

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS

REGULATORY REQUEST QUESTIONNAIRE

Instructions for completing this questionnaire

- Responses to this questionnaire should be typed and dated. Each question should be answered within a single main document, which is limited to 50 pages. Supporting evidence for your responses may be included as an *Appendix*, but all essential information should be included within the main document.
- Each question from the questionnaire should be stated in upper case (capital) letters. The response should follow in lower case letters.
- Each part of every question must be addressed. If there is no information available to answer the question, state this as your response and describe what you did to attempt to find information that would answer the question. If you think the question is not applicable, state this and explain your response.
- When supporting documentation is appropriate, include it as an *Appendix*. Appendices would be labeled as follows: Each document appended should be lettered in alphabetical order. Pages within each appendix should be numbered sequentially. For example, the third page of the first appendix will be labeled A3, and the fifth page of the second appendix will be labeled B5. References within the main document to information contained in Appendices should use these page labels.
- Please read the entire questionnaire before answering any questions so that you will understand what information is being requested and how questions relate to each other.

Section A: Applicant Group Identification

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

- 1. What occupational group is seeking regulation? Identify by name, address and associational affiliation the individuals who should be contacted when communicating with this group regarding this application.**

California massage therapists are seeking to shift regulation of the profession from subsection to adult entertainment laws enacted by cities and counties, to the more appropriate California Department of Consumer Affairs

Chairperson for this project is Beverly May, Director of Governmental Relations for the American Massage Therapy Association, CA Chapter - AMTA-CA, also known as California Massage Therapy Association).

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2. List all titles currently used by California practitioners of this occupation. Estimate the total number of practitioners now in California and the number using each title.

Massage therapist, massage practitioner, certified massage therapist, massage technician, CMT, bodyworker, masseur, masseuse, myotherapist, Nationally Certified in Therapeutic Massage and Bodywork. There are adjunct terms specific to the specialties of some practitioners, such as Rolfing.

We know of no resources to estimate the number of people using each title. Any practitioner may change title at whim at this point. Where no local regulations exist, any title can be used. Often, practitioners choose a title other than massage in an attempt to avoid the local ordinances.

3. Identify each occupational association or similar organization representing current practitioners in California, and estimate its membership. For each, list the name of any associated national group.

American Massage Therapy Association	46,800 members
AMTA-California Chapter	3182
Associated Bodywork and Massage Professionals	41,000 members
CA. members (no state chapters)	7,100
Associated Oriental Bodywork Therapies of Asia	137 in CA
International Massage Association	42,000
Ca. members (no state chapters)	10, 215
National Certification Board for Therapeutic Massage & Bodywork (NCBTMB)	62,000 certificants
	2,060 in CA.

Both ABMP and IMA are for-profit organizations that represent their client members and provide liability insurance and other business services similar to the traditional not-for-profit professional association; both include estheticians in their member list, though ABMP claims they have very few. AMTA, AOBTA and NCBTMB are not-for-profit professional organizations.

4. Estimate the percentage of practitioners who support this request for regulation. Document the source of this estimate.

Results of a 1996 Survey by the CA. Coalition on Somatic Practices <CCSP>- 72 % of AMTA-CA members and 44 of ABMP members supported state licensing (a practice act). AMTA-CA. members voted 60% for certification (a title act) and ABMP members 57%. Overall 55% supported state regulation.

AMTA 2001 survey – 85% support state licensing; 81% support certification

ABMP 2001 survey 69% support state regulation (title or practice)

2002 survey 48% support state licensing.

5. Name the applicant group representing the practitioners in this effort to seek regulation. How was this group selected to represent practitioners?

The AMTA-CA formed Committee for Reform of CA massage Regulations. The primary motivation is to shift control of massage from local adult entertainment ordinances to state professional regulation. Participants are members of all of the general membership massage associations, and include non-affiliated practitioners as well. The California Coalition on Somatic Practices (CCSP), a group formed in 1991, includes the leadership of all the related organizations. This group operates as a fully informed network of organizations that have interests in any potential state regulation of massage and how it might affect their membership. At the national level, there exists a federation of Massage, Bodywork and Somatic Organizations, all of which participate in CCSP.

6. Are all practitioner groups listed in response to question 2 represented in the organization seeking regulation? If not, why not?

The International Massage Association, IMA presents itself as a professional organization, but functions more like an insurance collective. We have attempted to contact them. They remain unresponsive. Individual members of IMA are involved in this project. Members of organizations represented by the Federation mentioned in #5 and the CCSP will potentially be affected. Their leadership remains fully informed and part of the process of negotiation within the massage and related somatic field. These organizations represent specialties that are not typically considered massage therapy but may be affected by new regulation if their interests are not represented. Directors of California massage schools have also been invited to participate and give input into the process.

Section B: Consumer Group Identification

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

7. Do practitioners typically deal with a specific consumer population? Are clients generally individuals or organizations? Document.

Practitioners do not typically deal with a specific consumer population. Clients are always individuals on one level, coming for almost any reason, although some clients are organizations, such as companies that contract for on-site massage for their employees.

As cited previously the 1993 study by Eisenberg et al. at Harvard Medical School and Beth Israel Hospital indicates that over 34% of Americans use alternative or complementary health care, spending about \$10 billion dollars a year out of pocket - only \$3 billion less than the sum for all hospitalizations in this country. The profession grows and expands into health clubs and spas, hospitals, hotels and corporations, airports and even downtown "Back Rub" businesses. It was an integrated part of the Healthcare Services since the 1996 Olympics in Atlanta. Massage is offered and credentialed through managed care providers such as American Specialty Health Networks, Blue Cross and the Blue Shield mylifepath program in California.

Hundreds of corporations allow massage therapists to provide short "chair massage" sessions in the workplace to enhance employee health. Counties such as San Mateo have massage therapists under contract to provide seated massage to employees on a regular basis.

Probably the fastest growing segment of the industry is the destination and day spa. According to a 2002 study for the International Spa Association (ISPA), conducted by Price Waterhouse Coopers, there are approximately 9,600 spas in the United States today. Nationwide it is a \$6 million industry. We do not have separate numbers for California. With our strong tourist and hotel industries it is certainly high. Massage is the most requested service in all spas - averaging over 80% of the services provided. See Addendum A (various articles on massage employment trends and consumer demand.)

8. Identify any advocacy groups representing California consumers of this service. List also the name of applicable national advocacy groups.

No group exists at this time to represent consumers of massage services. However, virtually all massage practitioners are also consumers, so the professional organizations have a strong consumer bias.

9. Identify any consumer populations not now using practitioner services likely to do so if regulation is approved.

Consumers not using massage include those for whom out of pocket costs of maintaining health are prohibitive. To the extent that repeal of expensive local permit fees may occur (typically city and county permit fees are significantly higher than any state certification or licensing fees) massage may be more accessible to the economically disadvantaged. With some type of state recognition of the massage profession, medical providers may be more willing to employ or refer to massage

therapists to provide clinical massage as an inexpensive and effective treatment.

