

**CALIFORNIA ALLIANCE OF MASSAGE
AND BODYWORK SCHOOLS**

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Beverly May
AMTA-CA
July 4, 2004

Dear Beverly, RE: AB 1388

Since AB 1388 was tabled in January, members of CAMBS have continued to discuss massage licensing concepts, hoping to build on the basis laid by the drafting committee of which you were a member. In keeping with your request for concepts and language to help the legislative process along, and in the spirit of cooperation with the multifaceted touch therapy community in California, the California Alliance of Massage and Bodywork Schools (CAMBS) has done what you asked, and as a result herein proposes a new version of AB 1388.

Accompanying this letter is a one-page overview of changes we are proposing to the last amended version of AB 1388 from January 2004. A copy of the entire massage bill also accompanies this letter so that the concepts and language we have worked out can be seen in the context of the full bill, for ease of reading and cohesiveness.

While we are addressing this letter to you, as the chairperson for the AMTA-CA legislative committee, we are also sending copies to all the parties that have participated in this process so far.

Our purpose is to share with the entire community a bill we feel will benefit the broad and multifaceted massage community as well as the consumer in California. This is a well-thought-out alternative that uses the current bill as a foundation.

Although we understand the nature of the legislative process will require continued negotiation, CAMBS stands firm on the following points:

1. Pre-emption of local massage licensing ordinances.
2. A 250-hour tier with sufficient safeguards to assure that a student will have completed a balance core curriculum, no restrictions on scope of practice, and no requirement for supervision. This tier must be permanent, not something that can be phased out in a few years.
3. Examination done within the school.
4. Massage Board has no control over curriculum in massage schools, either directly or indirectly.
5. Practitioner hours (250) must be acquired at an Approved, not a Registered school.
6. Reasonable licensing fees and other associated costs.
7. Testing such as the National Certification Exam (NCE) only as an option, not a requirement.

Sincerely,

Teresa Nead
President, CAMBS

CAMBS Legislative Committee

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(For ease of reading, modifications we have made to AB 1388 are printed in **Arial Bold** and comments that explain the intent of the changes are printed in *Italics*.)

BILL NUMBER: AB 1388

INTRODUCED BY

An act to amend Section 144 of, and to add Chapter 10.5 (commencing with Section 4600) to Division 2 of, the Business and Professions Code, and to repeal Chapter 6 (commencing with Section 51030) of Part 1 of Division 1 of Title 5 of the Government Code, relating to massage therapy, **and to add Section 94926 to California Education Code, Title 3, Division 10, Part 59, Chapter 7** and making an appropriation therefor.

(This adds a change to the Education Code in the sections on vocational schools, regarding minimum curriculum, the details are at the end of the document.)

Introduction:

It has been proven that the practice of massage does not cause serious or permanent harm to the public. However, the practice of massage has become an important and rapidly growing segment of the health, tourism, and personal services industries of California. The public is indirectly harmed by a lack of minimum standards in massage education and licensing, by a patchwork of confusing local massage regulation, by confusing job titles used by massage professionals, and a lack of standard titles for massage training courses. As a result it is difficult for the public to ascertain the qualifications of massage practitioners and therapists, especially to ascertain whether the individual massage therapist or practitioner has been trained in issues of health, safety, contraindications and the transmission of disease as related to the practice of massage. The public is also harmed because there is currently no adequate system for reporting any acts of gross negligence, malpractice, or unethical behavior of an individual massage therapist, other than filing a civil suit.

(This establishes the rationale for this bill. Massage isn't harmful in the usual sense, for instance, we don't use harsh chemicals or sharp instruments or penetrate the body, but there are other kinds of harm to the public.)

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, dentists, chiropractors, and acupuncturists. Existing law requires applicants for licensure or registration by various Boards, bureaus, commissions, and divisions to submit fingerprints for the **purpose of conducting an investigation into the applicant's criminal history record**. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county. *(Change of sentence structure)*

This bill would repeal those provisions authorizing a city or county to license and regulate the business of massage. The bill would instead establish the Board of Massage Therapy in the Department of Consumer Affairs to license and regulate **massage practitioners, as defined and massage therapists, as defined**. The bill would specify the composition, powers, and duties of the Board. The bill would create the Massage Therapy Fund and would require all fees collected by the Board to be paid into the State Treasury to be credited to the fund. The bill would make money in the fund available to the Board for specified purposes upon appropriation by the Legislature, except that the bill would appropriate all money in the fund to the Board in the 2005-06 fiscal year for the purpose of implementing the bill.

