

SUNSET EVALUATION REPORT
MASSAGE THERAPISTS AND ESTABLISHMENTS
Chapter 452, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of massage therapists and establishments under Chapter 452, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate massage therapists and establishments to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of massage therapists and establishments is described in Chapter 1 of this report under "Framework for Evaluation." That framework will also serve as the framework for conducting subsequent evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we applied was whether there existed an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. Then the other criteria for evaluation were applied.

We acknowledge the cooperation and assistance extended to our staff by the Department of Regulatory Agencies and other officials contacted during the course of our examination.

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Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 452.

Scope of the Evaluation

This report examines the history of the statute on licensing of massage therapists and establishments and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of restricting the profession or vocation to protect the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Chapter 452, Hawaii Revised Statutes, makes it unlawful for any person or establishment to engage in the practice of massage for compensation without a license from the Board of Massage.

The statute defines massage as "... any method of treatment or therapy of the superficial soft parts of the body, consisting of rubbing, stroking, tapping, pressing, shaking or kneading with hands, feet, elbow, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplemental aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, or other similar preparations commonly used in this practice."

Occupational Characteristics

According to the records of the Department of Regulatory Agencies (DRA), there were 760 massage therapists and 108 establishments licensed to engage in massage as of March 1980. The vast majority of massage therapists and establishments are located on Oahu.

The massage industry in Hawaii includes massage therapists and establishments engaged solely in the legitimate practice of massage as defined by law. However, there are also places and persons, licensed and unlicensed, engaged in promising, suggesting, or providing sexual contact under the guise of massage. The use of massage as a front for prostitution has become increasingly apparent in recent years.

The bona fide practice of massage consists of specific techniques. The Board of Massage in Hawaii recognizes three basic types of massage: Swedish, *lomi-lomi*, and *shiatsu*, along with other general methods.¹

Swedish, the recognized western variation of massage, involves five basic types of movements—petrissage, kneading, friction, stroking, and effluage. Other factors considered in its application are the direction, pressure, rate, rhythm, media, duration,

1. Board of Massage, Testimony to the Senate Committee on Health and the Committee on Consumer Protection and Commerce, February 7, 1980.

positioning, and frequency. There is considerable disagreement among Swedish masseurs on the movements.²

Lomi-lomi massage involves either “pinching, pounding, and squeezing” or “chaffing, squeezing or kneading” of the body. The kneading of the body with feet is part of the therapy.³

Shiatsu is a treatment in which thumbs and palms are used to apply pressure to certain points, identical to acupuncture meridian points, in order to correct irregularities.⁴

While there is one massage school licensed by the Department of Education, no specialized or formal training is required to practice massage in Hawaii. Many massage therapists have obtained their skills through their own observation, reading, and informal practice. Asked at one time to describe the specific skills, training, or experience essential to the practice of massage, the Board of Massage responded: “. . . The only way to develop competency and skill in any of the areas of massage is to obtain competent instructions and by many hours of serious practice. It is also important one has adequate knowledge of anatomy and physiology.”⁵

Legislative History

The first effort to control the occupation appeared in 1933 with government regulation of the laundering and sterilization of uniforms and articles of linen used in the practice of massage.⁶ In 1945 the Board of Health’s responsibility was broadened to regulate massage for the “public health and safety.”⁷

In 1946 the president of the Hawaii Masseurs Association stated that the reputation of the massage parlors during the war was “something deplorable” and that the association would attempt to police the industry in conjunction with the Board of Health and

2. Gertrude Beard and Elizabeth C. Wood, *Massage: Principles and Techniques*. (Saunders; Philadelphia, 1974).

3. “Therapeutic Massage is Her Business,” *Honolulu Star-Bulletin*, May 25, 1972, p. 12; “Today’s Pitch,” *Honolulu Advertiser*, June 10, 1953, p. II-5; “Lomi-lomi,” *Paradise*, August 1928.

4. Tokujiro Namikoshi, *Japanese Finger Pressure Therapy: Shiatsu*, (Japan Publications, 1972).

5. Department of Regulatory Agencies impact statement.

6. Act 73, SLH 1933.

7. Act 116, SLH 1945.

the Better Business Bureau. In particular, he mentioned the possible development of a "strict regulatory board of health code."⁸

A board of examiners was established the following year to license persons practicing massage and to "provide rules regulating the proper conduct and sanitation of massage establishments for the proper protection of the public health" It provided for the registration of masseurs and massage salons and the examination of masseurs. It also empowered the board to refuse or revoke licenses for persons guilty of fraud in passing the examination, convicted of a felony or misdemeanor involving such moral turpitude as the board may determine, addicted to liquor or drugs, or in violation of the licensing statute.⁹ A 1950 decision of the Supreme Court of Hawaii affirmed the Board of Massage's authority to refuse to grant a license on the grounds of prior convictions of felonies.¹⁰

Conviction of a felony or misdemeanor involving moral turpitude was deleted as grounds for refusal or revocation by Act 105, SLH 1979, to conform to Act 205, SLH 1974.

In 1976 there was widespread publicity on prostitution in many outcall massage services in Hawaii.¹¹ Chapter 452 was amended in 1980 to include outcall services and stricter penalties for wilful violations of the chapter and related rules and regulations. It also replaced the terms "masseur" with "massage therapist" and "massage parlor" with "massage establishment" and deleted a requirement for syphilis tests.¹² These revisions were recommended and justified by DRA to ". . . upgrade the massage industry which the public has a dim view of because of prostitution."¹³

Chapter 452, which was originally scheduled for repeal on December 31, 1978, has undergone two legislative sunset reviews. In the 1978 session, the Legislature

8. *Honolulu Star-Bulletin*, "Deplorable Reputation of Massage Parlors Cited by Association Head," August 9, 1946, p. 12.

