \$3,310,642 |
| Months in Reserve | 11 | 10 |

**Note: This table was taken from the CAMTC's 2015 Sunset Review Report.*

Staff Recommendation: *In an effort to help the Committees better understand the financial structure of the CAMTC, the CAMTC should explain to the Committees how it prepares, projects, and categorizes its annual budget.*

ISSUE #2: What is the CAMTC's contingency plan if problems arise with its current administrative contract provider?

Background: The CAMTC contracts for administrative services with the AMG, the company which provides 19 staff who perform work for the CAMTC. The AMG provides administrative services which include, providing customer service to applicants and certificate holders, database operations, application processing, certificate and ID card issuance, serving as the CAMTC headquarters, and housing the blank certificate paper.

Currently, the AMG maintains the current database (CAMTC owns the data) and processes applications for certification and recertification. If an application contains possible educational, background or conduct issues, the AMG staff sends those applications to the PSD, administered by the CAMTC, for review. The PSD is the only entity with the authority to make denial and disciplinary decisions. If the AMG does not identify background or educational issues with an application, it will issue a certificate.

The AMG is also responsible for the disbursement of certificates. This means that the AMG is responsible for the blank certificate paper and identification cards. Prior to January 2013, the printing and mailing of certificates was done at an undisclosed, private printing facility which was charged with the security of the blank certificate paper and identification card processing. Those services have since been moved in-house to the AMG which now has the sole responsibility for the integrity and safety of certificates and identification cards.

If for any reason the CAMTC finds its contractual relationship with the AMG severed or problems arise within the administration of the day to day operations, it is unclear what, if any, contingency plans the CAMTC has to replace the AMG or what would happen to the certification process, including the lock-and-key storage of certificate paper and cards. Any issues with the AMG relationship would leave the CAMTC without a headquarters. The majority of the other contracts the CAMTC has for assistance with operations could be replaced with minimal disruption to the daily administration of the CAMTC; however, the AMG plays a significant role in the CAMTC's administrative processes.

Staff Recommendation: *The CAMTC should advise the Committees on its proposed course of action in the event that its contract services with the AMG ends.*

CERTIFICATION ISSUES

ISSUE #3: Why are the numbers of new applicants for certification decreasing?

Background: The CAMTC reported that as of September 30, 2015, the active CMT population was 42,734. In 2014, the CAMTC issued 10,119 new certificates and recertified 18,035 certificate holders. For the first nine months of 2015, it issued only 5,378 certificates and recertified only 13,172 certificate holders; a sharp decrease from previous years. As noted by the CEO at the November 18, 2015, CAMTC board meeting, the number of new applications was down 70% from 2014 levels.

Currently, there are approximately 150 local cities or counties that require certification or are in the process of adopting a certification-requirement policy for massage therapy professionals. If the trend

set by local jurisdictions is to require a voluntary certification, it is unclear why certification and recertification levels may be dropping. The following issues may be contributing factors.

The enabling legislation, SB 731, created a two-tiered system for certification. Prior to January 1, 2015, individuals could obtain certification as a CMP or a CMT. Applicants for CMP were required to have 250 hours of education, and applicants for CMT were required to have 500 hours of education; only 250 of those hours were required to be from an approved school. The remaining 250 hours could have been acquired from a continuing education provider approved by the DCA. In addition to the 500-hour educational requirement to become a CMT, an individual could acquire 250 hours of education and pass a CAMTC approved examination. The CMP certification pathway was implemented as a grandfathering provision to allow massage providers with lesser hours of education previously received to become certified.

The law permitting the certification for the CMP (the 250 hour only level), and the shortened pathway for the CMT (250 hours of continuing education or passage of a CAMTC approved exam) were scheduled to be repealed on December 31, 2015 in favor of a standard 500-hour coursework requirement. However, in an effort to raise the professional standards for massage professionals in California, AB 1147 repealed the CMP pathway which required only 250 hours of education, one-year early, on January 1, 2015, and AB 1147 changed the requirements for the CMT pathway. All applicants for certification are now required to achieve the same educational standards, which include 500 hours of education from a CAMTC-approved school, with 100 hours in core curriculum areas including physiology and anatomy, business and ethics, health and hygiene and contraindications and passage of a CAMTC approved exam. Many massage professionals obtained certification at the inception of the program and as long as they apply for recertification within six months of the expiration of their certificates, they will continue to be certified without having to meet the new requirements. However, there are currently an unknown number of massage professionals who chose not to certify or their certificate lapsed for six months or more. Because the standards changed for certification on January 1, 2015, and have continually changed since the inception of the program, individuals with expired certificates who obtained certification through one of the old tiers may find themselves in a predicament, whereby they have been practicing for many years, were once certified, but no longer meet the new rigorous standards. It is unknown if there is any correlation between the increase in education and examination requirements and the decrease in applications for certification.

Prior to the passage of AB 1147, the Massage Therapy Act, included a specific provision which created an exemption (known as the 'preemption') for massage businesses that used only certified individuals to provide massage for compensation, from certain restrictive business regulations. That statute specifically stated "Nothing in this section shall prohibit a city, county, or city and county from enacting ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, or zoning requirements applicable to an individual certified pursuant to this chapter or to a massage establishment or business that uses only individuals who are certified pursuant to this chapter to provide massage for compensation, provided that, unless otherwise exempted by this chapter, 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 (a) of Section 13401 of the Corporations Code."

As noted during the CAMTC's last sunset review, the 'preemption' clause impacted a number of local governments throughout California, because it hampered their authority to regulate massage

businesses. However, many massage professionals noted a value in the 'preemption' standard as it was viewed as a tool to ensure that local land use decisions were made in a manner that did not discriminate against massage professionals. As a result, AB 1147 deleted the 'preemption' language and returned complete land use and zoning controls back to the cities and counties with minor protections for the profession. With the deletion of preemption, is there a lack of incentive for individuals to acquire certification?

The enabling legislation, SB 731, established the voluntary certification program as a mechanism to enhance consumer protection by creating a statewide framework to both raise professional standards and to provide a pathway for disciplinary actions to be taken against those who violate the law. With a decreasing certified population, what are the implications for consumer protection and the rise of a more professionalized industry?

Staff Recommendation: *From a consumer protection standpoint, certification ensures that a "certified professional" has met specified educational, training, and background standards, thereby giving consumers some reassurance that their practitioner is properly educated and trained. If applications for certification are decreasing, what are the implications for consumer safety? The Committees may wish to inquire of the CAMTC as to some of the reasons it believes are leading to a drop in new application levels.*

ENFORCEMENT ISSUES

ISSUE #4: Human Trafficking. Is there a role for the CAMTC to help in the fight against human trafficking?

Background: As a result of AB 1147, a representative from an anti-human trafficking organization was added as a dedicated member of the CAMTC board. The concern was raised during the previous sunset review of the CAMTC that persons engaged in illegal enterprises would masquerade as massage business owners or practitioners. According to information retrieved from the Polaris Project's initiative on Illicit Massage Businesses, there are approximately 9,000 illicit massage businesses in the United States. The Businesses open as establishments which are disguised as legitimate massage businesses, where they obtain local business licenses to conceal their activities. These venues are completely outside of the CAMTC's regulation as the CAMTC only certifies the individual and not the business owner; however, BPC Section 4607 authorizes the CAMTC to take an enforcement action against an owner or operator of a massage business if the owner or operator has certification, based on the conduct of all individuals providing massage for compensation.