Additionally, individuals concerned about how to locate a qualified and legitimate massage therapist may be more confident. Elderly and disabled clients are much more likely to obtain massage if the prohibition under many local ordinances against off-premises work is repealed, or the requirement in some cities for a medical prescription is lifted.

10. Does the applicant group include consumer advocate representation? If so, document. If not, why not?

There are no consumer advocate groups in California for massage. The professional organizations maintain consumer advocate branches and are strongly represented.

11. Name any non-applicant groups opposed to or with an interest in the proposed regulation. If none, indicate efforts made to identify them.

The Guild for Feldenkrais Method, The Rolf Guild, National Association of Teachers of Alexander Technique (NASTAT). Trager Institute USA. American Polarity Therapy Association, California Reflexology Association, Touch Pro Association (representing seated massage) and Jin Shin Do all do work which may fit under a broad definition of massage. Zero balancing and cranio-sacral therapy are also amongst the list of non-massage disciplines that may be affected. Many of these groups do not support regulation at the state level that may subject them to the need for traditional massage training. We are working with them through direct contact with representatives of their leadership and individual practitioners within the state to make sure that any proposed legislation protects their interests properly. In most licensed states, these modalities are exempted from massage regulation.

Some schools are opposed to state regulation if they will be required to raise their educational standards for entry level practice. We are working with alliances representing their concerns.

Section C: Sunrise Criteria

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

Part C1 – Sunrise Criteria and Questions

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

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

12. Is there or has there been significant public demand for a regulatory standard? Document. If not, what is the basis for this application?

Public demand is rising. Although few clients ask, virtually all who do are shocked to learn that almost anyone can practice massage with little or no training. In the experience of the principal writer of this document, in almost 30 years of practice, clients would feel much more confident knowing that those providing massage have met some uniform standard of education and are accountable to some credible agency.

Cities and counties wish to lower the cost, human and economic, of abating illicit businesses. It is difficult to prevent suspicious businesses from opening. A state law could at least assure local governments that permits are only being given to those meeting the state required criteria. Business permits could then be denied or revoked if the practitioners do not have state credentials. Others who want state regulation: citizens who object to adult services masquerading as massage, citizens deceived by illicit places, and massage practitioners subject to onerous local laws or solicited by clients expecting sexual services.

As massage is becoming more popular, these problems will only continue to increase unless some form of state regulation is instituted.

Staff and/or Supervisors from Sacramento, Santa Clara and San Mateo counties support a shift of massage permitting to a state agency. Cities such as San Mateo, San Rafael, Sacramento, Belmont, Redwood City, Oxnard, Newport Beach, San Diego and Los Angeles are amongst the many who find that even the most stringent adult entertainment licensing and zoning restrictions rarely prevent criminal activity. Further, current ordinances are exceedingly burdensome to public resources. Administrative staff time is wasted assuring that applicants have met any number of requirements for licensing. And every few years both staff and council need again to confront possible revisions to correct the problems of the latest ordinance. They are aware that onerous laws often leave many massage therapists with little choice but to work without licenses, often working quietly in their homes or clients homes, resulting in significant loss of revenue for the city. Many of these cities and counties have just recently been asked to provide letters for support for state regulation - at this time, most are awaiting policy approval by their Boards of Supervisors or City Councils before sending formal letters of support.

13. What is the nature and severity of the harm? Document the physical, social, intellectual, financial or other consequences to the consumer resulting from incompetent practice.

Physical harm due to incompetent massage is rare, although cases have been documented. See Addendum B for Medline citations of harm, several articles and information on complaints filed against licensed massage therapists in Oregon and Washington (all regulated states keep such information).

There is potential harm if there is no statewide process allowing for revocation of licenses for those who act inappropriately. Police are reluctant to pursue criminal charges related to massage at this time, partly because they treat massage as adult entertainment. As a result, there is unlikely to be any record of sexual assaults by or upon practitioners. The only recourse is civil action. The perpetrator of such outrages can continue to practice even if a victim has successfully sued the perpetrator, as most applications only ask if one has a criminal conviction. Permits are denied only for criminal convictions of specified crimes. Even with a sexual conviction, individuals can practice in areas with no local regulation

Another economic harm is the cost to consumers of inappropriately high local licensing fees: in the city of Belmont, for example, a massage license costs \$2,987.00 per year. Conditional use permits are this high in many areas; burdensome requirements for separate bathrooms and showers are also common and often are unnecessary to the safe practice. Even sole practitioners using techniques without oils or lotions often find they must install separate restrooms and showers. All of these raise the cost of massage as such fees must be passed on to consumers. In cities such as Belmont, extremely high fees will decrease availability of services to consumers.

A primary harm is in preventing people from getting massage because they cannot easily tell the difference between sexual and non-sexual massage businesses. Many clients who have inadvertently found themselves in illicit parlors hesitate to try again to obtain massage services.

There is no consistent way for a client to tell how competent a given therapist is - massage therapists who are not well trained will not know how to refer a client if a suspicious skin lesion that might be cancerous shows up on a client's back. This form of indirect harm may have major consequences for the client. Similarly, an untrained practitioner will not necessarily follow appropriate standards of hygiene, and may spread scabies, lice, ringworm, or herpes even if there is no sexual contact - all of these conditions may be spread by indirect skin contact. Another form of potential harm is for clients who might be inappropriately refused massage (AIDS patients, cancer patients) or might receive inappropriate massage from an untrained practitioner and not recognize the harm (pregnant women).

There is economic harm also possible for (for example) neonatal intensive care patients - massage has shown to be effective in reducing their hospital stays by 6

days, on the average resulting in lower medical costs.(See Addendum C for a list of research papers from the Touch Research institute in Miami; more information is available at their website <http://www.miami.edu/touch-research/>.) If massage is not available because of local prejudice, patients and insurers end up paying much more.

14. How likely is it that harm will occur? Cite cases or instances of consumer injury. If none, how is harm currently avoided?

Currently, it is very likely that the types of harm mentioned in the previous question will occur. Some of them occur on a regular, ongoing basis. (See Addendum B.) We hope to alleviate the harm by some form of uniform state regulation and by authorizing a dedicated state agency to investigate and take action on grievances. Economic harm is clearly cited above. Harm is currently not avoided and it is actually supported by the current patchwork of local regulations

15. What provisions of the proposed regulation would preclude consumer injury?

The provisions that will preclude consumer injury will depend very much on the wording of the final law. In any case, uniformity of regulation will allow for some statewide control and prevent people moving from one jurisdiction to another in order to find a safe haven for dubious activities. Revocation of either the certification or license will make it easier to prevent some forms of harm from re-occurring or escalating

II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE INSUFFICIENT

16. To what extent do consumers currently control their exposure to risk? How do clients locate and select practitioners?