9. Act 192, SLH 1947.

10. *In the matter of Application of Bernaldo Deconion*, 38 Haw. 584 (1950).

11. *Honolulu Star-Bulletin*, "Doi Hits Laxity on Prostitution," January 26, 1976, p. 22; "Outcall Massage Services May Be Fronts," March 4, 1976, p. 1; "Newspapers Halt Outcall Massage Ads," March 5, 1976, p. 1; and "New Massage Rules Eyed by State Board," March 6, 1976, p. 1.

12. Act 208, SLH 1980.

13. Administration justification sheet to House Bill No. 1991-80.

extended the repeal date to December 31, 1979.¹⁴ In the 1979 session, the repeal date was again extended, this time to December 31, 1981.¹⁵

The Statute and Rules

The board and its responsibilities. Under Chapter 452, the Board of Massage is responsible for the regulation of massage therapists and massage establishments. The Board of Massage consists of five members. Three are required to have at least three years of practical experience as licensed massage therapists. The remaining two members are required to be public members. From its membership, the board is required to elect annually a president, secretary, and treasurer. The board is required to meet at least twice each year. Board members receive no compensation but are required to be reimbursed for expenses necessary for the performance of their duties.

The powers and duties granted by statute to the board are: the adoption of rules; conduct of examinations; granting, revoking, suspending, or refusing to renew licenses; and maintenance of all records pertaining to its proceedings and activities, including actions taken on applications. The board may ask any person of established reputation and known ability for help in conducting examinations, inspections, and investigation. The board can also direct its secretary to subpoena witnesses and administer oaths.

Regulated practices. Licenses are required for all persons and establishments engaged in or attempting to engage in the occupation of massage for compensation, including outcall massage services. A license is not required for emergency or domestic application of massage without compensation or for services of persons holding valid licenses for the healing arts, barbers, hairdressers, cosmeticians, and cosmetologists.

The license is not transferable and must be displayed conspicuously in the place of business or employment.

Requirements for application and examination. An applicant for a massage therapist license is required to submit a written application under oath with a nonrefundable fee. An applicant is required to have "good moral character," submit a medical report,

14. Act 158, SLH 1978.

15. Act 75, SLH 1979.

including a chest X-ray examination made within 30 days prior to submission of the application; and a physician's statement that the applicant has been examined and is free of all communicable and contagious diseases. The board may require submission of certification from "reputable citizens," attesting to the applicant's good moral character and it may also, at its own discretion, independently investigate the applicant's moral character.

The applicant must also take a practical and a written or oral examination.¹⁶ The statute requires that the examinations must be consistent with the practical and theoretical requirements of the profession and that they cannot be confined to any specific system or method of massage.

If the applicant is licensed in another jurisdiction where the licensing requirements are comparable to or more stringent than the requirements in Hawaii, the board has the authority to waive the requirement for examinations.

Apprentices. The statute does not mention apprentices, but the rules and regulations authorize the board to issue six-month, nonrenewable apprentice permits.¹⁷ Before applying for a permit, an applicant must have applied for examination, submitted an application, and passed the written phase of the examination. An apprentice, according to the rules and regulations, cannot work on a customer for 30 days after issuance of the permit.

Massage establishment and out-call massage services. An applicant who wishes to obtain a license for a massage establishment or an outcall massage service must file a written application setting forth that the applicant has complied with all of the requirements of the rules of the board.

A massage establishment must abide by rules and regulations which include these conditions:¹⁸

The principal masseur is responsible for reporting and keeping current the address of the establishment and the names and addresses of all registered

16. The oral examination, in lieu of the written examination, is given to those applicants who are blind.

17. As of November 1980, there was one apprentice registered with the board. An apprenticeship is not required of therapist applicants, and most applicants apply directly for the therapist license.

18. As of November 12, 1980, the board was planning to make outcall massage services subject to most of these establishment conditions, but rules and regulations to this effect had not yet been adopted.

personnel. The principal masseur is responsible for the conduct of all persons employed or connected with the establishment.

- . The establishment is required to notify the board within five days after the principal masseur leaves or is replaced. If the establishment does not designate a principal masseur within 15 days of the departure of the original principal masseur, its license is automatically suspended.
- . The licenses of the establishment and its therapists must be displayed in a conspicuous place.
- . No establishment is allowed to operate without a licensed massage therapist.
- . No establishment is allowed to employ or allow any unlicensed person to assist or practice massage.
- . Each establishment is required to take all possible precautions against lewd and lascivious conduct or sexual acts on its premises.
- . The establishment is not allowed to exceed the ratio of three apprentices to each masseur.
- . Each establishment is required to assure proper supervision of an apprentice and notify a customer when he/she is being massaged by an apprentice.
- . The establishments are subject to inspection at any time during business hours by the Department of Health or the board or designated representatives.
- . Rest quarters provided for employees are required to be properly identified and not used for massage purposes.
- . Locks are not permitted on massage room doors.
- . Doors to massage rooms are required to be open during massage involving members of the opposite sex. Screens or curtains are allowed.
- . The license of the establishment is nontransferable.

Fees. For massage therapists, there is a \$15 application fee, a \$15 examination fee, and a \$25 license fee.

The fees for massage establishments, including outcall massage services, are \$15 for application and \$100 for a license.