This bill would prohibit a person from using certain titles without being licensed, and would make it a crime to violate that prohibition. The bill would specify requirements for licensure, including requiring the submission of fingerprints to conduct a criminal history record check. The bill would authorize the Board to issue administrative fines and suspensions for a violation of the laws regulating massage therapists. The bill would require the Board to submit fingerprint images from applicants for licensure to the Department of Justice. The bill would require the Department of Justice to provide certain criminal record information obtained from the fingerprint images to the Board and to charge a fee to cover the costs of processing this information. The bill would exempt certain unlicensed persons from the prohibitions against engaging in massage therapy or bodywork. The bill would preempt local ordinances regulating massage by persons licensed under the bill.

Because a violation of this bill's requirements with respect to practicing massage therapy, or representing oneself as a licensed massage therapist, without a license would be a crime, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 144 of the Business and Professions Code, as amended by Chapter 874 of the Statutes of 2003, is amended to read:

144.

(a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Registered Veterinary Technician Committee.
- (10) Board of Vocational Nursing and Psychiatric Technicians.
- (11) Respiratory Care Board of California.
- (12) Hearing Aid Dispensers Advisory Commission.
- (13) Physical Therapy Board of California.
- (14) Physician Assistant Committee of the Medical Board of California.
- (15) Speech-Language Pathology and Audiology Board.
- (16) Medical Board of California.
- (17) State Board of Optometry.
- (18) Acupuncture Board.
- (19) Cemetery and Funeral Bureau.
- (20) Bureau of Security and Investigative Services.
- (21) Division of Investigation.
- (22) Board of Psychology.
- (23) The California Board of Occupational Therapy.
- (24) Structural Pest Control Board.
- (25) Contractors' State License Board.
- (26) Bureau of Naturopathic Medicine.
- (27) *Board of Massage Therapy.*

(c) The provisions of paragraph (27) of subdivision (b) shall become operative on July 1, 2006.

(Corrects the paragraph number, which was incorrect in the January 2004 version of this bill.)

SEC. 2. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE PRACTITIONERS AND THERAPISTS

4600. The Legislature finds and declares that the public interest is served through licensure of massage practitioners and massage therapists, and that the health and welfare of citizens of California will be protected by identifying to the public those individuals who are qualified to call themselves massage practitioners and therapists. **The Legislature finds that the public interest is better served through having a central agency to license and regulate the massage profession, and investigate consumer complaints than is possible through a patchwork of local regulations.** This chapter establishes minimum standards of training for entry into the profession and effective discipline for practitioners who violate the law.

(Changed sentence to clarify meaning.)

4601. As used in this chapter, the following terms shall have the following meanings:

(a) "Massage" means the application of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations, use of devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. For purposes of this chapter, massage and bodywork are interchangeable.

(b) **"Massage Therapist," "Bodyworker," "Bodywork Therapist," or "Massage and Bodywork Therapist" means a person who is licensed by the Board of Massage Therapy under subdivision (c) of Section 4604 and administers massage for any form of compensation.**

(This is wording used in some local ordinances, it makes it clear that massage therapists must be licensed if they receive any form of payment, including tips or donations – which is how some people justify working without a license: they don't actually charge a set fee for their services but accept donations.)

(c) "Massage Practitioner," "Bodywork Practitioner," or "Massage and Bodywork Practitioner" means a person who is licensed by the Board of Massage Therapy under subdivision (b) of Section 4604 and administers massage for **any form of compensation.**

(d) "Board" means the Board of Massage Therapy within the Department of Consumer Affairs.

(e) "Massage Therapy Fund" means a fund set up by the Board to accept and disburse fees paid by licensees for the purpose of administering the provisions of this chapter.

(f) "Compensation" means the **payments payment**, loan, advance, donation, contribution, deposit or gift of money or anything of value.

(g) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects as determined by this chapter and that is - recognized by the Bureau For Private Postsecondary And Vocational Education, Department of Education (BPPVE) pursuant to Section 94931 of the Education Code, or by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (7) of subdivision (b) of Section 94739 of the Education Code and **colleges and universities of the state higher education system as defined in Section 100850**, or a **course** of equal or greater training that is approved by a corresponding agency in another state.

(The possibilities are: schools registered/approved by the BPPVE, college and universities of the state higher education system as defined in section 100850, and WASC accredited colleges and universities not considered to be private postsecondary institutions as specified under 94739(b)(7). There is no reason to keep the phrase “and

approved by the Chancellor..." as specifically mentioning section 100850 would include schools in the state higher education system too new to be accredited by WASC.

Education code: 94739.

(b) The following are not considered to be private postsecondary educational institutions under this chapter

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(7) [WASC accredited]

The above sections remove California institutions of higher education and remove most WASC accredited colleges and universities from the definition of private postsecondary schools and the BPPVE domain. Out of state schools accredited by a non-WASC regional accrediting agency (94905, 94740.3, 94740.5, 94945) or by a national accrediting agency approved by the United States Department of Education remain under the auspices of the BPPVE.