If possible, the consumer is referred to an establishment or sole practitioner by someone who has personal experience with the provider, such as a friend, health care provider, or other massage practitioner. If a personal referral is not available, locating a provider through the yellow pages, internet, professional associations or other sources are appropriate and available.

Consumers are rarely prepared to evaluate or compare services offered. Even professional massage therapists have found themselves mistakenly in establishments offering sexual services rather than massage. Additionally, few clients understand various descriptions of training and credentials, such as the difference between a massage therapist using the initials “CMT” which indicate as little as completion of 100 hours of training at a state approved school, and “NCTMB” indicating a nationally recognized (by the National Commission on Certifying Agencies-NCAA) certification exam that requires a minimum of 500 hours of training to sit for and which exam has been psychometrically developed to be fair.

17. Are clients frequently referred to practitioners for services? Give examples of referral patterns.

Most massage clients refer themselves, though medical referral is rising. Some examples of referral patterns to a practitioner come from other healthcare providers such as psychotherapists, dentists, medical doctors, chiropractors, nurses, physical therapists, and social workers. These providers recognize their patients / clients would benefit from massage therapy to address conditions such as musculoskeletal dysfunction, pain, general emotional stress and distress, pre-operative or post-operative stress or lymphatic drainage problems, etc.

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

Several managed care companies, such as American Specialty Health Network, maintain lists of participating massage therapists whose members are referred to for discount services through Blue Shield and other managed care programs.

18. Are clients frequently referred elsewhere by practitioners? Give examples of referral patterns.

Therapists who understand their scope of practice often refer out to other health care providers if an alternate or additional therapy is indicated. Massage therapists typically refer to orthopedists, physiatrists, chiropractors, osteopaths, general physicians, acupuncturists and dermatologists.

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

19. What sources exist to inform consumers of the risk inherent in incompetent practice and of what practitioner behaviors constitute competent performance?

Currently, the professional associations and National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) maintain websites with a great deal of information for the consumer. Much other information is available on the Internet, some of it good. Most consumers have no ability to sort the good from the bad

quickly or efficiently.

Under the recently passed Freedom of Health Care Law (SB 577), complementary and alternative practitioners must give their clients written disclosure of the fact that they are not licensed with a description of their education, training, experience, or any other qualifications that pertain to the services they provide. Written consent to the services must be obtained in advance. To the extent that massage therapists see themselves as complementary and alternative health care providers, they will give out such disclosure. Very few are currently doing so. Again, the consumer has no way of knowing whether the information is accurate or meaningful.

20. What administrative or legal remedies are currently available to redress consumer injury and abuse in this field?

Civil courts allow damaged consumers to sue. Local permit revocation is a possibility. Criminal action is possible, but almost never pursued by local law enforcement due to the economic cost, and again, the association with the sex industry.

21. Are the currently available remedies insufficient or ineffective? If so, explain why.

Current remedies are startlingly ineffective. In the 30 year experience of one of the primary writers of this document, rarely do police press criminal charges against male massage therapists for sexual assault of female clients. In numerous cases, the consumer's only recourse is civil court, at her own legal expense. Often the alleged perpetrators are not members of any professional association that could act on a grievance or covered by professional liability insurance. Even in the instance of civil cases, very often lawyers refuse to take the case unless the therapist has assets or insurance coverage to pay claims.

III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE PUBLIC

22. Explain why marketplace factors will not be as effective as governmental regulation in ensuring public welfare. Document specific instances in which market controls have broken down or proven ineffective in assuring consumer protection.

Marketplace factors have shown themselves to be ineffective. For example consumers don't know the difference between a purchased certification and a certification that requires a specific amount of training (Nationally Certified in Therapeutic Massage and Bodywork as opposed to Certified Massage Therapist: the First requires 500 hours of study and an exam, the second 100 hours of study with no Independent verification). The fact that different jurisdictions have very different standards within California indicates that there is no agreement about what standards

are necessary and sufficient. A uniform standard allows consumers to know what they are getting wherever they go in the state for massage. Some jurisdictions have no requirements for massage therapists - others require 1,000 hours of training. The variation shows no clear pattern across the state.

23. Are there other states in which this occupation is regulated? If so, identify the states and indicate the manner in which consumer protection is ensured in those states. Provide, as an appendix, copies of the regulatory provisions from these states.

STATE REGULATION OF
MESSAGE THERAPY AND BODYWORK

32 States and the District of Columbia Currently Regulate
Massage Therapy and Bodywork

Licensure States

Alabama
Arkansas
Connecticut
Delaware
Florida
Hawaii
Illinois
Iowa
Kentucky
Louisiana
Maryland
Missouri
Nebraska
New Hampshire
New Mexico
New York
North Carolina
North Dakota (titled Certified)
Ohio
Oregon
Rhode Island
South Carolina
Tennessee
Utah
Washington
Washington DC
West Virginia

Certification States

Delaware
Maine
Maryland
New Jersey
Virginia
Wisconsin

Registration States

Mississippi
Texas

*** Delaware – 2 Tier Title Regulations

*** Maryland – 2 Tier Title Regulations

States may choose to create an independent oversight Board of Directors or utilize existing Boards (e.g. Nursing, Chiropractic or Medical, to house Massage and Bodywork Sub-Boards). A few states have created Advisory Committees under their Department of Regulation and Licensing. Consumer protection is maintained in those states by a licensing board that can refuse permits to those who do not meet appropriate standards and revoke permits of those who break the rules. In some states, all display advertisements must include the practitioner's license number. See Addendum D - Summary of State Laws and AMTA Model State Code

24. What means other than governmental regulation have been employed in California to ensure consumer health and safety. Show why the following would be inadequate:

- a. code of ethics
- b. codes of practice enforced by professional associations
- c. dispute-resolution mechanisms such as mediation or arbitration
- d. recourse to current applicable law
- e. regulation of those who employ or supervise practitioners
- f. other measures attempted

Most of these methods have been tried by individuals or groups. Many massage practitioners are not members of any professional association and have no training in professional codes of ethics. Professional associations have difficulty revoking membership based on individual claims of misconduct due to fear of lawsuits. Dispute-resolution is possible for individual problems, but very cumbersome as a general practice. It is rarely utilized outside of a professional association grievance resolution process. Many practitioners are self-employed so there are no employers or supervisors to regulate. Recently passed CA. law (AB15) requires that medical practitioners must either hire massage practitioners as employees under their direct supervision and license or get local massage permits, but this is a small part of the market.

Current local laws are inappropriate in a great many cases, as discussed throughout this document.

25. If a “grandfather” clause (in which current practitioners are exempted from compliance with proposed entry standards) has been included in the regulation proposed by the applicant group, how is that clause justified? What safeguards will be provided consumers regarding this group?