The renewal fee for the massage therapist's license is \$25 and for the massage establishment and outcall service license it is \$100. Licenses expire on June 30 of each even-numbered year following issuance unless renewed for the following biennium. The grace period for delinquent renewal is one year with a penalty of \$25.

Grounds for denial, revocation, or suspension. The statute provides that the board may refuse to grant or renew a license or that it may revoke a license if a person is found guilty of fraud in meeting any requirement of Chapter 452, is addicted to liquor or drugs, or fails to display a license which has been issued. The rules and regulations list a number of grounds for suspension or revocation of licenses for massage establishments and therapists and apprentice permits. These grounds include: falsifying or misrepresenting facts required in the application; practicing massage under a false name or any name not indicated on the license or permit; using untrue, fraudulent, misleading, or deceptive advertising, or any advertising which may directly or indirectly suggest sexual or immoral acts; abandoning an establishment without prior notice to the board; violating any law, rule, or regulation concerning the practice of massage; prescribing or recommending medication or administering injection therapy; stating or implying that licensee has the ability to cure any disease, defect, or deformity; participating in or using the establishment for lewd and lascivious conduct or any sexual act in connection with massage.

Penalties. The penalty for unlicensed activity by an establishment, outcall service, or a therapist is a fine of not more than \$500 or imprisonment of not more than six months, or both.¹⁹

The 1980 amendments imposed stricter penalties for those owners, managers, operators, or licensees in charge of or in control of a massage establishment or outcall massage service who knowingly employ or allow an unlicensed person to practice massage. Such a person is guilty of a misdemeanor and, upon conviction, can be fined up to \$1000 or imprisoned up to a year, or both.

Sanitary rule. The Department of Health is authorized to prescribe sanitary rules as it deems necessary, with particular reference to prevention of the "creating and spreading of infectious and contagious diseases."

Administrative procedures. The rules and regulations of the Board of Massage also include a section on administrative procedures and practices for the board. These are standard for all boards and include specifications for such aspects as procedures and documents for board proceedings, handling of contested cases, and adoption of rules and regulations.

19. Reduced to not more than 30 days by revisions in the Penal Code, Sections 701-107, 706-640, 706-663.

Chapter 3

EVALUATION OF THE REGULATION OF MESSAGE THERAPISTS AND ESTABLISHMENTS

This chapter contains our evaluation of the regulation of message therapists and establishments under Chapter 452, Hawaii Revised Statutes, including evaluation of the need for regulation, the special problems posed by prostitution, regulatory operations, and our recommendations concerning regulation.

Summary of Findings

We find that:

1. The practice of message poses little potential harm to public health, safety, or welfare.
2. Such potential harm as might exist centers on the possibility of a customer being physically injured because of the lack of competence of a message therapist, but it is questionable whether the current requirements for licensing ensure the competence of those engaged in message.
3. Regulation of message has been justified on the basis that it helps to control prostitution, but it has not prevented message from continuing to be used by some as a front for prostitution.
4. The handling of complaints in the field of message is characterized by long delays, and the enforcement by the Department of Regulatory Agencies (DRA) of the law and rules and regulations against unlicensed activity is virtually nonexistent.

Potential Harm in the Practice of Message

In this section, we consider the basic issue whether the practice of message poses such potential harm to the public as to require government licensing. There are two possible areas of potential harm: (1) insanitary conditions which permit the spread of infectious diseases and (2) incompetent message resulting in physical injury.

Harm from disease. As noted in Chapter 2, the regulation of massage has its origins in disease prevention measures such as the requirement for the laundering and sterilization of uniforms and articles used in massage. Later, regulation was broadened under the more general reason of protecting "public health and safety."

Today, responsibility for the sanitary conditions of massage establishments continues to rest with the Department of Health (DOH). The department conducts initial inspections of massage establishments prior to licensing, and it uses the same sanitary standards as those for barber shops and beauty salons. The department may conduct spot-checks of establishments thereafter, but there is no system or schedule for periodic inspections.

The department apparently does not view sanitary conditions in massage establishments as a problem warranting greater attention or emphasis. Supporting that view is the absence of complaints, either to DOH or DRA, concerning sanitary conditions. DOH informed us that there have been no complaints in the past 30 years.

It should be noted that, even if Chapter 452 were to be repealed, DOH would continue to have jurisdiction of sanitary conditions in massage establishments under its powers for public health and safety as specified in Section 321-11, Hawaii Revised Statutes.

Harm from physical injury. As with sanitary conditions, there is likewise an absence of complaints concerning physical injury. In our examination of complaint data for the past five years, we found no complaints concerning physical injury. During the course of our discussions with officials and massage therapists, we were informed of two alleged cases of physical injury involving licensed therapists, one case said to have caused a broken vertebrae and the other said to have resulted in aggravated bursitis. However, neither case resulted in the filing of a complaint.

Nonetheless, members of the Board of Massage, those in the industry, as well as the literature in the field, all insist that there is a real danger of physical injury if a massage is not properly administered. It is said that the result of improper massage may be pinched nerves, bruises, strained muscles, and other conditions which cause discomfort or pain, as well as more serious problems, e.g., aggravation of disk problems, injury to internal organs such as the kidneys, and injury to the nervous system resulting from excessive pressure. It is also said that incorrect mechanical manipulations or spinal adjustments may result in serious brain stem dysfunctions manifested in the inability to

control limbs, in nausea, dysrhythmic speech, and other disabilities and that massage of persons with certain ailments such as arthritis could be more harmful than helpful.¹

Thus, while data do not support the contention that there is a pervasive danger of physical injury, it must be acknowledged that those who are knowledgeable about massage practices and techniques are of the view that the potential for physical injury does exist from incompetent massage. Therefore, they contend that the justification for licensing is to ensure competent massage therapists and to protect the public from the potential harm of physical injury.