Nonprofit organizations (NPOs) working to combat human trafficking recognize the difference between *illicit* massage businesses and legitimate massage businesses, and appreciate the health and wellness benefits that massage therapy provides. These NPOs suggest that it is damaging to massage professionals and consumers alike when these enterprises are conflated. The Polaris Project is a federally funded nonprofit that aims to collaborate with leaders in the massage industry to support the positive reputation of the industry. They recently hosted a convention with leaders in the massage industry and confirmed that legitimate massage professionals are often harassed with requests for "happy endings" by consumers, due to the stigma associated with illicit massage businesses. It may benefit massage professionals, consumers, and the public at large if the CAMTC can provide any support or assistance to help address this stigma by implementing policies to help address human trafficking.

Information retrieved from the Polaris Project's website and the AG's 2012 report, "*The State of Human Trafficking in California*" identified indicators of human trafficking in one's community. Knowing these indicators can be helpful to recognize human trafficking and providing information about them can be effective such as, on a website link or distributed by the CAMTC with certification or other outreach materials.

It was also reported that California has nine regional task forces charged with the responsibility of investigating reports of human trafficking. Additionally, in the AG's report, it is urged "industries and state agencies to enhance communication with the task forces and law enforcement divisions that are working to address the problem of human trafficking." Given that the CAMTC is enhancing outreach and communication efforts with local jurisdictions, the CAMTC may be well suited to share information about reports of unprofessional conduct or other violations that raise a red flag with respect to human trafficking.

Staff Recommendations: The Committees may wish to inquire of the CAMTC what it believes its role is in helping to combat human trafficking.

ISSUE #5: Information sharing processes and local government entities. Are the ways to enhance information sharing?

Background: Among the many characteristics which make the CAMTC unique in comparison to other regulatory entities, is the CAMTC's enforcement program and its ability to take swift disciplinary action against a certificate holder.

Since the last sunset review, the CAMTC reported that it has seen a significant increase in the number of suspensions overall, and more specifically in the number of suspensions "based on evidence". The CAMTC has two different specific statutory provisions that allow for immediate suspension of the certificates of certificate holders, BPC Sections 4610(f) and 4610(g). The CAMTC categorizes these as *suspensions based on operation of law* and *suspensions based on evidence*.

Suspensions Based on Operation of Law (BPC Section 4610(f))

Under the current law, the CAMTC is required to immediately suspend the certificate of a certificate holder if it receives notice that the individual has been arrested and charges have been filed for a violation of Penal Code Section 647(b) – (such as prostitution), or for another act punishable as a sexually related crime. Under this provision, the CAMTC has no discretion, and is required to suspend a certificate when it receives notification that the charges described above have been filed. The CAMTC receives Subsequent Arrest Notices from the DOJ and the FBI, when an applicant or certificate holder has been arrested or convicted; however the operative event for suspending under this provision is the filing of criminal charges. According to the CAMTC, there is no automated reporting system for the filing of criminal charges, and in order to obtain this information, PSD employees must routinely check with every court or local jurisdiction where a certificate holder has been arrested to verify if charges have been filed. The CAMTC notes that this is a very time-and-staff-resource intensive process. The local law enforcement agencies who notify the CAMTC when charges have been filed against a certificate holder help expedite the process. If the CAMTC does not receive a notice that a certificate holder has been arrested (some arrests are not reported to the DOJ; therefore,

no Subsequent Arrest Notice is generated), or that charges have been filed against a certificate holder, the CAMTC cannot suspend a certificate based on this provision.

Suspensions Based on Evidence (BPC Section 4610(g))

Pursuant to BPC Section 4610(g), a certificate may be suspended if the CAMTC “determines that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder.” According to the CAMTC, this is a discretionary suspension provision, meaning that the CAMTC has the discretion to suspend a certificate holder under this provision.

AB 1147 lowered the legal standard for *suspensions based on evidence* from "clear and convincing" evidence to a "preponderance of" the evidence. In order to suspend under this provision, the CAMTC must have evidence that a certificate holder committed an act punishable as a sexually related crime or a related felony. According to the CAMTC, in order to take disciplinary action in some cases, it relies upon declarations of conduct from victims, law enforcement, or both to provide the evidence.

The CAMTC reported that it has seen increased cooperation from law enforcement, which has resulted in an increase of declarations received. Contacts from police departments and local agencies have grown by 50% since September 2014. These declarations are used for *suspensions based on evidence* for applicant denials, and for certificate holder discipline. The CAMTC reported the increased cooperation has contributed to an increased number of suspensions under this provision of law. With more cooperation from law enforcement, the CAMTC believes that this trend will continue and more certificates will be *suspended based on evidence*.

Although the CAMTC notes that many local jurisdictions have been helpful in providing information necessary to help the CAMTC utilize its enforcement tool, *suspensions based on evidence*, in its 2015 sunset review report it also highlights some performance barriers. According to the CAMTC,

...in the past the CAMTC has been hampered by the lack of cooperation from local law enforcement agencies. Much of the evidence needed to build a case against a certificate holder comes directly from local agencies. For example, [BPC section 4609(a)(8)] allows [the] CAMTC to revoke a certificate if the certificate holder receives an administrative citation, and a certified copy of the citation is conclusive evidence that disciplinary action has been taken against the certificate holder. But if the local agency [will not] provide [the] CAMTC with a copy of the administrative citation, then [the] CAMTC does [not] have the evidence it needs to take action on that basis. Since the last sunset review this situation has improved. More law enforcement agencies and local government agencies that regulate massage are cooperating with [the] CAMTC. This increase in cooperation and information sharing has resulted in an increase in certificate holder discipline based on conduct-based violations. [The] CAMTC expects this trend to continue as more cooperation is received from local agencies. While we have come a long way, there is still a long way to go. Many local jurisdictions are incredibly helpful and easily share information like the law authorizes [BPC Section 4614(b)], while others (most notably one of the largest jurisdictions in the State) still refuse to provide any information to [the] CAMTC. [The] CAMTC has encountered resistance to information sharing from some cities, and has been told by a local government employee in one jurisdiction that League staff directed this person to not provide [the] CAMTC with officer declarations. We are working with cities to overcome their resistance and we are hopeful that this will change in the future.

BPC Section 4606(f) authorizes the CAMTC to receive arrest notifications and other background materials about applicants and certificate holders from a city, county, or city and county. The intent of that section is to encourage local jurisdictions to share information about certificate holders and applicants with the CAMTC in an effort to swiftly address enforcement-related issues.