The majority of current practitioners are not doing significant direct harm. The high turnover in massage therapists will help - most practitioners don't practice for more than 5 years. Revocation of licenses will be just as possible for those who are grandfathered into their licenses as for those who have newly obtained them. State-

wide regulation and state-wide revocation will assure local governments that prostitutes cannot just be relocated throughout the state. If continuing education requirements are included, all licensees will have to comply. We strongly support generous grandfathering of most current practitioners.

IV. REGULATION WILL MITIGATE EXISTING PROBLEMS

26. What specific benefits will the public realize if this occupation is regulated? Indicate clearly how the proposed regulation will correct or preclude consumer injury. Do these benefits go beyond freedom from harm? If so, in what way?

Appropriate regulation will increase access to massage and lower the cost to the general public. There will be more independent massage therapists, better-trained with a clearer scope of practice and more universally understood limits of practice. Massage therapists may stay in business longer as they will be more able to move easily within California. There will be more lucrative self-employment opportunities, leading to more business licenses and fees being collected by municipalities. Taxpayers will benefit as municipalities spend less time and money attempting to control adult entertainment under the guise of massage. Many currently unlicensed therapists will choose to be licensed if a state-level license will protect them from onerous and arbitrary local regulations to reduce the uncertainty that they face in their jobs. As they come forth and obtain state licenses and pay local business license fees both local and state coffers will benefit in a time of tight budgets. Most of these practitioners welcome the opportunity to decrease their own stress by complying with relevant laws.

27. Which consumers of practitioner services are most in need of protection? Which require least protection? Which consumers will benefit most and least from regulation?

Because massage is used by such a broad range of people, it is difficult to identify what consumers might need more or less protection. Benefits are easier to state. Handicapped and the elderly who now have much lower access where home appointments are prohibited would be more able to get needed massage. Consumers unfamiliar with massage will have an easier time locating competent practitioners. Local prohibitions against on-site chair massage (as in Bakersfield) can be lifted, helping any workers in those areas have the possibility of inexpensive and accessible massage. Those who will benefit least are those who have a current ongoing relationship with a reliable massage practitioner, but they will not be harmed at all. They will merely find it easier to find another if the relationship ends for any reason.

28. Provide evidence of “net” benefit when the following possible effects of regulation are considered:

- a. restriction of opportunity to practice**
- b. restricted supply of practitioners**
- c. increased costs of service to consumer**

d. increased governmental intervention in the marketplace.

- a. For much of the state, there will be less restriction of opportunities to practice openly. Current regulations make it very difficult to practice in some areas and easy in others.
- b. The current supply is more restricted through local regulation than it would be with state regulation. The problem is not how many practitioners are currently available - how we can keep practitioners working for a longer time is a greater concern. Clear regulation and uniform standards will make it easier for schools to supply properly trained graduates. This is indicated by the fact that *Massage Today*, a free professional magazine for therapists, has a proportionally higher number of subscribers in licensed states.
- c. Costs will drop in some areas, in general those with larger populations, as local fees based on nuisance abatement will drop and it becomes easier for practitioners to practice widely. Business costs are likely to drop.
- d. State legislation would shift governmental regulation to an appropriate level, resulting in a net reduction in intervention. As mentioned previously, we strongly recommend pre-emption of local massage laws. A uniform state law would replace hundreds of diverse local ordinances.

V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE

29. To what extent do individual practitioners make professional judgments of consequence? What are these judgments? How frequently do they occur? What are the consequences? Document.

According to a 2002 Consumer Survey Fact Sheet published by the American Massage Therapy Association (See Addendum E), 53 of the 28 of adult Americans who got a massage in the last 5 years did so because of health reasons. However, only 14 discussed massage therapy with their healthcare provider. This means that the majority of massage for healthcare purposes is being controlled by massage therapists based on their assessment findings without medical referral or consultation. Medical referral does occur; however this is generally for purposes of health insurance coverage. Currently, only about 11 of managed care organizations cover massage therapy (Faas, N., *Integrating Complementary Medicine into Health Systems*, Aspen, 2001, p. 17), hence the small request for medical referrals. A massage therapist's professional judgment regarding necessity of massage therapy is therefore particularly important. These decisions of medical necessity are therefore of extreme consequence since the majority of medically necessary massage is self-referred. Based on the same survey, the remainder of massage therapy is provided primarily for stress reduction and relaxation. The data does show however that more than half of all massage therapy provided is for health reasons.

Because massage therapy does not involve invasive techniques, pharmaceutical

substances, or extensive diagnostic skills, it is a low risk therapy. There are, however, consequences of adverse effects for any procedure and these are avoided by adequate training regarding indications and contraindications related to massage. Indications are those reasons to provide massage and contraindications are conditions where massage might aggravate or worsen an existing health problem and thus should be avoided or modified. Of particular importance is the application of too much pressure to endangerment sites or areas of the body where nerves and blood vessels surface close to the skin and are not well protected by muscle or connective tissue. Massage therapists must therefore know what conditions are contraindications or when and where not to massage. The most common contraindications include abnormally high blood pressure, certain forms of cancer, aneurysm, compromised circulation, contagious disease, fever (>102F), fractures, open sores, phlebitis, varicose veins, recent surgery or abdominal massage in the event of pregnancy. A properly trained massage therapist will have met competency standards that help to ensure patient and client safety. This applies equally to clients and patients whether they are receiving massage for medical or relaxation/stress reduction reasons.

The frequency with which therapists must judge the applicability of massage therapy and what areas to avoid is very high. Each time a person is massaged, the practitioner should assess for indications and contraindications, with an especially thorough assessment at the first encounter. Even in as benign a situation as a five-minute, clothed chair massage, the practitioner must determine if massage is safe and tailor the treatment to the individual's state and situation to ensure no harm is done. Adverse events can occur after massage and lead to an aggravation of an existing condition or worsening of the patient's health leading to further complications. Contraindications are generally determined prior to massage during an assessment of the patient.

A common consequence of massage is transient soreness - more serious ones occur, but rarely.

30. To what extent do practitioners work independently (as opposed to working under the auspices of an organization, an employer or a supervisor)?

Massage done by individual practitioners or in spas is almost completely unsupervised.

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

31. To what extent do decisions made by the practitioner require a high degree of skill or knowledge to avoid harm?

The proper training of massage therapists alerts practitioners to the unique characteristics of the human body. This knowledge permits practitioners to identify the conditions that favor or contraindicate massage therapy, as well as to permit the therapy to be delivered to the appropriate part of the body:

Unqualified individuals may cause psychological and emotional harm. Trust and comfort between the therapist and the client represent core elements of successful massage therapy. The connection that must be formed between the two could place a client in a vulnerable position. As with other professional health care workers who would be alone in a room with a patient, the same rules that govern these encounters should likewise exist to protect consumers and the reputation of bona fide practitioners of massage therapy.