Licensing and Competency

In Chapter 1 we stated that: "If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider." In this section, we review whether the licensing of massage therapists meets this standard.

With most occupations which are regulated in Hawaii to ensure competency and to protect the public from the potential harm of physical injury, the basic requirement is usually formal training and the passage of some form of examination. In the case of massage therapists, however, there is no training or apprenticeship requirement. The test for competency revolves solely around the passage of the examination.

The examination. Each massage therapist candidate must pass a written examination and a practical examination as the basic requirement for licensing. The written examination is essentially a test of *knowledge*: of rules and regulations governing the practice of massage, anatomy, physiology, massage techniques, and massage effects. It is the practical examination which is the test of *competency*.

In the practical examination, each candidate massages three evaluators who are board members or other licensed massage therapists. Candidates specify their massage technique, e.g., Swedish, *shiatsu*, etc., and are evaluated accordingly. Scoring is recorded on evaluation sheets which require points to be assigned to each of several aspects. The maximum number of points is 100, with 75 points required as a passing grade from at least two of the three evaluators.

1. Sidney Licht, M.D., *Massage, Manipulation, and Traction* (New York: Robert E. Krieger Publishing Co., 1976), pp. 83, 134-136. S. Mueller, M.D., and A. L. Sahs, M.D., "Brain Stem Dysfunction Related to Cervical Manipulation," *Neurology*, Vol. 26, pp. 547-550. Notes from Dr. Mitchell C. Eli, chiropractor, regarding "A Few of the Recognized Complications and Possible Side Effects of Spinal Adjustments."

The difficulty of reaching agreement, through the practical examination, of what constitutes competent massage is apparent when individual examination results are reviewed. The scores can be wide and disparate. In one case, one evaluator assigned a total score of 40 points, another evaluator assigned 89 points, and the third scored the applicant a perfect 100. In another case, one evaluator assigned a low score of 24 points, while the other two evaluators assigned scores of 83 and 100 points. Other examples are: scores of 68, 91, and 100 for one applicant, and scores of 60, 96, and 100 for another. In each of the foregoing examples, the lowest score by an evaluator is below the passing grade of 75, but all passed under the board's guideline that a passing score from two out of three examiners is sufficient to pass.

The effort to give quantitative measure to the practical examination can be regarded as an earnest effort on the part of the board to make the practical examination more objective. In the final analysis, however, the examination is still subjective since, in the view of the board, "... the evaluators grade the applicants on how he or she feels."² There are irrelevancies in the practical examination, such as the maximum assignment of five points for the applicant's "appearance," but the most serious difficulty, judging from the scores in actual cases, is that experienced massage therapists are not always able to agree that an applicant is competent or incompetent. This is by no means a criticism of the practical exam evaluators; the difficulty probably resides in the nature of massage itself, where satisfaction on the part of the customer is measured more by how he or she feels during the course of and after the massage than by any analytical insight into or objective evaluation of the massage therapist's competency.

Thus, there is the anomalous situation of defenders of regulation placing great emphasis on the necessity to ensure competency but the only measure of competency being an examination of questionable validity and reliability. As difficult as the task might appear to be, it would be appropriate for the board to review how the examination, scoring procedures, or evaluation methods can be made more valid and reliable if the examination is to be relied upon as the measure of competency.

Training or apprenticeship to ensure competency. While it is questionable that the examination alone can ensure competency, there are alternatives to strengthen the

2. Board of Massage, Minutes, October 23, 1979.

requirements for licensing so as to result in a greater assurance of competency and minimize the potential harm of physical injury. In our evaluation, that potential is already minimal, but the Legislature's perspective may be otherwise.

Thus, for example, the Senate in a resolution adopted in the 1979 session requested the Board of Massage to review the adequacy of current massage licensing testing procedures and to revise them by diversifying them to ensure that persons licensed in the practice of massage have adequate training and understanding in the art of massage.³

The concern was expressed that "... persons with particular problems may actually be harmed by certain types of massage. It seems necessary, therefore, that the training and educational requirements be reviewed to assure that a proper understanding of physiology, muscle anatomy, and other related topics be a required part of the basic knowledge for all persons practicing massage."⁴

The strengthened approach to licensing taken by one state involves the requirement for a course of training or apprenticeship and continuing education. Florida, which recently regulated massage, requires applicants to have completed an apprenticeship program or a course of study at a state-approved massage school. In addition, as part of the license renewal procedure, licensees are required to demonstrate their "current competency" in massage, with the law specifying that these "requirements shall be reasonable and shall include, but shall not be limited to, attendance at continuing education programs and reexamination."⁵ The American Massage & Therapy Association advocates formal training as a requirement for licensing,⁶ while the position of the Board of Massage is that it is "considering revision to its rules to provide for required schooling or apprenticeship training."⁷ However, any changes would probably require statutory amendments.

The Problem of Prostitution

Chapter 452 makes no reference to prostitution, but the control of prostitution has been advanced as a justification for regulating massage. The chairman of the Board of Massage, in opposing dissolution of the board, has stated:

3. Senate Resolution 115, S.D. 1, 1979 Regular Session.
4. Standing Committee Report 1183 to Senate Resolution 115, S.D. 1, 1979 Regular Session.
5. Chapter 480, Florida Statutes, Revised 1978.
6. American Massage & Therapy Association, Inc., Uniform Act Regulating Practice of Massage.
7. Board of Massage, Report on Senate Resolution 115. S.D. 1, February 7, 1980.