Staff Recommendation: *The CAMTC should advise the Committees as to the problems it has with obtaining timely enforcement-related data from local jurisdictions. In addition, the CAMTC should explain to the Committees alternative means to reach an optimal level of information sharing that is mutually beneficial to the CAMTC and those jurisdictions that may be uncomfortable with the current information-sharing system.*

ADMINISTRATIVE ISSUES

ISSUE #6: *Why did the CAMTC update its bylaws at the September 15, 2015 meeting?*

Background: Upon the passage of SB 731, as a California Nonprofit Public Benefit Corporation (a 501(c)(3)), the CAMTC was required to file articles of incorporation, appoint a board, and draft the initial bylaws and conflict of interest policy, among other requirements. The CAMTC's initial bylaws were drafted on February 19, 2009 and have been amended four times since then. The CAMTC reported in its *2015 Sunset Review Report* that its bylaws were amended twice since its last sunset review.

The first amendment in June 2014 changed Article V of the bylaws related to the "Attendance" provision for the CAMTC. That provision originally stated that any director missing three consecutive meetings would automatically lose his or her seat, unless the CAMTC voted to waive the provision. As the CAMTC has more frequently utilized "special meetings" which are often called on less than 10-day notice, the CAMTC determined it was unfair to count "short notice" meetings against a director for purposes of the Attendance section in the bylaws. As a result, the bylaws were amended to specify that attendance at "special" or "emergency" meetings on less than 10-day notice would not count against a director for purposes of the automatic removal section.

The second set of bylaw amendments were made on September 14, 2015 (the day before the new CAMTC board was scheduled to be seated). According to the CAMTC, those amendments were primarily for the purpose of bringing the bylaws into compliance with the portions of the new Massage Therapy Act regarding the new CAMTC board composition, and to update the "purposes" sections of the bylaws to align with the new Massage Therapy Act. In addition, the CAMTC reported that some additional amendments were made to delete certain sections of the bylaws that, while consistent with California Nonprofit Public Benefit Corporation Law, were not consistent with the provisions of the Massage Therapy Act.

The CAMTC's authorizing statute called for the program to be administered by a nonprofit organization which did not exist at the time the law was enacted. The only mandate was that it needed to be a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. The statute also did not specify any language to be included in the articles of incorporation or the bylaws. As a nonprofit public benefit corporation, the CAMTC is required to abide by the Nonprofit Public Benefit Corporations Law, as specified in the Corporations Code Section 5110 *et seq.*

Entities falling under the Nonprofit Public Benefit Corporations law are generally free to amend their bylaws by a majority vote of its Board of Directors, unless a specified statute prescribes an alternative method. In the case of the CAMTC, they must abide by the rules of the Bagley-Keene Open Meetings Act (Bagley Keene Act), which requires proper notice of the CAMTC meeting and public input, among others.

The California Corporations Code gives guidance on the type of content that should be addressed by a nonprofit corporation's bylaws, which include:

- (c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:
 - (1) Any provision referred to in subdivision (c) of Section 5132.
 - (2) The time, place, and manner of calling, conducting, and giving notice of members', directors', and committee meetings, or of conducting mail ballots.
 - (3) The qualifications, duties, and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.
 - (4) The appointment and authority of committees.
 - (5) The appointment, duties, compensation, and tenure of officers.
 - (6) The mode of determination of members of record.
 - (7) The making of reports and financial statements to members.
 - (8) Setting, imposing, and collecting dues, assessments, and admission fees.
- (d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 5341. (Corporations Code Section 5151)

At the September 14, 2015 CAMTC board meeting, the decision was made to amend the CAMTC's articles of incorporations and bylaws because the change in CAMTC board composition would become effective the following day. The specific amendments to the bylaws removed the term "quasi-legislative" under the "specific purpose" and made changes to the composition of the new CAMTC board. The changes to the "specific purpose" statement incorporated the intent language as specified in BPC Section 4605(a) which was recently added to the Massage Therapy Act as a result of AB 1147.

Prior to the September 14, 2015 amendments, Article III, Section 2, stated:

The specific purposes of this corporation is to provide certification for massage therapists and to advance public education regarding the massage therapy professions in California as quasi-public body pursuant to the authority granted in the Code for the benefit of the public.

The September 14, 2015 CAMTC-action amended Article III, Section 2 to state:

The specific purpose of this corporation is: to enable consumers and local governments to more easily identify certified massage professionals; to provide for consistent statewide certification and oversight of certified massage professionals; to ensure that schools approved by the Council that are teaching massage provide a high level of training; and to assist local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders.

By way of comparison, California recognizes other nonprofit models of professional regulation: tax preparers and interior designers. The California Tax Education Council (CTEC) was established by the Legislature to promote competent tax preparation. CTEC is a nonprofit corporation founded under

the authority contained in BPC Sections 22250-22259. The Board of Directors for CTEC is comprised of 15 unpaid volunteers appointed by certain qualified organizations. The CTEC's day-to-day operations are carried out by an administrator under a contract awarded by its Board of Directors.

The California Council for Interior Design Certification (CCIDC), also a nonprofit entity, administers a voluntary certification program for interior designers. Under the current bylaws of CCIDC, its Board is composed of eleven members, five of whom are members of designated national professional interior design associations; one member is a professional member who is not affiliated with any organization and one who is an “independent” or non-affiliated interior designer. One member is an interior design educator, and there are four public members, none of whom are associated with the interior design profession. All of the CCIDC Board members must be residents of California.

Like the CAMTC's authorizing statute, there are no specifications in the CTEC's authorizing statute regarding for bylaws or articles of incorporation. As stated under Article III, the CTEC's Specific Purposes state:

Within the context of the general purposes stated above, the purpose of the [CTEC] is to lessen the burdens of government and protect the public by (1) approving those tax curriculum providers who meet Council standards and comply with its procedures and (2) issuing certificates of completion and statements of compliance to registrants as required under Section 22255 of the Code.

There is nothing in CTEC's bylaws which reference a quasi-legislative body, although CTEC is statutorily required to provide regulatory oversight.

Although the CAMTC may have voted to revise their bylaws and articles or incorporations, the change in wording does not absolve the CAMTC of its general statutory obligations. The Massage Therapy Act indicates that the CAMTC has authority to act as specified in (BPC Section 4602) and whether they amend their bylaws does not exempt the CAMTC from its legislative mandate or operating under the requirements set forth in the Massage Therapy Act, BPC Section 4600 *et seq.*

Staff Recommendation: *The CAMTC should explain to the Committees why it was necessary to amend the organization's bylaws and articles of incorporation in September 2015.*

ISSUE #7: Is training available to CAMTC board members to ensure compliance with the Bagley-Keene Act and other statutory requirements?

Background: Although the CAMTC is a nonprofit 501(c)(3) entity, the CAMTC is required to comply with the provisions of the Bagley-Keene Act. The Bagley-Keene Act generally requires public bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized to meet in closed session. The CAMTC seeks to comply with the provisions of the Bagley-Keene Act by publicly placing the agenda and meeting minutes on its website, providing the agenda at least 10 days prior to the meeting, and making meetings open to the public.