The dynamics of a therapist massaging a client creates a power differential which only therapists prepared to address both the professional and ethical aspects of the profession can handle. In contrast, untrained, under-trained or unscrupulous individuals cannot or will not respect the boundaries that must exist. Indeed, a uniform regulatory structure would reinforce the required boundaries to help enforce good practice. Inappropriate comments, inappropriate touching, inappropriate draping, or an inappropriate setting represent some of the ways that this damage can be caused.

The foundation upon which the course of therapy is delivered will almost always be dependent upon the integrity of the therapist. In addition, massage therapists generally deliver massage services in a private room, unsupervised, usually isolated by the very nature of the therapy. As such, a massage therapist must routinely exercise independent judgment in a therapeutic setting generally marked by a one-to-one environment.

VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED

32. Does the proposed regulatory scheme define a scope of activity which requires licensure, or merely prevent the use of a designated job title or occupational description without a license?

The regulatory scheme will likely protect title and define the scope of practice of the regulated profession.

33. Describe the important functions, tasks and duties performed by practitioners. Identify the services and/or products provided.

Important functions, tasks and duties include assessment of suitability for massage of the client's condition, maintaining appropriate hygiene standards, performing appropriate manual therapy, maintaining client and practitioner decorum, maintaining appropriate boundaries, keeping appropriate records, referring to other professionals

when appropriate and maintaining client confidentiality. Services include manual therapy of many types.

34. Is there a consensus on what activities constitute competent practice of the occupation? If so, state and document. If not, what is the basis for assessing competence?

With several competing models of the nature of massage, it is impossible to get a true consensus as to what constitutes competent practice of massage. However, knowing what work is appropriate in what circumstances is a basic measure. The basis for assessing competence varies with the specialty, the approach, and the objectives of the therapist and the client.
See Addendum F for articles discussing the scope of competence within massage.

35. Are indicators of competent practice listed in response to *Question 34* measurable by objective standards such as peer review? Give examples.

Indicators of competent practice have been demonstrated to be measurable by instruments such as the National Certification Exam for Therapeutic Massage & Bodywork (NCETMB), the National Certification Commission for Acupuncture and Oriental Medicine's (NCCAOM) examination on Asian Bodywork Therapy, and peer review. (See Addendum H, Information on National Certifications). No written can measure kinesthetic competence or client relation skills. These exams measure basic intellectual understanding of a core, entry level knowledge base.

36. Specify activities or practices that would suggest that a practitioner is incompetent. To what extent is public harm caused by personal factors such as dishonesty? Document.

Ignoring contraindications would indicate incompetence, although it may not result in apparent or immediate injury. Many massage therapists put forth myths that may be harmless but promote inaccurate healthcare information. Not taking any intake evaluation may be considered a sign of incompetence to the extent that the clients' needs are not being met or contraindications not being discovered. Sexual assault is harmful to the client, and often results from dishonesty. In some cases of sexual abuse, the client was told that vaginal penetration would cure menstrual dysfunction. Misrepresentation of credentials occurs all the time. In fact, most massage schools, either through their own ignorance or intent, allow their students to believe that the certificate of attendance in the non-accredited program is somehow a state recognized certification. The result is that many massage therapists, who often do not know any better, advertise themselves as being Certified Massage Therapists (CMTs), implying state certified. Others promote themselves as being licensed, referring to their local business license or massage permit from their police department. To the extent that the public values meaningful credentials, the public trust can be affected negatively.

VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER

OCCUPATIONS THAT ARE ALREADY REGULATED

37. What similar occupations have been regulated in California?

California currently has scope of practice and licensing regulation for physical therapy, acupuncture, cosmetology, and chiropractic. These professions include some forms of massage as a portion of their scope of practice; however, it is not performed as their primary mode of treatment. The practitioner training in those fields do not approach massage in the comprehensive way appropriate for a massage practitioner.

38. Describe functions performed by practitioners that differ from those performed by occupations listed in *Question 37*.

In the California scope of practice portion of the laws and regulations relating to the practice of chiropractic, the first definition deals with manipulating and adjusting the spinal column and other joints of the human body. It further states the chiropractor may manipulate the muscle and connective tissue as part of a chiropractic treatment. Massage is listed as a part of that treatment. The primary mode of treatment listed, however, is manipulation and adjustments of joints, with massage being listed as a secondary or adjunctive treatment in addition to mechanical, hygienic, and sanitary measures incident to the care of the body. This includes, but is not limited to, air, cold, diet, exercise, heat, light, physical culture, rest, ultrasound, water, and physical therapy techniques.

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

The Business and Professions Code Section 7316 of the California State Board of Barbering and Cosmetology allows massage limited to the face, scalp, neck, arms, hands, upper body, or feet. This is a much more limited form of massage that is directed as an adjunctive portion of barbering and cosmetology. Its provisions are for cleansing, treating, and beautifying; however, again it is considered a secondary form of treatment to cutting and styling hair.

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

The purpose of the massage therapy regulatory board for California would be to have massage as its primary form of treatment. Massage therapists utilize touch as their primary tool. In most cases, the person is viewed holistically, so that low back pain, for example, may be addressed by releasing the posterior leg muscles, if that is found to be the primary region of restriction causing a compensatory pattern resulting in the reported problem. The professions above do not have massage listed within their scope of practice as their primary mode of therapy or purpose. The massage licensing board may include some limited forms of exercise and passive joint movement in their permitted treatments, but not to the extent listed in the chiropractic and physical therapy licensing acts.

39. Indicate the relationships among the groups listed in response to *Question 37* and practitioners. Can practitioners be considered a branch of currently regulated occupations?

It is not uncommon for massage therapists to work alongside of chiropractors, physical therapists, or in salons with cosmetologists. Generally speaking, in a health care setting, a chiropractor or physical therapist supervises the massage therapists and treatment is primarily geared towards therapeutic purposes. Working with a cosmetologist is generally more for client wellness or health enhancement purposes.

Massage therapy cannot be considered a branch of the above professions as training for massage therapy does not prepare an individual to obtain a chiropractic, physical therapy, or cosmetology license for the sole purpose of providing massage. Without a separate massage therapy regulatory board, massage therapists will be unable to obtain a state license and will continue to be regulated by a patchwork of different city and county regulations that are not consistent. The city and county regulations are also not designed to protect patient safety and deal with disciplinary actions related to clinical practice. State law can recognize the diversity of practice of massage - including relaxation, remedial, cosmetic, palliative, and other.

40. What impact will the requested regulation have upon the authority and scopes of practice of currently regulated groups?

There will be no impact, as the massage therapy regulatory law will not alter or restrict the practices of other professions. Other health care and cosmetology licensing regulations and acts will remain exempt from the provisions of any new massage therapy act to the extent that massage is included in their scopes of practice.

41. Are there unregulated occupations performing services similar to those of the group to be regulated? If so, identify.