100850. (a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(h) Approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects as determined by this chapter and that is approved by the BPPVE, Department of Education pursuant to Section 94915-**94930** of the Education Code, or by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (7) of subdivision (b) of Section 94739 of the Education Code and **colleges and universities of the state higher education system as defined in section 100850, or a course of equal or greater training that is approved by a corresponding agency in another state.**

(i) "Person" means an individual, **a natural person, not** a partnership, unincorporated organization, or corporation.

(Wording from the Cosmetology Act defining a "person." However, this definition eliminates partnerships, organizations, and corporations from obtaining a massage license – each individual in the organization who performs massage would have to obtain his/her own license.)

(j) "Professional" means both licensed massage practitioner and licensed massage therapist.

(k) **"Out-of-state school" means any public or private postsecondary or vocational educational institution offering career or job training programs, that has its place of instruction or its principal location outside the boundaries of the state, or that offers or conducts programs of instruction or subjects on premises maintained by the school outside the boundaries of the state, or that otherwise offers or provides California students with programs of instruction or subjects through activities engaged in or conducted outside the boundaries of the state, and which is approved by an agency in its state that is equivalent to the BPPVE.**

(Wording taken from Education Act; need to add this definition as a basis for accepting training taken in other states. Otherwise, this bill seems to require that all massage training be taken in California.)

(l) “Recognized professional association,” means an organization offering services to the massage professionals that has a code of ethics and a grievance resolution procedure, eligibility requirements and education standards.

(This is included in this bill because of the requirement for continuing education, and the list of continuing education providers. Some definitions of recognized professional associations include “non-profit,” but this would eliminate some of the larger professional associations, which isn’t logical. Being non-profit doesn’t in itself make an organization worthy of special consideration.)

4602.

(a) The Board of Massage Therapy is hereby created in the Department of Consumer Affairs. **The purpose of the Board of Massage Therapy shall be to review the qualifications of applicants for licensure, issue, deny, suspend or revoke licenses, and investigate the complaints of any member of the public against any person licensed under this Act.**

(The intent is to spell out the authority that the Board will possess, with the focus on protecting the public. So the purpose of the Board will be to review qualifications of applicants, issue or deny licenses, and investigate and act on consumer complaints.)

(b) The Board shall be composed of seven members who are residents of California, as follows:

(1) Five professional members currently licensed with at least three years of consecutive, recent experience in the practice of massage or massage therapy. Professional members shall represent both massage practitioners and massage therapists. A maximum of two members can be individuals who also own or direct massage therapy schools.

(2) Two public members who are not and have never been licensed under this chapter, are not in training to become massage practitioners or massage therapists, are not the spouse of a person so licensed, are not related to or share a household with someone so licensed, have not had within two years of the appointment a substantial financial interest in a licensee regulated by the Board, and otherwise have no financial interest, directly or indirectly, in the profession. One public member may hold a license in another health care profession.

(c) If the Board membership includes no other person licensed as a health care professional or no representative of massage therapy training programs, the Board may appoint advisers.

(d) All members shall be appointed for a term of three years. The Governor shall appoint five members, the Senate Committee on Rules shall appoint one member, and the Speaker of the Assembly shall appoint one member. Initial appointments to the Board

shall be made from those eligible for licensing under Section 4603. Initial appointments shall be made as follows:

- (1) The Governor shall appoint two Board members for a term of one year, two Board members for a term of two years, and one Board member for a term of three years. Initial appointments by the Senate Committee on Rules and Speaker of the Assembly shall be for three years.
- (2) Appointments made thereafter shall be for three-year terms, but no person may be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.
- (3) Vacancies shall be filled by appointment for the unexpired term.
- (e) Each member shall serve until his or her successor is appointed and qualified, unless the member is no longer competently performing the duties of office. Any vacancy on the Board shall be filled by the Governor for the balance of the unexpired term. The Governor may remove members of the Board from office for neglect of any duty imposed by state law, for incompetence, or for unprofessional or dishonorable conduct.
- (f) Members of the Board shall receive no compensation for their services but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.
(Is this normal practice for Boards? Does "reasonable...expenses" include reasonable compensation for the time spent on Board duties?)
- (g) The members of the Board shall annually elect officers in accordance with rules established by the Board.
- (h) The Board shall meet as frequently as shall be reasonably necessary to implement the provisions of this act, but not less than twice a year. The Board may convene from time to time until its business is concluded. Special meetings of the Board may be held at any time and place designated by the Board.
- (i) Notice of each meeting of the Board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). Four members of the Board shall constitute a quorum for the purpose of transacting Board business.

4602.10. The Board shall have the following powers and duties:

- (a) Administer, coordinate, and enforce the provisions of this chapter, and evaluate the qualifications of applicants for licensing under this chapter.