Every state body, including a board, commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings, and every commission created by executive order, is required to comply with the provisions of the Bagley-Keene Act. Since the Bagley-Keene Act is nuanced and complex, many incoming members of boards and bureaus overseen by the

DCA are required to attend or participate in training programs that cover the important elements of the Bagley-Keene Act. BPC Section 453 specifies that every newly appointed board member is required, within one-year of assuming office, to complete a training and orientation program offered by the DCA regarding, among other things, his or her functions, responsibilities, and obligations as a member of that board. Part of that training incorporates providing information about the Bagley-Keene Act. The CAMTC's enabling legislation, SB 731, required compliance with the Bagley-Keene Act as well; however, there is no such requirement for CAMTC member training specified in the Massage Therapy Act.

Staff recommendations made during the prior sunset review of the CAMTC called for a change in CAMTC member composition and that the CAMTC institute a rigorous CAMTC member training. As a result, the CAMTC membership was completely restructured; however, a mandatory CAMTC member training was not implemented. Now may be the appropriate time for the CAMTC to require newly appointed CAMTC members to participate in a training program to provide guidance and information about their duties, responsibilities, obligations, and the general requirements of the Bagley-Keene Act. The CAMTC board voted at its February 26, 2016 meeting to provide additional training to board members on the Bagley-Keene Act at a future board meeting.

Staff Recommendation: *The Committees may wish to inquire of the CAMTC how it conducts board member training to ensure compliance with the Bagley-Keene Act.*

ISSUE #8: *What is the status of the CAMTC's feasibility study?*

Background: Forty states and Puerto Rico regulate the practice of massage through some form of licensure, which includes the completion of an educational program, background checks, and the passage of an approved examination. Two states offer a licensure or certification level, depending on the type of practitioner. Three states, including California, offer a certification for massage therapists; however, California is the only state to offer a voluntary certification to practice. Five states, including Kansas, Minnesota, Oklahoma, Vermont, and Wyoming have no state regulation.

Prior to 2008, proponents of statewide regulation recognized a need to eliminate restrictive and duplicative local registration, education and other requirements mandated for massage professionals. The voluntary statewide certification was intended to bring consistency across city and county borders for massage professionals. In California, there are multiple professions which contain some form of massage therapy in their scope of practice. Current law does not specify a narrowly tailored scope of practice for massage therapy professionals and does not prohibit those other licensed professions from practicing massage as allowed by their scope of practice as specified in the BPC or in the California Code of Regulations.

Other Professions that Include Massage Within Their Scope of Practice

California has established scopes of practice and licensing regulation for physical therapy, acupuncture, cosmetology, chiropractic, and naturopaths. Each of these professions includes massage in some form:

Acupuncture: BPC Section 4937(b) authorizes the holder of an acupuncturist license to perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary

supplements to promote, maintain, and restore health.

Barbering and Cosmetology: BPC Section 7316 specifies that practice of cosmetology includes massaging, cleaning or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams. BPC Section 7316(b)(6) provides that cosmetologists may massage hands and feet.

Chiropractic: California Board of Chiropractors Title 16 CCR Section 302 specifies the scope of practice for chiropractors includes the manipulation and adjustment of the spinal column and other joints of the human body. It further states that a chiropractor may manipulate the muscle and connective tissue as part of a chiropractic treatment and massage is listed as part of that treatment.

Naturopaths: BPC Section 3640 specifies that a naturopathic doctor may among other things dispense, administer, order, and prescribe or perform the following: hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise.

Physical Therapy: BPC Section 2620 defines physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services.

The enabling legislation did not specify a scope of practice for the practice of massage therapy. BPC Section 4620(a)(1) requires the CAMTC to conduct a feasibility study of licensure for the massage profession, including a proposed scope of practice, legitimate techniques of massage and related statutory recommendations.

The report was originally due to the Legislature on or before June 1, 2016. In addition, to the feasibility study, the CAMTC is also required to provide a report, for the time period beginning on January 1, 2015, information about performance metrics including, certificate denials and other enforcement related activities, school inspections and approval, along with the CAMTC's compensation guidelines. The information requested in BPC Section 4620(a)(2-4) can and should be completed by the CAMTC; however, it may be more appropriate for the feasibility study to be conducted by an outside entity. In order to provide the CAMTC with a sufficient amount of time to identify the appropriate entity capable of producing a study of this magnitude, the submission deadline for the feasibility report should be extended to ensure the integrity of the report.

Staff Recommendation: *The Committees may wish to grant the CAMTC with a six-month extension to complete the feasibility study in order to ensure a timely, accurate and unbiased report.*

ISSUE #9: *Is clarification of the Public Member participate requirements necessary?*

Background: The boards, bureaus and committees under the jurisdiction of the DCA typically contain both representatives of the professional industry and public members who are not affiliated with the regulated industry. These appointments are generally controlled by the Governor, the Speaker of the Assembly, the Speaker Pro Tempore of the Senate or the Senate Rules Committee. For example, the Physical Therapy Board is comprised of seven members: the Governor appoints four professional members and one public member, the Speaker of the Assembly appoints one public member and the Senate Rules Committee appoints one public member. Members are usually appointed to serve a four-year term plus a one-year grace period, and members cannot exceed two full terms.

As previously stated, the CAMTC was reconstituted as a result of AB 1147, both reducing membership, including industry members, and increasing law enforcement, local government, and other experts in health, legal and human trafficking fields.

The current CAMTC is comprised of the following board members who represent:

- The League of Cities (1 appointee)
- The California Police Chiefs Association (1 appointee)
- The California State Association of Counties (1 appointee)
- An anti-human trafficking organization (1 appointee)
- Office of the Chancellor of the California Community Colleges (1 appointee)
- Member of the public appointed by the Director of the DCA (1 appointee)
- California Association of Private Postsecondary Schools (1 appointee)
- the American Massage Therapy Association, California Chapter (1 appointee)
- A city, county, or city and county, or state health department (1 public health official)
- A massage therapy professional society, association or other entity which membership is comprised of massage therapist professionals. (1 appointee)
- A licensed attorney who represents a city (1 CAMTC appointee)
- A massage business (1 CAMTC appointee)
- One additional member as determined by the CAMTC

As specified in BPC Section 4602(g)(1-9), the above mentioned entities do not have to exercise the right to appoint and can leave their seats unfilled.

Mr. Richard Lee, Acting Director of Environmental Health, San Francisco Department of Public Health, resigned his position on the CAMTC on January 26, 2016. Mr. Lee was appointed by the DCA as a member of the public. In February 2016, the DCA appointed Ms. Minouche D. Kandel, Esq., Women's Policy Director, Department on the Status of Women, City and County of San Francisco, to fill the vacancy.

As is common with most boards under the DCA, there are public member participants who are not involved in the industry (other than as a possible consumer) in which they regulate. The CAMTC does not have a public member participant majority, nor are appointments conducted by the Executive or the Legislative branches of government. The DCA has the option to appoint a member to the CAMTC, and if the DCA chooses not to exercise its right to appoint, the CAMTC will not have a representative of the public to address the consumer prospective.

BPC Section 450.3 and 450.5 specify:

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

A public member, or a lay member, at any time within five years immediately preceding his or her appointment, shall not have been engaged in pursuits which lie within the field of the industry or profession, or have provided representation to the industry or profession, regulated by the board of which he or she is a member, nor shall he or she engage in those pursuits or provide that representation during his or her term of office.