There are unlicensed practitioners that may include touch that can be considered similar to massage in that touch is involved. These would include movement educators, such as the Feldenkrais Method, Alexander Technique, Trager work. Zero

Balancing, reflexology, Jin Shin Do, and Polarity therapy.

42. Describe the similarities and differences between practitioners and the groups identified in *Question 41*.

To the average consumer observing these sessions, it would not fit their expectation of massage. Feldenkrais Method and Alexander Technique are done with clothed clients, and touch is used incidental to the goal of exploring new patterns of movement and enhancing kinesthetic awareness. In Reflexology, touch is limited to the hands, feet and ears. Jin Shin Do and Polarity Therapy are amongst a group of disciplines considered to be working with energy fields and may not involve physical touch. Clients are generally fully dressed and no lubricants are used. Trager work uses gentle rocking and shaking movements along with movement education for the purpose of re-educating the nervous system. It is the intent of the sponsor of regulation to exempt those whose work is not massage, either by title or defined scope of practice.

The following is a sample of exemptions used in several states - the specific wording is from the AMTA model state code for massage regulation.

(5) Persons who restrict their manipulation of the soft tissues of the human body to the hands, feet or ears and do not hold themselves out to be a massage therapist or do massage therapy; (6) Nothing in this Article shall be construed to prevent or restrict the practice of any person in this state who uses 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 within 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. Such practices include, but are not limited to the Feldenkrais Method, the Trager Approach, and Body-Mind Centering; (7) Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to that which is essential for palpation and affectation of the human energy system, provided that their services are not designated or implied to be massage or massage therapy.

The above unregulated practitioners may or may not have massage therapy training. It is also possible they may have less training than might typically be required of a massage therapist obtaining a state license or certification. Movement therapists tend to include different forms of movement as an adjunctive portion of their treatment. Energetic healers use their hands to transmit energy to the body thereby producing a therapeutic effect. Reflexologists tend to limit their massage practice to the feet, hands and ears, using reflex points to affect different portions of the body. Some of the above practitioners also belong to organizations that set standards and train and promote their own styles of practice: however, in most cases, massage licensure and training should not be required for their practice unless they are also providing or advertising massage services.

**VIII THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES,
SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND
TESTABLE**

43. Is there a generally accepted core set of knowledges, skills and abilities without which a practitioner may cause public harm? Describe and document.

The set of knowledges, skills and abilities described in the answer to Question 49 are generally accepted. These include knowledge of anatomy, physiology, contraindications, ethics, client relations, terminology, and business practices. Generally accepted does not mean universally accepted - however, those who disagree with their set have not proposed a coherent set of their own.

44. What methods are currently used to define the requisite knowledges, skills and abilities? Who is responsible for defining these knowledges, skills and abilities?

See Question 49.

45. Are these knowledges, skills and abilities testable? Is the work of the group sufficiently defined that competence could be evaluated by some standard (such as ratings of education, experience or exam performance)?

Yes. See Question 49.

46. List institutions and program titles offering accredited and nonaccredited preparatory programs in California. Estimate the annual number of graduates from each. If no such preparatory programs exist within California, list programs found elsewhere.

Addendum G lists massage institutions and programs approved by the California Bureau of Private Postsecondary and Vocational Education (BPPVE). DeAnza College in Cupertino is part of the CA college and university system and is not on the list. It is accredited instead by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

The number of graduates annually from each program is highly variable. It is difficult to teach a class of fewer than five people - it is almost impossible to teach a hands-on discipline to classes of greater than 40 people. Not all programs teach a serious group of vocational students. The Bureau of Private Vocational Education exempts "short term career classes of less than 250 hours and costing less than \$2000 from the fiduciary and placement responsibilities of the longer programs. (Education Code Section 94739).

It is pretty safe to say that the longer programs attract serious career minded students, and that the shorter programs (100-250 hours) attract both those with vocational

intention and those interested in just learning a little massage for family and friends, as well as those not sure, and intending to "get their feet wet before committing further. The largest private massage school in CA, National Holistic Institute in Emeryville, holds several classes at once, teaching a nationally accredited program of 720 hours over 9 to 11 months, and graduates 500 students annually. Currently, most of their graduates are placed in the profession within 6 months - 60 as employees. There are at least 12 vocational schools, such as Bryman and Western Colleges, that now teach 720 hour massage programs, and graduate classes of at least 40 students each annually. Many of their graduates expect to find employment in the spa industry. An effective maximum number of graduates is probably about 6,000 graduates per year.

Due in part to the physical demands of the profession, a large number of people who study massage and become professionals in other states do not maintain their professional status for more than three years. Licensure should allow for a good flow of new therapists without either saturating the market or not allowing consumers to find competent therapists.

An interesting trend is that currently the longer programs that are nationally accredited and therefore are able to offer financial aid seem to attract the least committed students - generally younger, and looking simply for a job that might pay reasonably well without requiring long training. In contrast, the shorter programs are attracting both the avocational student and the more mature, career change individual, often seriously drawn to massage as a meaningful profession. While these short programs cannot adequately (or at all) cover topics such as ethics, professionalism, and scope of practice, the older student is more likely to have these skills through life experience, and know how to research information that they have not gotten in class. Those who stay in the profession often continue their education in additional modules of training. Being older, these students often have more financial responsibilities, and may attend classes while working fulltime. They often need the ability to take minimal training and begin to work part-time, phasing gradually into the field, and being eligible for tax deductions on continuing education.

One of the primary writers of this document entered this profession in her early twenties, and is still in practice after 30 years. After an initial 100 hours of training, she continued to get a pre-med chemistry degree from SFSU in order to obtain the scientific background she felt was needed, and obtained another 2,000 hours of formal massage training, in addition to many hours of continuing education. She is firmly convinced, from these many years of practice and observation and involvement in the profession, that the minimum of 100 hours offered in CA schools is not adequate for the young student who has not had time to develop sufficient maturity for intimate client contacts, nor are they likely, even with the internet today, to know when they need consultation and further resources and knowledge. Massage can be a lonely profession, and younger, entry level practitioners need supervision as they continue their education, either formally or in apprenticeship. The 100 to 200 hour programs are often adequate for the older student to enter the profession safely and

competently.

47. Apart from the programs listed in *Question 46*, indicate various methods of acquiring requisite knowledge, skill and ability. Examples may include apprenticeships, internships, on-the-job training, individual study, etc.

Massage may be learned from apprenticeships, internships, and individual study (though the ability to feel what is going on in a client's muscles is only learnable through practice, not through books!). Some may attempt to learn through on-the-job training, but since massage is generally done in a one-on-one setting, it is difficult to have a trainer present while a student is learning. School clinics allow for an instructor to spend some time with a student who is working on a client, but few spend the entire time of the massage present. There are internet and video programs that purport to teach massage skills, but some interaction with a teacher is absolutely necessary in learning a kinesthetic skill like massage.

