

**SUNSET EVALUATION REPORT**  
**MESSAGE**  
**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**  
**Honolulu, Hawaii**

**Report No. 87-3**  
**January 1987**

## FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 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 These programs are repealed unless they are specifically reestablished by the Legislature.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 the practice of massage 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 the practice of massage to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Board of Massage, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

Clinton T. Tanimura  
Legislative Auditor  
State of Hawaii

January 1987

## TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION .....	1
	Objective of the Evaluation .....	1
	Scope of the Evaluation .....	1
	Organization of the Report .....	2
	Framework for Evaluation .....	2
2	BACKGROUND .....	7
	Occupational Characteristics .....	7
	Prior Sunset Evaluation .....	13
	Nature of Regulation .....	15
3	EVALUATION OF THE REGULATION OF MESSAGE .....	21
	Current Findings .....	21
	Need for Regulation .....	22
	Licensing Program .....	27
	Possible Violations of State Ethics Code .....	39
	Recommendations .....	44
	Appendix A: Comments on Agency Responses .....	A-1
	Appendix B: Proposed Legislation .....	B-1

## **Chapter 1**

### **INTRODUCTION**

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs 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, Hawaii Revised Statutes.

#### **Scope of the Evaluation**

This report examines the history of the statute on the regulation of massage 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.

## Chapter 2

### BACKGROUND

Chapter 452, Hawaii Revised Statutes, establishes the Board of Massage to regulate the practice of massage in Hawaii. The board is authorized to issue licenses to massage therapists, massage establishments, and out-call massage services.

This chapter reviews the occupational characteristics of the massage field, the findings and recommendations contained in our 1981 sunset evaluation report on Chapter 452, and the current regulation of the occupation by the Board of Massage.

#### **Occupational Characteristics**

Massage is defined as the manipulation of soft body tissues for therapeutic purposes, either by hand or with mechanical or electrical apparatus.<sup>1</sup> The practice of massage promotes good health by increasing the circulation of blood and lymph, and imparting a general sense of well-being and relaxation. Massage also helps to alleviate pain and restore optimal physical functioning in the body.<sup>2</sup>

In March 1986, there were 920 licensed massage therapists, 144 licensed massage establishments, and 98 licensed out-call massage services in Hawaii.

---

1. American Massage Therapy Association, "Massage Therapy," Kingsport, Tenn., February 1985.

2. Miland Knapp, "Massage," in Frank Krusen, M.D., (ed.), *Handbook of Physical Medicine and Rehabilitation*, Philadelphia, W.B. Saunders, 1965, p. 361.

Fifty-nine percent of the massage therapists lived on Oahu, 34 percent lived on the neighbor islands, and 8 percent lived on the mainland or abroad.<sup>3</sup> During the past six years, the number of licensed massage therapists has increased by approximately 20 percent.

**Development of the massage occupation.** Massage has been used since ancient times to relieve pain and promote physical well-being. Traditions of massage arose independently in many different cultures, and massage has been practiced in India, China, Japan, Europe, and Arabia for thousands of years.

Massage was first introduced into the United States in the mid-nineteenth century by European-trained "medical gymnasts" who used massage and exercise to treat a variety of chronic health problems. These practitioners popularized the "Swedish Movement Cure," which utilized passive movements (such as friction, kneading, stroking, percussion, joint mobilization, and stretching of body tissues) and active movements (such as physical exercises undertaken by the patient) to achieve therapeutic results.<sup>4</sup>

Some prominent American physicians incorporated Swedish movements into their medical practice and wrote books reporting on the therapeutic value of these treatments. Other forms of massage and physical therapy developed during the

---

3. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, March 17, 1986.