It is unclear if the above explanation of public member in the BPC accurately reflects the requirement of AB 1147 to include a member of the public on the CAMTC board.

Staff Recommendation: *The Committees may wish to discuss if the definition of “member of the public” needs to be further clarified or if the current statute is sufficient.*

ISSUE #10: *Explain the criteria for school approval. Should there be a fee cap for the approval of schools?*

Background: The CAMTC's reactive unapproval process for schools was raised as an issue during the prior sunset review. As a result, AB 1147 directed the CAMTC to take a proactive approach in approving schools to help address fraudulent academic concerns.

BPC Section 4601 defines an "approved school" or an "approved massage school" as a school that is approved by the CAMTC, has not been unapproved by the CAMTC, and is approved by the BPPE, the DCA, or the organizations that accredit junior and community colleges, and corresponding agencies in other states.

During the last Sunset period, the CAMTC did not proactively approve schools, but rather unapproved a school if it found that the school violated one or more of its provisions for the unapproval of Schools. This process changed with the creation of the ESD. Effectually, as long as a school is approved by one of the bodies as specified in BPC 4601, then the school is also approved by the CAMTC until it finds a reason to unapprove the school. During the CAMTC's prior sunset review, concerns were raised as to whether or not a reactive unapproval process was the best mechanism to ensure that students were meeting important academic standards. AB 1147 required the CAMTC to restructure its school approval system from a complaint-driven unapproval process to a more thorough and proactive approval process.

BPC Section 4615(b) requires that the CAMTC develop policies, procedures, rules, or bylaws governing the requirements and process for the approval and unapproval of schools, as specified, including any corrective action required to return a school to approved status. These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance, in keeping with the CAMTC's statutory requirement that protection of the public be its highest priority.

In November 2014, the Educational Standards Division was established and a director was hired in order to move towards a proactive school approval system. In an effort to comply with new requirements, the CAMTC reported it is working to transform the current system of unapproving schools to actively approving schools that provide education for CAMTC certification. In November 2014, the Educational Standards Division was established and a director was hired.

Under the new system, the CAMTC reported that if a school wishes to provide a massage therapy program that would permit students to obtain certification, the school must be approved by the CAMTC. In order for schools to be eligible for CAMTC-approval they must meet the requirements specified in the CAMTC's Procedures for Approval of Schools, including, but not limited to the following requirements: 1) offer a program clearly identified as a professional massage program; 2) provide an organized plan of study of massage and related subjects (totaling a minimum of 500 supervised hours), with no distance learning, externships, or self-study included within the 500 hours; 3) is not currently unapproved by the CAMTC; and, 4) is approved by the BPPE, the DCA, or the organizations that accredit junior and community colleges, and corresponding agencies in other states.

Schools are required to complete an application packet, pay the \$750 application fee, and host a scheduled site visit. Applications became available on April 1, 2015, and schools that applied before the deadline and are being approved will be notified of that approval on or before July 1, 2016. For applications for certification received on or after July 1, 2016, CAMTC will only accept education from CAMTC approved schools. The most recent policies and procedures for the approval of schools was updated at the February 25, 2016 CAMTC Board of Directors meeting.

BPC Section 4615(c) specifies that the CAMTC may charge a reasonable fee for the inspection or approval of schools, provided that the fees do not exceed the reasonable cost of the inspection or approval process. Currently, the CAMTC has established a fee of \$750 per application. As stated earlier, in order to implement the approval program, the CAMTC hired new staff, including a division director, dedicated to the ESD. In its *2015 Sunset Review Report*, the CAMTC notes that the ESD seeks to hire hearing officers to hear proposed denials and or other disciplinary related issues pertaining to schools.

Applications for school approval were posted to the CAMTC's website on April 1, 2014. As of December 8, 2015, 112 schools have applied for CAMTC approval. Currently, no schools have been officially approved by the CAMTC; once approved, schools will have a two-year approval. Unlike approval from the BPPE, there is no requirement that a school offering a massage program obtain CAMTC approval; however, if an individual seeks to be certified by the CAMTC, they must complete their coursework from a CAMTC-approved institution.

As the number of students served by private postsecondary institutions has increased, so has the focus on fraudulent practices and low academic standards. There have been numerous high-profile federal investigations into the practices of for-profit institutions in recent years.

There is nothing in existing law that specifies the approval process, as long as it is consistent with its mission of protecting the public.

Staff Recommendation: *The CAMTC should explain to the Committees the status of the new school approval program. The CAMTC should explain the process for those transitional students who begin coursework before July 1, 2016, and complete the coursework after July 1, 2016.*

ISSUE #11: *When does the CAMTC anticipate signing the MOU with the BPPE?*

Background: Although the CAMTC is transitioning from its current reactive "unapproval" system to a more proactive approach, the dual oversight which is currently required by BPC Section 4601(a) will be continued. Under existing law, the majority of private for-profit education institutions in California require approval from the BPPE.

According to the CAMTC, under its current unapproval system, it does not proactively approve schools, but rather unapproves a school if it finds that a school engages in inappropriate behavior or does not meet the minimum standards for training and curriculum. Schools may be disapproved for violating the provisions of the CAMTC unapproval procedures which include, but are not limited to, selling or offering to sell transcripts, failing to require students to attend the classes listed on the transcript, failing to require students to attend all of the hours listed on the transcript, or engaging in fraudulent practices.

In order to obtain certification, an individual must meet educational requirements which include obtaining 500 hours of education at a school that is approved (or not unapproved) by the CAMTC and at least one of the other specified entities. The list of other agencies includes the BPPE, the DCA, and the organizations that accredit junior and community colleges, and corresponding agencies in other states. California State University and University of California schools also meet the definition of an "approved school."

For the majority of massage schools in California, the additional State certifying agency is the BPPE. If a California school does not have a massage program approved by the BPPE or another one of the certifying agencies listed in BPC 4600(a), CAMTC cannot accept the education transcripts from that school. The CAMTC reported that it does not accept education from schools that are not approved by the BPPE. Four specific schools are listed on the CAMTC's website.

While the CAMTC may unapprove a school for a number of reasons, the most common reason is transcript discrepancies, meaning the transcript does not accurately reflect the education actually received by the applicant. According to the CAMTC, the reasons for transcript discrepancies range from inaccurate record keeping to fraud, such as the sale of transcripts. The CAMTC is responsible for determining that schools meet the specified requirements necessary for certification. In addition, the CAMTC has broad authority to investigate whether an applicant actually received the education claimed on an application or provided through a transcript.

The California Private Postsecondary Education Act (The Act) requires all *unaccredited* colleges in California to be approved by the BPPE and all *nationally accredited* colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors, and, most importantly, it gives BPPE an array of enforcement tools to ensure that colleges

comply with the law. The Act provides a fee structure to ensure BPPE's operational effectiveness, including an application fee and an annual institution fee.