- (b) Issue, renew, deny, suspend, or revoke licenses under this chapter. Licenses shall be valid for a period not to exceed two years. Licenses shall be issued to qualified applicants within 60 days of receipt of a completed application.
- (c) Conduct investigation of persons applying for a massage license or engaged in massage or massage establishments and to inspect the license of practitioners for compliance. The refusal of a practitioner to permit inspections shall be grounds for revocation, suspension or refusal to issue a license pursuant to this chapter. Investigations shall be conducted within 90 days.
- (d) Provide a system for adjudication and investigation of consumer complaints and seek an injunction through the Attorney General's office against any person or massage establishment not in compliance with the provisions of this chapter.
- (e) Conduct proceedings under this chapter in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
- (f) Employ appropriate professional, clerical, or other special personnel necessary to carry out its duties subject to Sections 107 and 154.
- (g) Represent the diversity of disciplines within the profession at all times when making decisions, and stay current and informed regarding the various branches of massage therapy practice.
- (h) Establish reasonable fees for applications, initial license and renewal, fines, and other services provided by the Board.
- (i) Maintain a record of all proceedings and make such records available to all licensees in an annual report.
- (j) Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

4602.20.

- (a) The Board shall establish the amount of fees assessed to conduct activities of the Board, including the amount for license application, renewal and late renewal.
- (b) All fees collected by the Board shall be paid into the State Treasury and shall be credited to the Massage Therapy Fund which is hereby created in the State Treasury. The money in the fund shall be available to the Board for expenditure for the purposes of this chapter only upon appropriation by the Legislature.
- (c) Notwithstanding subdivision (b), all money received and credited to the Massage Therapy Fund in the 2005-06 fiscal year is hereby appropriated to the Board for the purpose of implementing this chapter.

4602.30.

- (a) The Board may, after a hearing, deny, suspend, revoke, place on probation a license, inactive license, or limited permit.
- (b) As used in this chapter, *license* includes a license, limited permit, or any other authorization to engage in practice regulated by this chapter.
- (c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Board shall have all the powers granted therein.

4602.40.

- (a) The Board may discipline a licensee by any or a combination of the following methods:
 - (1) Placing the license on probation with terms and conditions.
 - (2) Suspending the license and the right to practice massage therapy for a period not to exceed one year.
 - (3) Revoking the license.
 - (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
 - (5) Taking other action as the Board, in its discretion, deems proper, including the levying of fines.
- (b) The Board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

4602.50. The Board may deny or discipline a licensee for any of the following:

- (a) Unprofessional conduct, including, but not limited to, the following:
 - (1) Incompetence or gross negligence in carrying out usual massage or massage therapy functions.
 - (2) Repeated similar negligent acts in carrying out usual massage or massage therapy functions.
 - (3) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing Board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.
- (b) Procuring a license by fraud, misrepresentation, or mistake.
- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

- (d) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence of the crime or offense.
- (e) Impersonating an applicant or acting as proxy for an applicant in any examination -referred to under this chapter for the issuance of a license.
- (f) Impersonating a licensed practitioner or therapist, or permitting or allowing another unlicensed person to use a license.
- (g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.
- (h) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

4602.60. The Board shall retain jurisdiction to proceed with any investigation, action, or disciplinary proceeding against a **licensee**, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the Board or a court of law, or by the voluntary surrender of a license by the licensee.

4602.70. If a license is suspended, the holder may not practice massage therapy during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated and the holder entitled to resume practice under any remaining terms of the discipline, unless it is established to the satisfaction of the Board that the holder of the license practiced in this state during the term of suspension. In this event, the Board may, after a hearing on this issue alone, revoke the license.

4603. It shall be unlawful to advertise the practice of massage or massage therapy using the term massage or other term that implies massage without holding a current, valid license issued by the Board. It shall also be unlawful for any licensee to advertise in any public publication or communication without including in the advertisement the license number and title of the massage therapist or practitioner. Advertising by multipractitioner practices may alternatively state that "**all massage professionals in this facility possess a valid California massage license.**"
(changed wording to clarify meaning.)

4604.

- (a) Except as provided in Section 4606, it shall be unlawful for any person to practice massage or massage therapy unless that person holds a current valid license issued in accordance with the provisions of this chapter. It shall further be unlawful for any person to hold himself or herself out as a massage practitioner, bodywork practitioner, massage and bodywork practitioner, massage therapist, **bodyworker, massage and bodywork therapist** or with any title or initials with the intent to represent that the person practices, or is authorized to practice, massage or massage therapy, unless that person holds a current valid license issued pursuant to this chapter or is exempt from the provisions of this chapter pursuant to Section 4606. *(The titles in*

bold should have been included in the January 2004 version, but were left out due to an error)

- (b) (1) In order to obtain a license as a California Massage Practitioner (CaIMP), applicants shall provide the Board with satisfactory evidence of all of the following:
- (A) The applicant is 18 years of age or older.
 - (B) The applicant has successfully completed the Massage Practitioner Course (California Education Code, Title 3, Division 10, Part 59, Chapter 7 Private Postsecondary and Vocational Institutions, Section 94926)

from a massage school approved by the Bureau for Private Postsecondary and Vocational Education

or from community colleges or other institutions accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (7) of subdivision (b) of Section 94739 of the Education Code and approved by the Chancellor of the California Community Colleges

or from an out-of-state school that has a program with equal or greater requirements. (4601 (j))

(C) All required fees have been paid.