“... prostitution will run rampant—as bad as it is today—massage and prostitution—it will really get out of hand. The ‘Dolphin’ group is trying very hard to curtail the jurisdiction of the board and if this should come about the entire massage industry and its image will totally be lost. I personally am in favor of prostitution but until it is legalized or decriminalized this Board will have to remain in existence and remain strong—again to protect the consumer.”⁸

The Honolulu Police Department (HPD) has reported that:

“The massage licensing provisions of Chapter 452 have been utilized by law enforcement as an effective tool in detecting illegal prostitution activities being conducted in business establishments fronting as massage parlors, bath houses, salons, saunas and health spas.

“In the past six years, 124 Unlicensed Masseuse violations led to the arrests of 232 prostitutes and 31 persons for felony Promoting Prostitution violations. These arrests were effected in 25 establishments or 63% of the 40 massage type businesses listed in the telephone directory. Although the majority of these establishments may not have fallen under the sanctions of the Board of Massage, the provisions of Chapter 452 remained effective for law enforcement purposes. Arrest records reveal that out-call massage services are equally involved as fronts for illegal prostitution activity.”⁹

From our discussions with HPD officials, it is our understanding that arrests for prostitution have continued to be made in massage establishments, some of which are licensed and some of which are not. Frequently, a person may be arrested and charged with prostitution as well as with performing massage without a license. The apparent value of Chapter 452 to law enforcement officials is that it enables prostitutes to be penalized for engaging in massage without a license even if a conviction cannot be obtained for prostitution.

For example, in a case involving one licensed massage establishment, six persons were initially charged with prostitution and with practicing massage without a license. While only two were convicted of prostitution, all six were convicted of one or more counts of practicing massage without a license.

For its part, the Board of Massage expresses great concern over the problem of prostitution in the industry. In our discussions with board members, they expressed the desire and need for the industry to rid itself of prostitution and for the industry to improve its image.

8. Department of Regulatory Agencies impact statement, comments by Bill Nishita, p. 14.

9. Testimony. Lt. Stanley Atkins on S.B. 1995–80. Senate Ways and Means Committee, March 7, 1980.

Lack of state enforcement. However, for all the concern over prostitution, the board appears to be uncertain over the extent of its authority in denying or revoking licenses in prostitution cases. Thus, in our review of the history of board activity for the past several years, we know of only one case where the license of a massage establishment was revoked and only one case (connected with the same establishment) of a massage therapist license being revoked. The revocations were for prostitution and other violations of rules and regulations.

On the other hand, there have been situations such as these:

- . An individual was licensed as a massage therapist in 1974. She was convicted of prostitution in 1975. In 1978, she applied for and was granted a license to operate a massage establishment.
- . An individual had been found guilty of contempt of court and forfeited bail on a prostitution charge in 1975. In March 1977, she applied for a massage therapist license. In November 1977, she was convicted of prostitution and two counts of practicing massage without a license. In December 1977, she was granted a massage therapist license. (The case came to the attention of licensing officials in January 1978 as the result of a complaint from the individual's former employer. The case was dropped in April 1979 on the basis that the individual's license had been on forfeit status since July 1, 1978.)

There has been almost no activity on the part of the Board of Massage and licensing officials to prevent establishments from using the industry as a cover for prostitution and to rid the industry of prostitution. There are still numerous establishments which advertise themselves as providing massage and other services and in which HPD has made arrests for prostitution and unlicensed massage. There appears to be little followup on these cases by state officials.

Factors affecting enforcement. The lack of enforcement by state officials is the result of several factors:

First, in those cases where an applicant might have a prostitution conviction or a licensed therapist is subsequently convicted of prostitution, there is uncertainty on the part of state officials whether a license can be denied or revoked solely on the basis of a prostitution conviction. In 1974, Act 205 was enacted which affects licensing generally. One of its provisions states: "A person shall not be disqualified . . . to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political sub-

divisions or agencies, solely by reason of a prior conviction of a crime."¹⁰ There was a time when Chapter 452 contained a specific provision that the Board of Massage could deny or revoke a license to "a person convicted of a felony or misdemeanor involving moral turpitude . . ." However, this provision was deleted by Act 105, SLH 1979.

Second, while Chapter 452 does provide, as a preliminary qualification for a license, that the "board shall satisfy itself as to the good moral character of the applicant, may require the submission of certification as to good moral character by reputable citizens, and, in its discretion, may independently investigate the applicant's moral character," the provision, in practice, is ineffectual. The board has no standards for "good moral character." Moreover, while the rules and regulations require applicants to submit criminal abstracts, licensing officials no longer enforced the requirement beginning in 1974 when the police departments stopped issuing such abstracts. This was also the result of Act 205, SLH 1974, which restricts the use and dissemination of criminal records in connection with applications for employment and occupational licenses.

Third, there is little state enforcement against unlicensed massage activity. Inasmuch as prostitution frequently occurs in establishments which advertise massage and other services but are unlicensed, it would appear that such establishments could be enjoined from advertising massage and that legal action could be pursued against such establishments. However, this is not being done. (The lack of enforcement over unlicensed operations is discussed further in the ensuing section of this chapter.)

Prospects for controlling prostitution. From the foregoing, it is apparent that for all the good intentions of the board in trying to protect the industry from prostitution, it has made little headway, and future prospects are likely to be no different if the circumstances remain the same.

If the Legislature perceives the problem of prostitution in the industry as one warranting protection of the industry through additional regulation, there are some things that could be done. For example, the board could be specifically empowered by law to deny or revoke massage licenses on the basis of prostitution convictions. Specific penalties could be applied to those establishments which advertise massage services but are unlicensed. All of this would be in the nature of a crackdown on prostitution within the industry itself.