The BPPE's school approval process is separate from the CAMTC's, and currently, there is no formal relationship between the two entities. The BPPE is charged with student protection and ensuring financial solvency of a school, while CAMTC's statutory responsibility is to determine whether the school meets minimum standards for training and curriculum and is limited to approving the school in relation to CAMTC certification. This means schools can be unapproved by the CAMTC and still operate massage programs, if they are approved by the BPPE, but students from those schools may not use educational units for CAMTC certification.

Under the current unapproval process, CAMTC has unapproved 62 schools since 2009, and has identified and listed 7 other schools for which students must provide additional proof of adequate education (beyond a transcript and diploma) when applying for certification. Fifty-seven of the 62 unapproved schools have been unapproved since the CAMTC's last sunset review. The CAMTC continues to investigate and unapprove schools that have violated its Procedures for Unapproval, and will continue to do so until July 1, 2016, at which time it will transition to only accepting education from CAMTC approved schools. The CAMTC has not re-approved any schools that have been unapproved, though it has lifted probationary conditions for some schools. The CAMTC also does not recognize a number of schools because they fail to meet the definition of an approved school in BPC Section 4601(a) in that they do not have a massage program that is approved by BPPE or another listed organization.

The relationship between the two entities impacts both the BPPE's and the CAMTC's ability to ensure that approved massage programs are operating properly and that the students are not being harmed or misled as to the value of their education. In July 2015, the DCA distributed a press release stating that "The Department of Consumer Affairs' Bureau for Private Postsecondary Education (Bureau) has revoked the approval to operate issued to Hans Academy of Massage located in Los Angeles." After reviewing the CAMTC's website on February 11, 2016, Hans Academy of Massage (a.k.a. Han's Career College) was "unapproved" by the CAMTC on August 2, 2012. Effectively, students who obtained massage education from this school between August 2, 2012 and July 26, 2015 (when the BPPE revoked its approval) could not submit this education for voluntary certification. This instance may highlight a need for enhanced communication efforts between the CAMTC and the BPPE.

The CAMTC reported in its *2015 Sunset Review Report*, that the CAMTC adopted, as part of its 2015 strategic priorities, to initiate the development of a MOU with the BPPE. Enhancing the school oversight relationship may result in a more coordinated effort to curtail academic institutions from providing a fraudulent education and better protect students seeking specified job training.

Staff Recommendation: *The CAMTC should advise the Committees on the MOU process and provide an update as to its relationship development with the BBPE.*

LOCAL GOVERNMENT ISSUES

ISSUE #12: *What is the CAMTC's relationship with Law Enforcement and Local Governments? Is there a sufficient exchange of information? Has that relationship improved?*

Background: California law authorizes certain government and private organizations to conduct criminal background checks to help determine the suitability of an individual applying for different types of licensure, employment, or in the CAMTC's case, certification. The CAMTC requires all applicants to be fingerprinted as part of the background check process. The DOJ and the FBI provides an automated service for criminal history background checks. Applicant fingerprint submissions are transmitted electronically; most commonly through "Live Scan" technology. Fingerprint reports are sent directly to the CAMTC by DOJ and the FBI and subsequent arrest notifications are received and reviewed.

In addition to the fingerprint background checks, once an application is received by the CAMTC processing staff, an email notice is sent to each government entity in charge of massage regulation in the cities and counties where the applicant has reported that they have lived or worked within the past ten years. The CAMTC provides local law enforcement staff and local governments with a minimum of two weeks to submit information to the CAMTC related to each applicant. The CAMTC reported that email communication with cities, counties, and law enforcement agencies related to applicants and certificate holders is continuous and on-going, with more than 1.2 million email messages sent from the CAMTC to local agencies since inception. On average, the CAMTC reported that it sends ten email messages for each applicant for certification or re-certification to the cities, counties, and law enforcement agencies where the applicant or certificate holder lives each time they apply for certification or re-certification.

Because certificate holders must reapply for certification every two years, cities counties and law enforcement agencies are contacted about each certificate holder at least once every two-year cycle. Information received is reviewed and, when warranted, investigated to determine if a violation of the CAMTC's statute has occurred.

According to the CAMTC, the receipt of this information from local jurisdictions is critical. The DOJ and FBI reports are limited to criminal arrests and convictions and do not commonly include administrative citations or civil actions related to a local massage or business permit, as these are commonly civil, not criminal, matters. Additionally, local municipal code violations do not require the submission of fingerprints, and are not reported to the DOJ. Local jurisdictions may also provide evidence that an applicant or certificate holder has engaged in conduct that violates the CAMTC's statute. Since the implementation of AB 1147, the CAMTC reported that it has received more reporting from local cities, counties, and law enforcement agencies and hopes that this cooperation will continue to increase in the future.

Local law enforcement and local governments are not mandated to provide information to the CAMTC and are under no obligation to report information back in a timely manner. Because there is no statutory requirement that local governments or local law enforcement entities to provide any background information to CAMTC, cooperation can be incomplete. BPC Section 4614(b) authorizes any law enforcement agency or any other representative of a local government agency responsible for regulating massage therapy, to provide the CAMTC, upon request with information concerning an applicant or certificate holder including, but not limited to, the current status of any local application or permit, any history of legal or administrative action and any information related to criminal activity or unprofessional conduct.

During the previous sunset review, the issue of the effectiveness of local government and CAMTC communications was raised. It was recommended that both local agencies and the CAMTC work to

enhance communication strategies. In response, the CAMTC states in its *2015 Sunset Review Report*, that strengthening the collaboration with the law enforcement community was one of CAMTC's top priorities in 2015.

In October 2015, the CAMTC reported that it embarked on a new statewide outreach initiative to local law enforcement agencies offering to strengthen collaboration by implementing a three prong approach: 1) coordination of enforcement protocols; 2) escalation of information sharing; and, 3) no-cost training for law enforcement. The CAMTC reported that its CEO sent correspondence to 356 police chiefs and 58 sheriffs, as well as letters to the Presidents of the California Police Chiefs Association and the California State Sheriffs' Association.

As of November 24, 2015, the CAMTC reported that it has received 76 responses and has set up numerous meetings throughout the state to discuss coordination of enforcement protocols and increased information sharing. The CAMTC staff continues to schedule additional training sessions. As reported by the CAMTC, since 2014, it has provided training to 487 law enforcement and local government officials from 193 different agencies (these agencies include local government agencies that regulate massage in addition to law enforcement agencies).

Staff Recommendation: *The CAMTC should update the Committees about its relationship with local governments and local law enforcement with respect to information sharing and explain any plans to increase its communications strategy with local regulators. In addition, the CAMTC should explain to the Committees where there may be bottlenecks in the communications process. The CAMTC should explain to the Committees if there are times when certificate holders avoid discipline or applicant denials based on a breakdown of shared communication.*

ISSUE #13: *How have local governments changed the way they regulate the massage industry?*

Background: In 2005, the Joint Committee on Boards, Commissions and Consumer Protection Background Paper on the proposal to regulate massage therapists noted that many local massage ordinances reflected the perception that massage was a "vice" rather than a healthcare modality, and restricted massage businesses from opening near schools, churches or certain residences, thereby zoning massage out of some small cities. Additionally, massage ordinances required certain medical testing of practitioners, established potentially excessive fees, and prohibited outcall massage. In an attempt to address the complex massage regulatory system found across local jurisdictions, the Massage Therapy Act (SB 731) was enacted, which sought to help standardize the profession so that professionals need only meet one set of state standards and to also ensure that local land use decisions were made in a manner that does not unduly discriminate against massage professionals. However, as highlighted during the prior sunset review, the strict prohibitions on massage business regulation proved to be challenging for local governments. As a result, AB 1147, which revised the Massage Therapy Act and the operations of the CAMTC, was chaptered into law on September 19, 2014 to address some of these issues.