Books and videos are reasonable for continuing education of the experienced practitioner.

48. Estimate the percentage of current practitioners trained by each of the routes described in *Questions 46-47*.

School-based training (referenced in Question 46)	99%
Apprenticeship	1%

Of school-based training, approximately 69% receive fewer than 500 clock hours of training according to a survey conducted by the ABMP of their affiliated schools (Note: most of their affiliates in CA. offer the shorter programs).

49. Does any examination or other measure currently exist to test for functional competence? If so, indicate how and by whom each was constructed and by whom it is currently administered. If not, indicate search efforts to locate such measures.

The National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) is accredited by the National Commission for Certifying Agencies (NCCA), the accrediting arm of the National Organization for Competency Assurance (NOCA). NOCA stands alone in establishing standards of excellence for those agencies offering voluntary certification. NCBTMB was accredited by NCCA in 1993 and renewed its accreditation status in 1998. NCBTMB plans to continue this process every five years, as required by NCCA. Accredited by the National Commission for Certifying Agencies (NCCA) and a member of the National Organization for Competency Assurance, NCBTMB certifies massage therapists and bodyworkers on behalf of the profession and general public. To this end, NCBTMB

has developed and administered the National Certification Examination for Therapeutic Massage and Bodywork (NCE). Combined with other components of the National Certification Program, the NCE helps to assure that those who have been awarded the Nationally Certified in Therapeutic Massage and Bodywork (NCTMB) credential are providing massage therapy and/or bodywork safely, effectively and ethically.

The current form of the NCE being used to measure the entry-level knowledge and competencies of massage therapy and bodywork practitioners is based on a Job Task Analysis Study (JTA) conducted through the cooperative efforts of NCBTMB and Assessment Systems, Inc. (ASI). This study, conducted over approximately a two year period beginning in 1996, provides a detailed description of job related tasks, the extent to which they are performed and their importance for entry level practice in therapeutic massage and bodywork. By utilizing the results of this Job Task Analysis, NCBTMB and ASI created and maintain a legally defensible examination that accurately reflects the current standards in the therapeutic massage and bodywork profession. The development of the examination was in strict compliance with the accreditation guidelines established by the National Commission on Certifying Agencies, the American Psychological Association's *Standards for Educational and Psychological Testing*, and the EEOC's Guidelines on Employee Selection Procedures. Through the statistical analysis of the information collected from practitioners during the Job Task Analysis, NCBTMB, in conjunction with ASI, develops and revises the content outline for the examination. NCBTMB plans to conduct a Job Task Analysis every five years to ensure its examination instrument continues to accurately reflect those standards of practice that are current to the profession. This approach supports the development of an examination designed to test the knowledge and competencies of an entry-level practitioner in the field of all touch therapies.

It should be noted that during this Job Task Analysis Study no single modality was the area of focus. Rather, NCBTMB gathered information from a number of groups in order to accurately reflect those standards of practice that exist in the areas of touch therapies across the country. Modalities represented during this study included those areas, which could be described as Western (Swedish, Sports Medicine, etc.) and Non-Western (Traditional Chinese Medicine, Other Energetic Systems, etc.). By gaining the input from all types of practitioners, NCBTMB was able to develop a content outline that demonstrates the tasks that are consistent among many types of bodywork. The result is a comprehensive instrument rather than an exam specific to one modality or type of bodywork.

There is also a nationally recognized certification exam for practitioners for certification in Asian bodywork therapies. This is administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), and results in Certification for Asian Bodywork Therapy. It is also recognized by the NCCA. See Addendum F for more information on NCCAOM and NCBTMB.

50. Describe the format and content of each examination listed in *Question 49*. Describe the sections of each examination. What competencies is each designed to measure? How do these relate to the knowledges, skills and abilities listed in *Question 43*?

The format of both examinations is a 200 item multiple choice computer-based examination. Questions are not put in sections, but mixed randomly. They measure different competencies because they use different models of the human body. They test appropriate knowledges, skills and abilities based on the job skills analysis. See Addendum F for information on the organizations.

51. If more than one examination is listed above, which standard do you intend to support? Why? If none of the above, why not, and what do you propose as an alternative?

We support both examinations because they test different but related skills and knowledges. Depending on whether the law recognizes tiers of practitioner, a specific examination may or may not be required for all levels. The training requirements for taking the examination are not necessarily appropriate for the current entry levels common in California.

IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED

52. HOW MANY PEOPLE ARE EXPOSED ANNUALLY TO THIS OCCUPATION?

An estimated 5,350,000 adult Californians (age 20 and over) had at least one massage in 2002. (Sources: Baseline figures from “*Demystifying Massage Economics*,” *Massage & Bodywork*, December 1998 updated in ‘*No Slight of Hand Here - Profession is Crowing*,’ “*Massage & Bodywork December-January 2002*” adjusted to reflect U.S. Census 2000 population figures and 2002 American Massage Therapy Association’s 2002 sixth annual national survey of massage utilization.) See Addendum I for a copy of the first report.

WILL REGULATION OF THE OCCUPATION AFFECT THIS FIGURE? IF SO, IN WHAT WAY?

It depends upon content, especially massage education requirements and extent of grandfathering protection, of a licensing proposal which becomes law. If a two tier set of massage practitioner qualifications, titles and accompanying educational requirements are enacted, a significant majority of the estimated 25,900 current practitioners in CA. would be able to continue practicing and the flow of new massage therapy practitioners would only be slightly diminished if at all, If a uniform 500 hour education requirement is levied with no grandfathering, as many as half of these individuals now practicing would be

unable to practice without securing additional education, in most instances having to double or triple the amount of education they now have. If generous grandfathering is allowed, virtually all 25,900 would be able to practice, but the flow of new massage therapists may sharply decline unless and until the approximately 50 - 60% of massage therapy programs now constituting 100-250 hours of training would be expanded. Since many cities are already requiring 500 hours of training and/or national certification, a two-tier system might ease regulation and increase the number of practitioners in those cities. The frustration and expense of dealing with local adult entertainment regulation has artificially limited the number of practitioners in many jurisdictions.

53. WHAT IS THE CURRENT COST OF THE SERVICE PROVIDED? ESTIMATE THE AMOUNT OF MONEY SPENT ANNUALLY IN CALIFORNIA FOR THE SERVICES OF THIS GROUP.

The typical massage session lasts one hour (sometimes 50 minutes). Typical prices in CA range from \$45-\$80 in the independent practices, to \$80-130 in the spas. Estimate of the annual amount spent in this state. \$807,000,000. (Same sources cited in answer to question 52 above.)

HOW WILL REGULATION AFFECT THESE COSTS?

Typically, state regulation has increased the number of massage practitioners available. The cost to the individuals receiving massage will probably remain at current levels, though the decrease in local regulatory fees may allow substantial decreases in cost for the individuals. As it becomes easier for individuals to open private practices, prices to consumers are likely to drop while the total amount spent on therapeutic massage in the state rises substantially.