4. Patricia Benjamin, "The Seeds of a Profession: The Practice of Massage in America from the 1850s to the 1950s . . .," *The Massage Journal*, Summer 1986, p. 41.

ensuing years, and the first schools teaching massage and physiotherapy were established in the early 1900s.<sup>5</sup>

Massage and physical therapy treatments were used extensively during World War I and World War II to rehabilitate wounded soldiers. New schools of physical therapy (which taught a variety of therapeutic approaches including massage) were established, and a nationwide campaign was undertaken to promote state licensing of physical therapists. Today, physical therapy is a licensed occupation in all 50 states.<sup>6</sup>

In 1943, the American Association of Masseurs and Masseuses was established to upgrade the practice of massage through better training, registration of therapists, and state licensing laws.<sup>7</sup> Its campaign to create a separate niche for the massage occupation was only partially successful.

Some states merely exempted massage therapists from their physical therapy licensing requirements. Other states passed licensing laws governing the massage occupation or enabling local jurisdictions to regulate the occupation. State and local regulations rarely established competency standards for massage therapists. Instead, they were primarily designed to control prostitution and included requirements such as fingerprinting, health clearances, good moral character references, and registration of business names.

---

5. *Ibid.*, p. 45.

6. U.S., Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 1986–87 Edition, April 1986, p. 167.

7. Benjamin, "The Seeds of a Profession," p. 46.

During the 1970s, there was a resurgence of interest in the use of massage to promote physical and mental well-being. This was accompanied by a more general interest in "wellness" and the use of alternative health treatments. By the mid-1980s, the use of massage as a health and fitness treatment had gained fairly wide acceptance. Most states with licensing programs recognized the increasing acceptance of massage by adding competency standards to their statutes and rules.

Today, the clientele of massage therapists includes a large number of healthy persons who use massage for the reduction of stress, improvement of athletic performance, relief of minor muscle injuries and pain, and overall health maintenance. Massage therapists also treat patients referred by other health professionals such as physicians and chiropractors.

The American Massage Therapy Association (AMTA), formerly the American Association of Masseurs and Masseuses, is the major professional organization for massage therapists. The AMTA sets standards for and approves the curriculum of massage schools. In 1986, there were 40 AMTA-approved training programs in the United States. The association also operates a credentialing system for massage therapists, conducts educational activities, and promotes the interests of the occupation. In 1986, AMTA had approximately 3200 members.<sup>8</sup>

The Hawaii Massage Therapy Association (HMTA) is the locally-chartered state affiliate of AMTA. It administers a national credentialing examination,

---

8. "National Organizations of the U.S.," in Katherine Gruber (ed.), *Encyclopedia of Associations*, 21st ed., Detroit, Gale Research Company, 1986, p. 1153.

conducts educational programs, and promotes the interests of the occupation in Hawaii. The HMTA membership consists largely of students who are enrolled in AMTA-approved training programs in Hawaii and massage therapists who have completed their training or passed written and practical examinations administered under the auspices of AMTA. In 1986, HMTA had approximately 60 members.<sup>9</sup>

Several local organizations have been established recently to promote the art of Shiatsu, which is a Japanese form of physical therapy that applies pressure on different points of the body to achieve therapeutic results. Although Shiatsu is a regulated occupation in Japan, there is no national organization in the United States that sets standards for the training or certification of Shiatsu practitioners. Most states that regulate massage include Shiatsu in the scope of practice for massage therapists.

**Education and training.** There are many different Western and Asian traditions in massage, and individual therapists tend to blend elements from different systems to create their own therapeutic approach. This makes it difficult to establish uniform standards for the occupation.

The AMTA is the only organization which has established national standards for the credentialing of massage therapists. This organization certifies individuals who are trained in the art of *Swedish* massage and its technical derivatives.<sup>10</sup>

---

9. Interview with Elizabeth Reveley, President, Hawaii Massage Therapy Association, November 7, 1986.

10. American Massage Therapy Association, "AMTA Curriculum Approved School Packet," Kingsport, Tenn., June 1, 1986, p. 7.

At the entry-level, AMTA certifies "massage therapists (Ms.Ts)" who have completed 500 hours of academic training in an approved program *or* passed written and practical examinations. At the advanced level, AMTA certifies "registered massage therapists (RMTs)" who have been members of the organization for at least three years *and* passed written and practical examinations. In order to qualify for the RMT credential, applicants must first qualify for the massage therapist credential.<sup>11</sup> In 1985, there were approximately 2000 Ms.Ts and 350 RMTs in the United States.