The recent legislative changes to the Massage Therapy Act not only redirected operations of the CAMTC, but also completely restructured the regulatory framework for both massage therapy professionals and the local entities charged with massage business regulation across the state. Prior to the implementation of AB 1147, those businesses that employed only certified massage professionals, were exempt from certain aspects of local control, including zoning, land use, fees or other local requirements, because of the preemption clause. AB 1147 deleted any preemption for certified-only

massage professionals in order to restore local government's regulatory authority over all massage businesses in each jurisdiction. Instead of preemption, AB 1147 provided minimal protections in the GC for massage professionals.

The intent of the 2014 Massage Therapy Act as specified in BPC Section 4600.5 (c) states:

It is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers, during the transition period after this act becomes law and thereafter for the sake of developing a healthy and vibrant local economy.

AB 1147 aimed to strike a balance between professional regulation and local control. Instead of permitting unregulated businesses to be exempt from any regulatory oversight, massage businesses are once again subject to various local ordinances, and massage professionals, who chose certification, are regulated by the CAMTC. The CAMTC's primary role is consumer protection by ensuring that only those who have met the education and background requirements are eligible for certification and those that violate the law are disciplined accordingly.

Once AB 1147 was chaptered into law on September 19, 2014, local governments had a brief window (approximately 3 months) to establish new ordinances, amend or repeal existing ordinances to adjust to the new law. In addition, certified individuals were faced with new land use and zoning requirements, and had to quickly adjust to obtaining new permits, face new moratoriums, or pay additional business licensing fees, including conditional use permits. 'Preemption', created a bifurcated system of regulation whereby cities and local governments regulated non-certified individuals under one set of rules, and attempted to regulate certified individuals and businesses that use only certified individuals to provide massage under another set of rules.

A key element for an effective massage regulatory system in California is open communication, information sharing and consistency in regulations throughout the state. Because each jurisdiction is impacted differently by the industry, there may be opportunities for different jurisdictions to share best practices with bordering neighbors in order for practitioners, cities, and consumers to easily navigate the system and fight against illegal business enterprises. The American Massage Therapy Association, California Chapter (AMTA-CA) provided brief summaries of local massage ordinances to the Committees, that it believes have provided a regulatory structure that "...respect[s] the profession as they enable local government and law enforcement to prevent and punish criminal activity;" those jurisdictions include:

San Mateo County: background checks are imposed on non-certified owners only. Health and safety inspections are charged at reasonable fees for cost recovery.

San Rafael: after a brief moratorium, the city chose not to impose conditional use or distance limitations on massage establishments.

Vacaville: application, investigation and licensing fee is a total of \$48.

Fresno: 2013 massage ordinance requires certification and a no fee registration of massage establishments.

The AMTC-CA also provided to the Committees a sample of elements from ordinances in other jurisdictions which the industry association views as "adult entertainment ordinances" as opposed to massage therapy ordinances. Elements of those ordinances include:

- Moratoria on new businesses and issuance of new business licenses to tenants and independent contractors of existing businesses;
- Conditional use permits (CUPs);
- Perceived high application and/or establishment fees;
- Exclusionary zoning;
- Distancing requirements from like businesses and/or sensitive land use (such as schools, churches, residences, other massage establishments, etc....);
- Prohibited mobile (in-home or outcall) or homebased businesses (home office);massage;
- Requirements that businesses that provide mobile only services must have a brick and mortar location within the city (not home based);
- Additional background checks and Live Scans of the CAMTC certificate holders who are owners or operators, including sole providers; and,
- Additional fees for local authorities to verify certification.

The AMTA California Chapter reports that over 100 cities have imposed some or all of the above restrictions on massage businesses.

In addition, there appears to be some confusion between practitioners and local governments regarding the authority granted to local governments to conduct 'background' checks on CAMTC certified individuals. AB 1147 added GC Section 51034 which included minor prohibitions on how a city or county can regulate certified massage practitioners. GC Section 51304(7) specifically prohibits a city or county from imposing a requirement that a certified person take any test, medical examination, or background check or comply with education requirements beyond what is required in the Massage Therapy Act. This was intended to alleviate cities and counties from conducting duplicative and resource intensive verifications of practitioners 'education and criminal background histories. At the same time, it would also ensure that practitioners need only meet one set of standards and prevent practitioners from paying duplicative fees for background inquiries. GC Section 51034(8) specifies that a local jurisdiction can require a massage business or establishment to obtain a license, permit, certificate or other authorization in order to operate the business.

Certificated individuals have contacted the Committees explaining that they have been required to conduct duplicative background checks, specifically submitting to a criminal record background check or 'livescan' which is already required by the CAMTC for certification. The duplicative background check process impacts those business owners who are certified solo practitioners whether working for themselves or as independent contractors working in larger establishments. These individuals adhere

to CAMTC background checks as certified individuals, but also must meet the requirements of local jurisdictions for "business owner" background checks. This process is costly and duplicative for certificated practitioners who happen to be sole providers or business owners. At this time, the DOJ's fingerprint background-check system does not allow for fingerprint requests to be shared with multiple entities that require fingerprinting.

Nothing in GC Section 51034 or in the Massage Therapy Act prohibits a local jurisdiction from imposing any regulations on those persons practicing massage therapy who are not certified by the CAMTC.

Staff Recommendation: *The Committees may wish to ask the CAMTC and other stakeholders to provide additional background on this issue. The Committees may wish to continue discussions about this issue during the Legislative Session.*

EDITS TO THE MASSAGE THERAPY PRACTICE ACT

ISSUE #14: *Are there minor/non-substantive changes to the massage therapy act that may improve the CAMTCs operations?*

Background: There may be a number of non-substantive and technical changes to the Massage Therapy Act which may need to be made. The appropriate place for these types of changes to be made is in the Senate Committee on Business, Professions and Economic Development's (BP&ED) annual committee omnibus bills.

Each year, the Senate BP&ED Committee introduces two omnibus bills. One bill contains provisions related to health boards/bureaus and the other bill contains provisions related to non-health boards/bureaus. The Senate BP&ED Committee staff reviews all proposals, and consults with the Republican caucus staff and Committee member offices to determine the provisions that are suitable for inclusion in the committee omnibus bills. All entities that submit language for consideration are notified of the BP&ED Committee's decision regarding inclusion of the proposed language.