- (2) The Board shall issue a license to an applicant who meets other qualifications of this chapter and holds current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed the requirements of this chapter. The Board shall have discretion to give credit for comparable academic work completed by an applicant in a program outside California in satisfaction of the requirements of subparagraph (B) of paragraph (1).

(portability.)

- (c) In order to obtain a license as a California Massage Therapist (CaIMT), applicants shall provide the Board with satisfactory evidence of all of the following:

- (1) The applicant is 18 years of age or older.
- (2) One of the following requirements is met:

- (A) The applicant has successfully completed a total of 500 hours of training in the practice of massage, including successful completion of a Massage Practitioner Course that satisfies the criteria established in subparagraph (B) of paragraph (1) of subdivision (b).

(The Massage Practitioner course is required because it contains course material that emphasizes the protection of the consumer.)

The remaining 250 hours of massage-relevant training may be obtained from any school approved by or registered with the BPPVE,

or courses such as Category A courses approved by the NCBTMB, or by similar recognized professional associations,

or from colleges and universities accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (7) of subdivision (b) of Section 94739 of the Education Code, or that are part of the California higher education system as defined in Section 100850,

or from approved continued education providers meeting qualifications set forth in subdivision (b) of Section 4604.20

or courses at an out-of-state school as defined in 4601 (j) that is approved by the corresponding agency in another state.

(The intent is to allow a broad range of advanced training, so that massage practitioners can pursue the type of training in which they are most interested in order to meet the requirements for massage therapist licensure. However there has to be accountability, so the training must be offered by a school which is regulated by the Bureau or a similar agency in its own state, by recognized professional associations, or by accredited and state colleges or universities. Groups that offer short term training who don't meet the above qualifications can easily become registered with the Bureau and then legally offer training in California.)

- (B) The Board shall have discretion to grant a massage therapist license to a licensed massage practitioner **or applicant** possessing a combination of relevant additional education **and knowledge, skills and abilities** that the Board deems sufficient.

(The intent is to allow the board to exercise its own discretion in granting licenses to therapists under unusual circumstances where the Board deems the applicant's knowledge, skills and abilities are sufficient to warrant licensure at the therapist level. The board will have to create regulations and policies for these unusual individual cases.)

- (C) The applicant holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter.**

- (3) All required fees have been paid.

- (d) The Board is authorized to require payment of a fee, not to exceed fifty dollars (\$50), to cover its costs of issuing a new license upgrading the applicant from massage practitioner to massage therapist. To ensure fairness in applicant satisfaction of continuing education requirements, the term of that newly-issued license shall expire at the same date as the date that the massage practitioner license would have expired, unless the request for upgrade is made simultaneously with a license renewal, in which case a new two-year massage therapist license shall be issued to a qualified applicant.
- (e) An applicant applying for a license as a massage therapist or massage practitioner shall file with the Board a written application provided by the Board, showing to the satisfaction of the Board that he or she meets all of the following requirements:
- (1) That the applicant has not committed acts or crimes constituting grounds for denial of a license under Section 480.
 - (2) That the applicant has successfully completed the academic requirements of an educational program in massage and related subjects that is registered or approved, as defined in Section 4601
- (f) Any person who violates subdivision (a) is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than *six months* in a county jail, or by both that fine and imprisonment.
- (g) The Board shall issue a license to any applicant who meets the requirements of this chapter, including the payment of the prescribed licensure fee, and who meets any other requirement in accordance with applicable state law.
- (h) Any license issued under this chapter shall be subject to renewal as prescribed by the Board and shall expire unless renewed in that manner. The Board may provide for the late renewal of a license.
- (i) Upon a written request, the Board may grant inactive status to a massage practitioner or massage therapist who is in good standing, who meets the requirements of this section.

4604.10.