**Licensing.** Only 13 states currently license massage therapists. The scope of practice for massage varies from state to state, as do licensing requirements and organizational structure.

Some states have independent boards to administer their licensing programs while others have combined boards or place the programs under the department of health. In addition to state-level licensing programs, a number of states also permit counties to regulate the practice of massage.

Some of the states which do not regulate the practice of massage exempt massage therapists from their physical therapy licensing requirements.

**Sunset activity in other states.** In recent years, seven states have sunsetted their licensing programs for massage therapy: Connecticut, Minnesota, Montana, New Mexico, South Carolina, South Dakota, and Wisconsin. In addition, Michigan reports that it has never implemented its licensing program for massage therapists due to defects in the enabling legislation.

---

11. Interview with Elizabeth Reveley, November 7, 1986.

### **Prior Sunset Evaluation**

In 1981, we reported on our first sunset evaluation of Chapter 452.<sup>12</sup> We recommended that Chapter 452 be allowed to expire as scheduled and that the counties be permitted to regulate massage therapists and establishments. We also recommended that certain changes be made in the licensing program should the Legislature decide to continue Chapter 452.

**Potential harm to the public.** We found that the practice of massage posed little risk to the health, safety, or welfare of the public. No personal injury complaints had been filed with the board, and there was only anecdotal evidence to support an industry belief that massage could physically harm consumers. No sanitation complaints had been filed with the Department of Health (DOH), and the inspection of massage establishments was not a departmental priority. If Chapter 452 were sunsetted, DOH would continue to regulate sanitary conditions in massage establishments.

**Control of prostitution.** We found that Chapter 452 did not prevent the use of massage as a front for prostitution. The Honolulu Police Department reported that over a six-year period it had arrested 232 prostitutes and 31 others in connection with massage. These arrests were made in 25 massage establishments, or 63 percent of the massage businesses listed in the telephone directory.

We also found that neither the board nor the Department of Regulatory Agencies, now the Department of Commerce and Consumer Affairs (DCCA), had

---

12. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Massage Therapists and Establishments, Chapter 452, Hawaii Revised Statutes*, Report No. 81-1, Honolulu, January 1981.

actively tried to rid the industry of prostitution or to prevent the use of massage as a cover for prostitution. The board had issued licenses to convicted prostitutes, and only two licenses had been revoked for prostitution in the history of the licensing program. The department seemed reluctant or unable to prosecute cases involving unlicensed activity.

In part, this lack of activity was due to deficiencies in the statutes and problems in the overall disciplinary program. If Chapter 452 were continued, we recommended that the Legislature empower the board to deny or revoke licenses on the basis of a conviction for prostitution and that it establish penalties for unlicensed activity. We also recommended that the department be empowered to enjoin unlicensed activity and pursue other legal actions when such violations occur.

**Licensing program.** We found that there were two areas where the licensing program could be improved. *First*, if the Legislature decided there was a potential for physical injury, it could add a requirement for apprenticeship or other training in order to ensure the entry-level competency of massage therapists. *Second*, DCCA could take steps to make the practical licensing examination more valid and reliable.

**Disciplinary program.** We found that there were serious delays in the processing of consumer complaints and problems with the prosecution of unlicensed activity cases. We recommended that the Legislature consider making improvements in the overall disciplinary program and placing restrictions on advertising by unlicensed persons. We also recommended that the department pursue unlicensed activity cases more diligently.

**Legislative action.** In 1981, the Legislature held hearings to determine whether Chapter 452 should be reenacted or sunsetted.

Massage therapists testified in support of continued regulation. They stated that massage was a legitimate health occupation, that the incompetent administration of massage could harm consumers, and that the licensing program was needed to ensure minimum competency. They also stated that insurance companies might not cover massage therapy services prescribed by a physician if the occupation were deregulated.