The CAMTC identified several issues in need of technical clarification in its *2015 Sunset Review Report*, including the three referenced below:

BPC Section 4601(a) defines an "approved school" or an "approved massage school" as a school that is approved by the council that meets minimum standards for training and curriculum in massage and related subjects, and that is additionally approved by a specified list of accrediting bodies. As a result of AB 1147, in BPC Section 4064(a)(2)(B), it specifies that in order to obtain certification, all 500 hours of education must be from schools "approved by the council." As noted in the CAMTC's *2015 Sunset Report*, because the CAMTC is not the only entity responsible for school-approval, it requests to replace "schools approved by the council" with an "approved school" for consistency with the definition of an "approved school" as defined in BPC Section 4601(a).

Prior to AB 1147, there was a provision in the Massage Therapy Act which required the CAMTC to notify the employers of certificate holders that were suspended based on an arrest with charges filed for PC 647(b) (prostitution), or an act punishable by a sexually-related crime, at the last address filed with the CAMTC. BPC Section 4610(f)(1)(C) changed this provision to limit the notification of employers to an email-only notification. As reported by the CAMTC, often times applicants fail to

provide the CAMTC with an email address for the vast majority of businesses (even though one is requested), and an email message may easily be ignored. The CAMTC requests to revise current law to allow for the specified notification to employers to be completed via email or first-class mail. Additionally, the CAMTC requests one additional change to the language to broaden the scope of notification from “employers” to all massage businesses, in order to address the industry practice of using independent contractors.

BPC Section 4610(e)(4) specifies that when the CAMTC is proposing to deny an application or impose discipline on a certificate holder, the disciplinary procedure is fair and reasonable if specified conditions are followed, including “an opportunity for the applicant or certificate holder, to be heard, orally or in writing.” However, BPC Section 4610(g)(2), a provision allowing for suspension based on evidence, does not specify that a certificate holder has the opportunity to be heard “orally or in writing.” The CAMTC reported that although the CAMTC interprets this provision to provide for an oral hearing or consideration of a written statement, clarification of this provision might better inform certificate holders of their options in appealing a disciplinary matter.

Staff Recommendation: *The Committees may wish to consider amending the Massage Therapy Act to include the above-mentioned technical changes in either an omnibus bill or another bill.*

ISSUE #15: SB 1193 Posting Requirements.

Background: In an effort to address the ongoing issue of human trafficking, SB 1193 (Steinberg) Chapter 515, Statutes of 2012, was signed into law which required that the operators of bars, adult or sexually oriented businesses, massage businesses *where all those providing massage services are not CAMTC certified*, primary airports, rail stations, bus stations, truck stops, emergency rooms, urgent care centers, farm labor contractors, privately operated job recruitment centers, and roadside rest stops post a conspicuous notice publicizing human trafficking resources. That bill required the DOJ to develop a model notice and make that notice available on its website and specified the font size, the size of the paper, the posting location, and the language to be used on the poster. That bill required that the posting notice must include the following statement:

If you or someone you know is being forced to engage in any activity and cannot leave—whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or the California Coalition to Abolish Slavery and Trafficking (CAST) at 1-888-KEY-2-FRE(EDOM) or 1-888-539-2373 to access help and services. Victims of slavery and human trafficking are protected under United States and California law.

The hotlines are:

- *Available 24 hours a day, 7 days a week.*
- *Toll-free.*
- *Operated by nonprofit, nongovernmental organizations.*
- *Anonymous and confidential.*
- *Accessible in more than 160 languages.*
- *Able to provide help, referral to services, training, and general information.*

SB 1193 required certain businesses to post a notification containing the above information, including certain massage establishments; however, SB 1193 did provide an exemption for massage businesses where all those who provide massage were CAMTC certified as specified in BPC Section 4612 which was redrafted as a result of AB 1147. Until January 1, 2015, the law specified that only those massage businesses that *did not employ or use only certified massage professionals* were required to post the notification. Because of revisions to the Massage Therapy Act, current law now requires that every massage business in California post the notification. The DOJ makes a model notice available on its Web site, which can be found at:

https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/HumanTraffickMandate_ENG.pdf.

However, an entity required to post the notification is not required to use the product developed by the DOJ and may create their own notice as long as the font, paper size and other specifications as identified in Civil Code (CC) Section 52.6 are included on the notice.

SB 1193 placed the provisions of the posting notification requirement in CC Section 52.6 and provided an exemption, as specified, in CC Section 52.6(a)(12) for "Businesses or establishments that offer massage or bodywork services for compensation and are not described in paragraph (1) of subdivision (b) of Section 4612 of the [BPC]". At that time, BPC Section 4612(b)(1) specifically applied to massage establishments or businesses that were sole proprietorships, where the sole proprietor was certified, and to massage establishments or businesses that employed or used only certified individuals. As noted by the CAMTC in its *2015 Sunset Review Report*, the current CC Section 52.6(a)(12) references a statutory provision that was revised as a result of AB 1147; the CAMTC states "This is an unintended consequence of the restructuring of CAMTC's statute. [The] CAMTC is therefore requesting that this [CC] Section be modified to properly exclude businesses where everyone providing massage for compensation is CAMTC-certified."

Staff Recommendation: *The CAMTC should explain to the Committees what, if any, communication it has had with stakeholder groups regarding this change. The CAMTC should explain to the Committees why massage professionals should be exempt from the posting requirement. Further, the CAMTC may wish to consider creating its own model posting notification in order to help certified individuals comply with current law.*

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

ISSUE #16: *Can CAMTC continue to effectively fulfill its mission of certifying massage professionals in California? Will CAMTC be able to fulfill its mission if new requirements, such as more frequent or thorough school inspections, are imposed?*

Background: As intended by SB 731, the health, safety and welfare of consumers are better protected through a voluntary certification of massage professionals, ensuring greater consistency and quality amongst professionals while giving local governments the tools to more easily identify trustworthy professionals. The current regulatory scheme combines education, training, and background standards into a systematic formal review process whereby only those individuals who have met those standards can dutifully represent themselves as massage therapists or massage practitioners. That system would be overseen by a regulating entity with a mission "to protect the public through the administration of a successful certification process." That mission is worthy of continuation.

The CAMTC should continue to focus on its communication efforts with local government and law enforcement entities to help stop individuals and businesses engaged in illegal activity from masquerading as legitimate healing arts practitioners and damaging the reputation of the massage therapy profession.

A strong argument can be made for the continuation of some form of professional regulation: statewide regulation is more efficient, consistent, and the norm across the majority of states. Without any regulation, consumers would lose any hope of making distinctions in quality between massage professionals, practitioners again would be subject to a patchwork of licensing regimes, and local governments would be forced to develop new regulatory processes.

Staff Recommendation: *The Committees may wish to consider extending the CAMTC for four-years in order for the organization to continue its regulatory oversight over the Massage Therapy Act, and the voluntary certification system. The CAMTC should continue to work with certificate holders, consumers, local governments, the Legislature, and other stakeholders to help improve upon the certification system and ensure that only those individuals who meet the education, examination, and background requirements are granted certification, and to take swift enforcement actions against those who violate the Massage Therapy Act. The CAMTC should be prepared to testify at a future legislative sunset review hearing, if requested by the Legislature, prior to its next statutorily required sunset review hearing, to discuss its progress in addressing the issues raised in this Background Paper.*

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