(a) Before January 1, 2007, the Board may grant a massage practitioner license to any person who applies for a license with evidence of one of the following:

- (1) A current valid massage permit or license from a California city or county that requires at least 250 hours of training at a state approved massage school.**
- (2) If the applicant works exclusively in one or more cities and/or counties that do not require licensing to practice massage, or exclusively in one or more cities and/or counties that require less than 250 hours of training for licensing, the applicant may instead submit documentation of having completed at least one hundred hours of training in massage at a school approved by the Bureau for**

Private Postsecondary and Vocational Education or its predecessors, and proof of having provided at least 250 hours of massage to members of the public for compensation . Proof of practice shall include one of the following:

- (A) employer's or supervisor's affidavit containing the dates of the applicant's service and a description of the applicant's duties.**
- (B) Tax returns indicating employment or self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.**

(b) The Board may grant a massage therapist license to any person who applies before January 1, 2007, with a current valid certificate of authorization as an instructor in a massage school approved by the BPPVE or as an instructor of a massage course offered at an accredited or state-run community college, college or university.

(The Bureau's requirements for instructor certification meet or exceed the requirements of this bill for a massage therapist.)

(c) After reviewing the information submitted under subdivision (a) or (b), the Board may require additional information necessary to enable it to determine whether to grant a license under this section.

(The intent is to give the Board latitude for highly unusual circumstances).

(Grandfathering has to be fair and reasonable, we can't require those who follow us into the profession to meet requirements that are significantly more difficult than the requirements we have to meet, but the provision also has to reasonably accommodate current practitioners from a wide variety of programs currently available in California. We have learned recently that some cities and counties opposed the original AB 1388 because the grandfathering provisions were too broad.)

4604.20.

(a) Massage practitioners and massage therapists shall show proof of completion of a minimum of 24 hours of approved continuing education in massage and related subjects during the just-completed two-year period as a condition of renewal of a license. A maximum of 12 hours may be carried over from the previous licensing period.

(b) Registered or approved schools, as defined in subdivisions (g) and (h) of Section 4601, shall be approved as providers of continuing education,

as shall be Category A courses approved by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB)

or similar courses offered by other recognized professional associations,

or similar courses offered by an out-of-state school as defined in 4601(j).

All providers of continuing education courses who offer training in California must be registered with or approved by the Bureau for Postsecondary and Private Vocational Education (BPPVE) as required by statute.

(This is carefully thought out to solve several problems: students who may take their continuing education in another state or even Canada, or students who want to take continuing education offered by their professional association, and also requires that continuing education providers who offer classes IN California follow California law and become registered or approved, which addresses the problem of unfair competition by schools or organizations that don't bother to follow California law and so don't have the accountability or the costs of California schools.

4605. Initial license and renewal fees shall be established by the Board in an amount that does not exceed fifty dollars (\$50) per year. The Board shall establish the following additional fees:

- (a) An application fee not to exceed fifty dollars (\$50).
- (b) A late renewal fee.
- (c) A fee to recover actual costs to collect fingerprints for criminal history record checks.

4606. The following persons are exempted from the provisions of this chapter:

(a) Any person licensed, certified, or otherwise recognized in this state by any other law or regulation when that person is engaged in the profession or occupation for which he or she is licensed, certified, or otherwise recognized and who is performing services within their authorized scope of practice and who does not hold himself or herself out to be a massage practitioner or therapist.

(b) Students enrolled in a program **approved by the BPPVE or at a WASC accredited or state-run college or university while completing a clinical requirement for graduation, provided that the massage is performed under the supervision of an instructor with a current valid certificate of authorization from the Bureau for Private Postsecondary and Vocational Education or who is an instructor at a WASC accredited or state-run college or university, and** provided the student does not hold himself or herself out as a licensed massage practitioner or massage therapist and does not receive compensation for massage.

(California Education Code, Title 3, Division 10, Part 59 Chapter 7 Private Postsecondary and Vocational Institutions, 94926 (b) (1) (F) and (G)).

(For more details see the requirements for massage practitioner curriculum at the end of this document.)

- (c) Individuals duly licensed, registered, or certified in another state or a foreign country when teaching a course related to massage therapy, or to consult with a person licensed under this chapter.
- (d) Individuals giving massage to members of his or her immediate family **or individuals giving massage as a charitable service.**
(This exempts folks who may be offering massage as part of their spiritual practice or for charity. If there's no income or compensation, the entire bill doesn't apply. This really addresses the situation in which there is compensation but it is incidental -- either being internal to a family process or being something like getting lunch as part of volunteering at a charitable event.)
- (e) Individuals who restrict their manipulation of the soft tissues of the human body to the hands, feet, or ears and who do not hold themselves out to be massage practitioners or therapists or to do massage or massage therapy. *(Such as Reflexology)*
- (f) Individuals using methods which involve only techniques which are specifically intended to affect the human energy fields or systems, including, but not limited to, Polarity Therapy, Reiki, Touch for Health or Jin Shin Do, in which their services are not designated or implied to be massage or massage therapy.
- (g) Individuals who use touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged in the scope of practice of a profession with established standards and ethics, provided that their services are not designated or implied to be massage or massage therapy. These practices include, but are not limited to, the Feldenkrais Method of Somatic Education, the Trager Approach to Movement Education, and Body-Mind Centering. .
- (h) Any individuals performing massage therapy services in the state, if those services are performed for no more than 45 days in a calendar year, **and the individual is not a resident of California, and if the following conditions are satisfied:**
 - (1) The individual is licensed under the laws of another state that the Board determines has licensure requirements at least as stringent as the requirements of this chapter,**
 - (2) and the individual is incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials or the individual travels with and provides massage therapy exclusively to members of a specific athletic team, dance troupe, or other performing artists while those groups or individuals are temporarily in the state.**

4607.