Massage therapists opposed county-level regulation of the massage occupation saying it would stigmatize legitimate massage therapists as prostitutes. They felt that state-level regulation of the occupation would acknowledge the legitimate practice of massage and be more efficient. The Honolulu Prosecuting Attorney's office also supported retention of Chapter 452 as a tool to fight prostitution.

The Board of Massage and massage therapists testified that it was necessary to retain the board in order to implement the recommendations contained in our report and to continue upgrading the massage industry. They said DCCA and local police departments did not have the time or expertise to do this.

The Legislature decided to extend the repeal date of the Board of Massage to December 31, 1984. Legislative concerns about the potential of physical injury from the practice of massage and a desire for further study led to the decision to reenact Chapter 452. In 1982, the repeal date for Chapter 452 was extended to December 31, 1987, in a general revision of the sunset review schedule.

### **Nature of Regulation**

**The Board of Massage.** The board is composed of five members who are appointed by the Governor and confirmed by the Senate. Three members must be licensed massage therapists who have at least three years of practical experience in

the field. Two must be public members. The board is required to meet at least two times a year.

The board is empowered to issue licenses to massage therapists, massage establishments, and out-call massage services. It may also issue temporary permits to massage therapist apprentices.

The board has the authority to adopt, amend, and repeal rules. It must adopt rules establishing the qualifications for massage therapist apprentices and for admission to the massage therapist examination.

The board's executive secretary is authorized to determine the sufficiency of an applicant's preliminary qualifications to take the licensing examination. The executive secretary may also issue subpoenas and administer oaths on behalf of the board.

The board is authorized to appoint persons of established reputation and known ability to conduct examinations, inspections, and investigations. In addition, either the board or the department may contract with professional testing services to prepare, administer, and grade licensing examinations.

**Scope of practice.** Section 452-1(2) defines massage as follows:

". . . any method of treatment or therapy of the superficial soft parts of the body, consisting of rubbing, stroking, tapping, pressing, shaking, or kneading with the hands, feet, or elbow, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids. . . ."

Massage therapists may not: (1) state or imply that they have successfully treated or cured any disease, defect, or deformity of the body; (2) prescribe or recommend medications; or (3) administer injection therapy.

It is unlawful for any person to engage in or attempt to engage in the practice of massage *for compensation* without a current massage therapist license or apprentice permit issued by the board.

The law does not prohibit services rendered: (1) in an emergency, (2) in a domestic setting, (3) without compensation, (4) by persons who hold a valid license in the healing arts, or (5) by persons who lawfully engage in the practice of barbering or beauty culture.

**Massage therapist apprentice.** Massage therapist apprentices are issued a permit to practice massage under the direct supervision of a "sponsoring" massage therapist who has been licensed in Hawaii for at least three years.

In order to qualify for an apprentice permit, applicants must complete 30 hours of academic training in anatomy and physiology and 70 hours of academic training in the theory and demonstration of massage. This training must be taken at a school licensed by the Department of Education, the University of Hawaii, or other institutions approved by the board. The board will also accept training in the theory and demonstration of massage if it is taught in a workshop by a board-approved massage therapist who has been licensed for at least three years.

Applicants must also submit an agreement with a sponsoring massage therapist indicating the date training will begin and the number of hours per week that the apprentice will be supervised.

While working, apprentices must wear name tags identifying their status. Clients must be informed when they will be massaged by an apprentice, and they must be provided with the option of receiving their massage from a fully licensed therapist or obtaining a refund. Apprentices may not be sent on hotel or house calls.

**Massage therapist.** Massage therapists are issued a license to practice massage for compensation. They may practice in a licensed massage establishment or for a licensed out-call massage service.

In order to qualify for a massage therapist license, apprentices must complete 420 hours of practical training in a program of at least six months' duration. They must also pass an examination that includes practical demonstrations and written or oral tests. This examination may not be confined to any specific system or method of massage.

The apprenticeship training requirements may be waived if an applicant was previously licensed in Hawaii, another state, or a foreign country for at least one year, and has completed equivalent training.