10. Another section of Act 205 states that the State may consider any conviction of a penal offense as justification for denial or revocation of a license when such offense "directly relates . . . to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held." However, in the case of massage, since the State has not denied or revoked a license solely on the basis of a prostitution conviction, this particular section has not been tested.

However, with respect to prostitution generally, there is this view, expressed in the commentary to the prostitution laws in the Hawaii Penal Code:

“History has proven that prostitution is not going to be abolished either by penal legislation nor [sic] the imposition of criminal sanctions through the vigorous enforcement of such legislation.”¹¹

Thus, while new laws could be enacted to make it more difficult for massage establishments to be used as fronts for prostitution, the result is very likely to be the use and spread of other covers for prostitution: saunas, health spas, escort services, bath houses, and the like.¹²

Regulatory Operations

In this section, we examine the efficiency of operations of the massage regulatory program, particularly with respect to the processing of license applications, handling of complaints, and enforcement against unlicensed activities.

Processing of applications. We reviewed 115 massage therapist records to determine the efficiency of the Board of Massage and the licensing staff in processing license applications. For the majority of the applications, there was a period of 10 to 80 days between the filing of the application and the administering of the first written examination, and a period of 55 to 75 days from the first examination to the issuance of the license. By and large, the time taken to process initial applications, schedule and administer the written and practical examinations, and issue the licenses to successful applicants is reasonable. We find that such delays as have occurred in individual cases are attributable to the failure of the applicants to pay examination or license fees promptly or to attend the scheduled examinations.

Handling of complaints. Of 22 complaints filed with DRA since 1975, 16 involved unlicensed massage or prostitution. Of the remaining six cases, one involved falsification of the license application, one alleged that a therapist was making claims of cures through massage, one alleged that a person's practice should be under the jurisdiction of the Board of Acupuncture, and the nature of three complaints is unknown because the records were not available.

11. Commentary to Section 712-1200, Hawaii Revised Statutes.

12. Some of these establishments are already being used as fronts for prostitution: Testimony, Lt. Stanley Atkins, *op.cit.* In 1979, the Legislature enacted Act 181, a nuisance abatement law providing for the abatement of places violating laws pertaining to “offenses against public health and morals . . . including . . . all forms of prostitution”

The formal procedure for the handling of complaints, as specified by rules and regulations, calls for complaints to be routed to the executive secretary of the board, who is responsible for initiating an investigation of the matter contained in the complaint. Investigations are conducted by the Regulated Industries Complaints Office (RICO). When completed, the investigation report is placed on the agenda of the board at the next meeting. The board then decides whether the case should be set for formal hearing. If it does, the case file is then transmitted to the Attorney General.

Actual handling of complaints does not always follow the procedure set forth in the rules and regulations. There are cases where complaints are received directly by the investigation staff (RICO) and investigation reports are transmitted directly to the Department of Attorney General without having been reviewed by the executive secretary or the board.

We question the practice of bypassing the executive secretary or the board. It prevents those in authority from exercising their determination at appropriate junctures whether a case can be and should be resolved informally or whether the case should proceed to formal hearing.

The most serious consequence of the complaint handling process is that some cases drag on interminably. While DRA has an internal policy of resolving complaints or submitting the case to the Attorney General within 90 days, there appear to be few controls to assure that required actions are completed within specified times.

We note that four closed cases took over 400 days from receipt of the complaint to final disposition. In two of the cases, the investigation staff had the cases for over 300 days before completing the investigations. In the two other cases, the Department of Attorney General had the cases for 161 days and 259 days.

The efficiency in handling complaints is not likely to improve unless some controls are developed and implemented both within DRA and the Department of Attorney General. Of eight cases pending as of October 30, 1980, the elapsed period ranged from 248 days to 611 days. Three of the complaints had by then been pending for over 18 months.

The explanation offered for the long periods of time in handling complaints is that complaints concerning unlicensed massage and other violations of massage rules and regulations have a relatively low priority when compared with cases involving injury to

consumers. This may be so, but we do not believe that complaints should be allowed to run through the excessively lengthy periods evidenced by recent and pending cases.

Unlicensed activity. The complaints process is complicated further when the complaint involves an unlicensed business which should be licensed. Such cases are usually referred to the Office of Consumer Protection (OCP) even though it would appear that, in the case of massage, the Board of Massage and DRA are responsible for Chapter 452, including enforcement against unlicensed massage operations.

The practice of referring cases involving unlicensed businesses to OCP is said by OCP and DRA officials to have its basis in a law passed in 1974. Act 120 made it unlawful for any unlicensed person to furnish commodities or services for which a license is required from DRA, and it made any such person subject to a fine of not less than \$500 nor more than \$2500 for each unlawful practice, to be collected in a *civil suit* brought by OCP.

We do not believe that the 1974 law authorizing OCP to pursue *civil* action against unlicensed persons abrogates the responsibility of DRA for enforcing the law, including, if appropriate, the pursuit of the *criminal* penalties provided by law against unlicensed operations. In the case of massage, we contend that DRA is responsible for Chapter 452, including enforcing the provisions against unlicensed massage operations.

However, given the practice of DRA referring cases of unlicensed operations to OCP, the following is what happened in one specific case:

In January 1980, a person was arrested and subsequently convicted for practicing massage without a license. HPD filed a complaint with DRA that the establishment in which the person worked was operating and advertising as a massage establishment without a license. At the end of February 1980, DRA completed an investigation report indicating that the establishment may be in violation of Chapter 452-3 (prohibiting the operation of unlicensed massage establishments) and that the case would be referred to OCP. In May, the owner applied for a massage establishment license from DRA and was granted a license. In June, OCP closed the case.