- (a) A city, county, or other political jurisdiction within the state may not enact an ordinance that regulates the practice of massage, as defined in this chapter, by an individual who is licensed under this chapter. No provision of any ordinance enacted

by a city, county, or other political jurisdiction that is in effect before the effective date of this chapter, and that relates to the practice of massage, may be enforced against a person who is issued a license by the Board under this chapter. Effective January 1, 2007, this chapter shall preempt any local ordinance regulating massage.

- (b) Nothing in this chapter precludes a local government jurisdiction from licensing over persons and businesses **that** do not meet the requirements of this chapter.

4608.

- (a) The Board shall submit fingerprint images and related information to the Department of Justice of applicants for licensure for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice.
- (b) Pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, the Department of Justice shall provide the following information to the Board:
 - (1) Every conviction rendered against the applicant.
 - (2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.
- (c) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.
- (d) Fingerprint images and related information submitted pursuant to this section include fingerprint images and related information transmitted electronically.
- (e) The Board shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure for which fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

4609. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

SEC. 3. Chapter 6 (commencing with Section 51030) of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or

infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

The following is an addition to the education code, under the laws regarding the regulation of vocational schools by the BPPVE. This is a more appropriate place for curriculum requirements. The language that follows is based on the Barber and Cosmetology Act, which provides a model for curriculum requirements.

SEC. 5. Section 94926 is added to California Education Code, Title 3, Division 10, Part 59, Chapter 7 Private Postsecondary and Vocational Institutions, as follows:

94926. No person shall own or operate a school offering a Massage Practitioner Course unless all of the following conditions are met:

(a) The school or instruction has been approved by the Bureau for Private Postsecondary and Vocational Education (BPPVE), is a college or university accredited by the Western Association of Schools and Colleges (WASC), or is part of the California higher education system.

(This means that entry level massage training must be taken at an approved, not a registered, school. We believe that the Bureau will support this requirement.

(b) The school, at the time of application and thereafter, complies with the following requirements:

(1) The curriculum for students enrolled in a Massage Practitioner course shall consist of a minimum of two hundred fifty (250) clock hours of theoretical instruction and practical experience.

(2) For the purpose of this section, theoretical instruction shall mean instruction by demonstration, lecture, classroom participation, or examination; practical experience shall mean the actual performance by the student of massage on another person. Such technical instruction and practical operations shall include the following subjects as they relate to the practice of massage:

Subject	Minimum Hours of Technical Instruction	Minimum Practical Experience
Demonstration, theory and practice of massage <i>(The intent is to preserve diversity by putting no specific requirements on the method of massage that is taught other than the amount of time devoted to demonstration and practice of massage, but to include specific requirements below that relate to</i>	30	110

<i>consumer safety.)</i>		
<p>Anatomy and Physiology</p> <p><i>(This refers to the A&P specific to the type of massage being taught, which in the case of Acupressure would mean the meridians and points as well as muscles, bones, systems of the body.)</i></p>	60	
<p>Contraindications, Health and Hygiene</p> <p>(Shall include training in health and safety issues that pertain to the practice of massage including contraindications, body mechanics, the transmission of disease, including HIV/AIDS and Hepatitis B, and communicable diseases, protocol for blood-borne pathogens, sanitation and safety including procedures to protect the health and safety of the consumer as well as the practitioner.)</p> <p><i>(The intent is to provide genuine protection for the public by making sure the massage practitioner understand health-related concerns and the transmission of disease, as well as understanding when a massage is not appropriate.)</i></p>	15	
<p>Business and Ethics</p> <p>(Shall include training in the area of communication skills, handling difficult situations, professional ethics and boundaries, including a discussion of transference and counter-transference and other ethical issues likely to be encountered in massage practice, basic business practices, salesmanship, decorum, record keeping, and client records, licensing requirements and laws that apply to the practice of massage.)</p> <p><i>(The intent is to make sure the massage practitioner knows how to handle difficult situations, including ethical challenges, and understand business procedures so that he/she is more likely to be successful in his/her career.)</i></p>	25	
Testing and review	10	

(250 hours is a number that seems to be acceptable to most. There are some who would oppose any legislation requiring more than 100 hours, and some who would oppose any legislation requiring less than 500 hours, but 250 hours seems acceptable to most and is evidence based – coming close to the information developed by the Massage School Task Force and CAMBS.)