54. Outline the major governmental activities you believe will be necessary to appropriately regulate practitioners. Examples may include such program elements as: qualifications evaluation, examination development or administration, enforcement, school accreditation, etc.

Typically regulatory boards have the following powers and duties — in CA., most but not all of these responsibilities may rest with the Board: (1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage therapy practice; (2) Evaluate the qualifications of applicants for credentialing under this Article; (3) Issue, renew, deny, suspend, or revoke credentials under this Article; (4) Reprimand or otherwise discipline credentiallees under this article; (5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against credentiallees under this Article; (6) Conduct administrative hearings in accordance with the General Statutes when a contested case, as defined in said chapter, arises under this Article; (7) May employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or

rent necessary space, equipment and supplies, or hire a lobbyist, according to the general statutes of the State; (8) Establish reasonable fees for applications for examination, initial credential and renewal, and other services provided by the Board; (9) Adopt amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board; (10) Maintain a record of all proceedings and make available to all credentiallees and other concerned parties the annual report of the Board; (11) Adopt a al containing the name of the Board for use on all certificates and official reports issued by it; (12) Provide a system for grievances to be presented and resolved, pursuant to the general provisions of this State; (13) The Board shall consult an educational advisory committee of three or more persons who are knowledgeable in the area of practice or education under consideration when the Board is considering regulations relative to or affecting massage therapy training programs. The Board may appoint other advisory committees as necessary; (14) Approve or administer examinations for qualification under this act; (15) Establish school curriculum minimums for programmatic approval of massage therapy training programs to meet the requirements for credentialing of massage therapists as stated in this Article.
Review qualifications, monitor and respond to grievances, enforce regulation, respond to complaints about inappropriate local regulation, review school accreditation or approval when requested

- 55. Provide a cost analysis supporting regulatory services to this occupation. Include costs to provide adequate regulatory functions during the first three years following implementation of this regulation. Assure that at least the following have been included:**
- a. costs of program administration, including staffing**
 - b. costs of developing and/or administering examinations**
 - c. costs of effective enforcement programs**

We expect minimal costs in the first year as the program begins. There will be no cost for administering examinations as we expect to use appropriate national examinations if any. We expect to collect funds prior to implementation of the program in order to avoid the need for any loans from the CA. General Fund. The professional associations can notify members that licensees can pre-pay for their first year. To the extent that the profession supports and looks forward to the shift from local to state regulation, practitioners may welcome the opportunity to support implementation through pre-payment. As with other state boards, board members should be reimbursed only for expenses incurred.

Costs of administration and enforcement should be comparable to those of other state professional boards. Currently, cosmetologists and estheticians each pay only \$40 every 2 years for renewal of licenses. It seems reasonable that massage license fees will need to be comparable or slightly higher.

56. How many practitioners are likely to apply each year for certification if this regulation is adopted? If small numbers will apply, how are costs justified?

There will be a large number of practitioners who apply in the first year — we expect that all members of the AMTA, ABMP and IMA will apply as they are already paying for insurance, and therefore are employed in the field. That would indicate that we would get about 20,000 applicants in the first year. After that, new applicants would depend on the number of graduates from appropriate programs.

57. Does adoption of the requested regulation represent the most cost-effective form of regulation? Indicate alternatives considered and costs associated with each.

We believe that this form of regulation will be much more cost-effective than the current patchwork of local regulation. This entire document indicates the costs associated with that form of regulation. We see this as an effective and minimal solution. As previously noted, local massage ordinances are ineffective and expensive. A certification (title) act has been considered but is not likely to be supported by local officials seeking to shift regulation to a state agency. It would not be cost effective to either the local jurisdiction, state or practitioner to have massage regulated dually by local and state laws.

Part C2 – Rating on Sunrise Criteria

Assign each Criterion a numeric rating of 0–5 in the space provided. The rating should be supported by the answers provided to the questions in *Part C1*. Scale descriptions are intended to give examples of characteristics indicative of ratings.

0 _____ 1 _____ 2 _____ 3 _____ 4 _____ 5
(Little Need for Regulation) LOW HIGH (Great Need for Regulation)

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

3

low: Regulation sought only by practitioners. Evidence of harm lacking or remote. Most effects secondary or tertiary. Little evidence that regulation would correct inequities.

high: Significant public demand. Patterns of repeated and severe harm, caused directly by incompetent practice. Suggested regulatory pattern deals effectively with inequity. Elements of protection from fraudulent activity and deceptive practice are included.

II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE INSUFFICIENT

5

low: Other regulated groups control access to practitioners. Existing remedies are in place and effective. Clients are generally groups or organizations with adequate resources to seek protection.

high: Individual clients access practitioners directly. Current remedies are ineffective or nonexistent.

III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE PUBLIC

4

low: No alternatives considered. Practice unregulated in most other states. Current system for handling abuses adequate.

high: Exhaustive search of alternatives finds them lacking. Practice regulated elsewhere. Current system ineffective or nonexistent.

IV. REGULATION WILL MITIGATE EXISTING PROBLEMS

5

low: Little or no evidence of public benefit from regulation. Case not demonstrated that regulation precludes harm. Net benefit does not indicate need for regulation.

high: Little or no doubt that regulation will ensure consumer protection. Greatest protection provided to those who are least able to protect themselves. Regulation likely to eliminate currently existing problems.

V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE

5

low: Practitioners operate under the supervision of another regulated profession or under the auspices of an organization which may be held responsible for services provided. Decisions made by practitioners are of little consequence.

high: Practitioners have little or no supervision. Decisions made by practitioners are of consequence, directly affecting important consumer concerns.

VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED

4

low: Definition of competent practice unclear or very subjective. Consensus does not exist regarding appropriate functions and measures of competence.

high: Important occupational functions are clearly defined, with quantifiable measures of successful practice. High degree of agreement regarding appropriate functions and measures of competence.

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

4

low: High degree of overlap with currently regulated occupations. Little information given regarding the relationships among similar occupations.

high: Important occupational functions clearly different from those of currently regulated occupations. Similar non-regulated groups do not perform critical functions included in this occupation's practice.

**VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES,
SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND
TESTABLE 5**

low: Required knowledge undefined. Preparatory programs limited in scope and availability. Low degree of required knowledge or training. Current standard sufficient to measure competence without regulation. Required skill subjectively determined; not teachable and/or not testable.

high: Required knowledges clearly defined. Measures of competence both objective and testable. Incompetent practice defined by lack of knowledge, skill or ability. No current standard effectively used to protect public interest.

**IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED
4**

low: Economic impact not fully considered. Dollar and staffing cost estimates inaccurate or poorly done.

high: Full analysis of all costs indicate net benefit of regulation is in the public interest.