From the foregoing case, it is evident that enforcement against unlicensed operations falls between the cracks. DRA refers cases of unlicensed businesses to OCP, but OCP's position is that it can only pursue civil action. Thus, in the case of massage, enforcement against unlicensed operations, including pursuit of the penalties provided by Chapter 452, is virtually nonexistent. This situation is particularly paradoxical in view of DRA recommending and obtaining amendments to Chapter 452 in the 1980 legislative session to provide for stiffer regulatory measures against unlicensed massage operations.

There is the paradox also, as in the case noted, of an unlicensed individual being convicted while the establishment, far from being penalized, is made legitimate through the routine issuance of a license.

This entire area of enforcement against unlicensed businesses warrants attention by top DRA officials, not only with respect to massage, but other licensed fields, so that the laws against unlicensed operations can be effectively enforced.

Alternative to Current Program

One of the problems in the massage regulatory program, particularly in enforcement, is that there are two levels of government involved—the State and the counties. By far the more active in moving against prostitution and unlicensed massage on Oahu is the City and County of Honolulu, through its police department. For its part, the State has been weak in enforcement and slow to act on complaints filed by HPD.

If the Legislature continues to regard the massage industry as a field which should be protected from prostitution, one alternative is to allow the counties, at their option, to regulate the industry within their respective counties.

From our discussions with law enforcement officials on Kauai, Maui, and Hawaii, we conclude that massage does not present the same problem in those counties that it does on Oahu. Other than Oahu, there has been only one case involving alleged use of massage as a front for prostitution, a case which was pending in Maui County at the time of our inquiry.

Thus, some counties might choose not to regulate massage since no problems are evident. On the other hand, a jurisdiction like the City and County of Honolulu might choose to do so, and the result might be improved overall enforcement.

Recommendations

We recommend the following:

1. *Chapter 452, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1981 and that the counties be provided the option to regulate massage establishments and massage therapists, or alternatively,*

2. *If the Legislature should decide that the possibility of physical injury from the practice of massage and the problem of prostitution warrant continued state regulation, it consider such measures as the following:*

- a. *Requiring training or apprenticeship as a condition for licensing;*
- b. *Making conviction for an offense involving moral turpitude a specific ground for denial or revocation of a license;*
- c. *Prohibiting establishments from advertising massage services if they are unlicensed, and providing for penalties if they do; and*

3. *If state regulation is continued, the Board of Massage and DRA improve the examination to ensure competency of massage therapists and develop and implement a system for the timely handling of complaints and effective enforcement against unlicensed massage operations.*

APPENDIX
RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 18, 1980 to the Board of Massage and the Department of Regulatory Agencies. We asked them for their comments on the recommendations contained in the report.

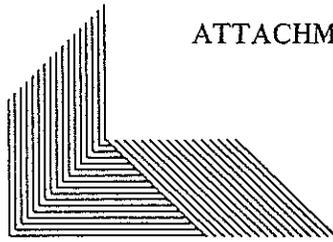
A copy of the transmittal letter to the Board of Massage is included as Attachment 1 of this appendix. A similar letter was sent to the Department of Regulatory Agencies. On January 2, 1981 we received the written comments of the Board of Massage and the Department of Regulatory Agencies. The responses are included as Attachments 2 and 3.

In its response, the Board of Massage concurs with "the general overviews of the report" and "recognize[s] many of the deficiencies mentioned in the report." However, the board disagrees with the recommendation that Chapter 452, HRS, be allowed to expire and that counties be provided the option to regulate massage establishments and massage therapists.

The Department of Regulatory Agencies states: "The observation and evaluation of the board and the department . . . is accurate, comprehensive and complete." However, the department declined to make comments on the recommendations "at this time." The department did call to our attention one item. On page 7 of the report, we stated that Swedish massage involves five basic types of movements: "petrissage, kneading, friction, stroking, and effleurage." The department advises that the terms "petrissage" and "effleurage" are synonymous, respectively, with the terms "kneading" and "stroking." Our reference, *Massage Principles and Techniques* by Gertrude Beard and Elizabeth C. Wood, indicates that "petrissage" and "kneading" are sometimes used interchangeably, but several authors differentiate between the two. Some also differentiate between the terms "effleurage" and "stroking."

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813
(808) 548-2450



CLINTON T. TANIMURA
AUDITOR
RALPH W. KONDO
DEPUTY AUDITOR

December 18, 1980

Mr. Bill Nishita, Chairman
Board of Massage
Department of Regulatory Agencies
State of Hawaii
Honolulu, Hawaii

COPY

Dear Mr. Nishita:

Enclosed are five preliminary copies, numbered 4 through 6, of our *Sunset Evaluation Report on Massage Therapists and Establishments*. These copies are for review by you and other members of the board. This preliminary report has also been transmitted to Mr. Tany S. Hong, Director, Department of Regulatory Agencies.