(3) The course of instruction shall be outlined in detail showing major subjects and clock hours devoted to each subject, entrance requirements and occupational objectives. Education objectives shall be clearly defined and simply stated and shall indicate what the educational program can do for reasonably diligent students.

(4) Students may be given credit for massages given to the public at the school as long as these laboratory activities are conducted under the direction and supervision of an instructor who possesses a current valid certificate of authorization from the BPPVE or who is an instructor at a WASC accredited or state-run college or university. Massages given by students to members of the public must be an integral part of the massage curriculum. The school must establish and disclose a benchmark for the purposes of evaluating whether the student demonstrates at least minimally acceptable competency before giving massage to the public.

(We believe it is important for students to be able to practice on members of the public under the supervision of an instructor, to help them make the change from working on other students in the classroom and to develop their experience in dealing with a variety of consumers, and consumer health conditions. However, for the most benefit for the student and to protect the consumer, the work must be done under the supervision of a qualified instructor. The school should establish a benchmark for evaluating the student's competency, such as requiring the student to complete at least 50 hours of lecture and 50 hours of hands on practice before working in the student clinic, or requiring the student to give a massage to a member of the staff or a licensed massage practitioner or therapist for the purposes of evaluation.)

(5) Students may be given credit for massages given off-site as part of an externship, as long as these massages are given under the supervision of a licensed massage practitioner or therapist who is present on the premises while students are giving massages to the public. The school shall be required to enter into a written affiliation agreement with the representative of the facility where the off-site clinical activities are being provided. Any student externship shall not exceed ten percent of the required clock hours in the theory and practical category of the program. The school must establish a benchmark for the purposes of evaluating whether the student demonstrates at least minimally acceptable competency before beginning an externship.

(Externships are also beneficial for students, helping them develop their skills in a real work setting; however to protect the student and consumers who may use their services, the work must be supervised by a qualified person. To avoid

exploitation of students as unpaid labor, the amount of time in an externship must be limited.)

(6) The student participating in massage on the public either at the school or off-site shall be clearly identified as a student and shall obtain signed acknowledgement of that notice from the consumer.

(Consumer protection, full disclosure)

Resources

Links to these resources may be found on the CAMBS website, www.camassageschools.org.

Grant KE, 2003 [Massage safety: injuries reported in Medline relating to the practice of therapeutic massage — 1965–2003](#). Journal of Bodywork and Movement Therapies, 7(4), 207-212.

http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6WHF-49H1B8N-3&_user=10&_handle=W-WA-A-A-AV-MSAYWA-UUW-AUZVYEDCDD-AAEEYZUB-AV-U&_fmt=summary&_coverDate=10%2F31%2F2003&_rdoc=2&_orig=browse&_srch=%23to%236849%232003%23999929995%23451612%21&_cdi=6849&view=c&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=1a88514906fef630afcac4c5fac10eb5

Summary of 1997 Georgia review of massage

http://www.mckinnonmassage.com/articles/ga_opb_masgrev.html

West Virginia's 2003 legislative auditor's review

http://www.legis.state.wv.us/Joint/perd/MassTher_1_2003.pdf

Studdert DM, Eisenberg DM, Miller FH, Curto DA, Kaptchuk TJ, Brennan TA 1998 [Medical malpractice implications of alternative medicine](#). The Journal of the American Medical Association 280: 1610-1615

[http://jama.ama-](http://jama.ama-assn.org/cgi/content/abstract/280/18/1610?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=studdert&searchid=1082513165547_9350&stored_search=&FIRSTINDEX=0&journalcode=jama)

[assn.org/cgi/content/abstract/280/18/1610?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=studdert&searchid=1082513165547_9350&stored_search=&FIRSTINDEX=0&journalcode=jama](http://jama.ama-assn.org/cgi/content/abstract/280/18/1610?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=studdert&searchid=1082513165547_9350&stored_search=&FIRSTINDEX=0&journalcode=jama)

http://www.ramblemuse.com/blogger/documents/nce_closerlook.pdf

ABMP sunrise document

http://www.camassageschools.org/library/sunrise_abmp_2004.pdf

Massage School Task Force and CAMBS Curriculum Review

http://www.camassageschools.org/library/massage_hours.html

http://www.camassageschools.org/library/sunrise_abmp_2004.pdf

<http://www.apa.org/journals/bul/104ab.html>

Ernst E, 2003 [The safety of massage therapy](#). Rheumatology, 42 (9), 1101–1106.

<http://rheumatology.oupjournals.org/cgi/content/abstract/42/9/1101>