The report contains recommendations relating to the regulation of massage. We would appreciate receiving your written comments on the recommendations by December 31, 1980. Your comments will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, access to this report should be restricted solely to board members and those officials whom you might wish to call upon to assist you in your response. We request that you exercise controls over access to the report and ensure that the report will not be reproduced. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures



GEORGE R. ARIYOSHI
GOVERNOR

TANY S. HONG
DIRECTOR

BOARD OF MASSAGE

DICK H. OKAJI
LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES
P. O. BOX 3469
HONOLULU, HAWAII 96801

December 29, 1980

RECEIVED

JAN 2 11 50 AM '81

Mr. Clint T. Tanimura
Legislative Auditor
State Capitol
Honolulu, Hawaii 96813

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Tanimura:

Thank you for your letter of December 18, 1980, inviting our written comments and recommendations to your preliminary report to the Governor and the Legislature of the State of Hawaii entitled, "Sunset Evaluation Report - Massage Therapists and Establishments - Chapter 452, Hawaii Revised Statutes."

We concur with the general overviews of the report and recognize many of the deficiencies mentioned in your report. However, the Board of Massage would like to address its comments in the area of the Board's concern, recommendation in the audit.

Recommendation

1. Chapter 452, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1981, and that the counties be provided the option to regulate massage establishments and massage therapists, or alternatively.

Comment

We do not agree with the recommendation and feel that continuation of Chapter 452, HRS, is necessary for the following reasons:

The health, safety and welfare of consumers will not be protected if the Board of Massage is sunseted. Knowledge of anatomy and physiology is needed for competently practicing massage, because these subjects deal with general structure of the body and concern the proper functioning of the various cells, tissues, organs and systems in the body. Without assessing

massage therapist knowledge of these subjects, it would be impossible to determine competence to practice massage.

Although there is no record of complaints with reference to physical injury, the Board has been informed of alleged physical injuries involving massage therapists.

The Board feels that there is a real danger of physical injury if a massage is not properly administered. The result of improper massage may be pinched nerves, bruises, strained muscles, cracked vertebrae and other conditions which cause discomfort or pain.

Since the deadline to submit the comments on the report makes it impossible to fully comment on the report, additional comments and testimony will be submitted at a later date or at the hearings.

Recommendation

2. If the Legislature should decide that the possibility of physical injury from the practice of massage and the problems of prostitution warrant continued state regulation, consider such measures as the following:
 - (a) Requiring training or apprenticeship as a condition for licensing;
 - (b) Making conviction for an offense involving moral turpitude a specific ground for denial or revocation of a license;
 - (c) Prohibiting establishments from advertising massage services if they are unlicensed, and providing for penalties if they do.

Comment (a)

We agree with the recommendation. The Board has proposed the following to be included in the rules under Subchapter 6, Massage Therapist:

SUBCHAPTER 6

MASSAGE THERAPIST

§16-84-23 Qualifications for taking a massage therapist examination. (a) Successful completion of 100 hours of instruction of which 60 hours may be acquired by volunteer experience under the supervision of a licensed massage therapist, physical therapist or a person with a medical license in hospitals or nonprofit facilities.

(b) Applicant must submit verification from the persons supervising them.

(c) Other experiences may also be submitted for board approval, such as schooling from massage schools in the United States or foreign country.

(d) Requirements spelled out in section 16-84-7 of these rules.

Comment (b)

We agree with the recommendation and have proposed the following rules under Subchapter 5, Revocation:

- (9) Professional misconduct or gross carelessness causing injury to the customer.
- (10) Massage therapist convicted in court in violation of chapter 452, HRS, and rules of the board.

Comment (c)

We agree with the recommendation and have proposed the following rules under Subchapter 9, Advertising:

SUBCHAPTER 9

ADVERTISING

§16-84-35 Advertising. (a) No massage establishment or out-call massage service shall advertise unless it holds a valid license issued under chapter 452, HRS. The advertisement shall include massage establishment or out-call massage license number. Advertisement includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper or magazine, or in any directory under the listing of massage establishment or out-call massage service, or broadcasting by airwave transmission.

(b) Other requirements as spelled out in section 16-84-19(3) and (7) of these rules.

Please be informed that the Board of Massage had worked on these proposals in mid 1980, but was unable to proceed with the adoption of these rules since the Department of Regulatory Agencies was in the process of converting the rules to comply with the Administrative Rules Format mandated by Section 91-4.2, HRS, (SLH 1979, Act 216) with reference to the memorandum from the Legislative Reference Bureau.

Recommendation

- 3. If state regulation is continued, the Board of Massage and DRA improve the examination to ensure

Mr. Clint T. Tanimura

-4-

December 29, 1980

competency of massage therapists and develop and implement a system for the timely handling of complaints and effective enforcement against unlicensed massage operations.

Comment

We concur with your recommendation. The Board will try to improve the examination to ensure competency of massage therapists.

Very truly yours,



WILLIAM NISHITA, Chairman
Board of Massage

WN:pl

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF REGULATORY AGENCIES
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

TANY S. HONG
DIRECTOR
BANK EXAMINER
COMMISSIONER OF SECURITIES
INSURANCE COMMISSIONER

DONALD D.H. CHING
DEPUTY DIRECTOR

December 31, 1980

RECEIVED

JAN 2 11 11 AM '81

OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Report on Massage Therapists and Establishments."

The observation and evaluation you have made of the board and the department is accurate, comprehensive and complete. We think you and your staff did a commendable job.

As I mentioned to you in our telephone conversation this morning, we are not making any comments on your recommendation at this time. We would like to, however, call to your attention a small item in your report.

The terms "petrissage" and "effuerage" appear on the bottom of page 7 of your report, which we suggest be deleted since a reader of your report may be confused and might be led to believe that they are massage techniques other than those mentioned. In massage parlance, "petrissage" means kneading and "effuerage" means stroking and terms kneading and stroking appear in the same sentence and referred to as one of the massage techniques.

Very truly yours,

DONALD D. H. CHING
Deputy Director

cc: Tany S. Hong, Director