If a massage therapist license has lapsed for more than one year, the therapist must retake the board's examination in order to qualify for restoration of the license.

**Massage establishment and out-call massage service.** Massage establishments are premises occupied and used for the purpose of practicing massage. Out-call massage services are businesses that practice massage at a location designated by the customer. Separate licenses are required for massage establishments and out-call massage services.

In order to qualify for a massage establishment or out-call massage service license, applicants must register the names and addresses of all partners, officers, proprietors, and directors with the board, and designate a "principal" massage therapist.

The principal massage therapist is responsible for the direct management of the business; the filing of apprentice training reports; all lascivious conduct,

lewdness, and sexual acts committed by employees; and the conduct of all persons connected with an establishment while they are on the premises. The principal massage therapist, or a temporary replacement, must be present at an establishment at all times.

Licensed massage establishments and out-call massage services may not employ unlicensed persons to massage or assist in massage practice, unless these persons hold an apprentice permit. They must ensure that massage therapist apprentices are properly trained and supervised, and that a maximum ratio of five apprentices to one sponsor is not exceeded. Massage establishments and out-call massage services are also responsible for any lascivious conduct, lewdness, and sexual acts committed by employees.

In order to qualify for a massage establishment license, applicants must present evidence that the establishment has a sanitation clearance from DOH. If a massage establishment is located in a residence, its premises must be set apart and not used for any other purpose.

The board has adopted several rules that are specifically designed to reduce the possibility that massage establishments will be used for prostitution. These rules prohibit the use of locks on the doors of massage rooms, require doors to be kept fully open during opposite sex massage, and require employee rest quarters to be clearly identified and separated from massage rooms.

**Sanitary rule.** The DOH is responsible for prescribing sanitary rules for the massage occupation with particular reference to the precautions necessary to prevent communicable diseases. All licensees are required to conform with these rules in their practice of massage.

**Disciplinary program.** The board may revoke, suspend, refuse to grant, and refuse to renew licenses for a variety of practice-related and administrative reasons. It may also fine license holders for violating the statutes and rules. Each violation is subject to a minimum \$100 fine. The maximum fine is \$1000 per violation.

The board may also discipline license holders and others for unlicensed activity. Participating in unlicensed activity can result in a \$500 fine or six months in jail or both. Authorizing or permitting unlicensed activity to take place can result in a \$1000 fine or one year in jail or both.

The department is authorized to apply to the courts for an injunction to restrain violations of the statutes and rules.

**Advertising restrictions.** It is unlawful for any person to advertise massage without a current license. It is also unlawful for licensed massage therapists to advertise specific forms of massage unless they are trained in the technique being advertised.

All print and broadcast advertisements must include the massage license number. Publishers and producers are required to verify this information, and they may refuse to print or broadcast any advertisements that do not meet these conditions.

## Chapter 3

### EVALUATION OF THE REGULATION OF MASSAGE

This chapter updates our 1981 sunset review findings on the regulation of massage. It includes our assessment of the regulatory operations of the Board of Massage and our recommendations on continued regulation of the occupation.

#### Current Findings

We find as follows:

1. There is a slight potential for harm in the practice of massage by individuals who are not familiar with the functioning of the human body.

2. Recent amendments to the licensing law appear to have reduced the association between massage and prostitution. If the Legislature continues to find that it is in the public interest to prevent massage from being used for prostitution, continued regulation would be warranted.

3. Some of the licensing standards are vague and inconsistent and have resulted in inequitable treatment of applicants. It is also not clear whether the interests of apprentices are protected adequately.

4. The practical examination is subjective, and examiners have not always followed proper procedures in its administration.

5. There have been numerous situations and actions which appear to be in violation of the State Ethics Code by industry board members.

## Need for Regulation

Three major arguments have been used to support continued regulation of the massage occupation: the incompetent application of massage can injure consumers, the practice of massage can transmit communicable diseases, and the association between massage and prostitution can be reduced by requiring massage therapists and businesses to be licensed. While there is not much hard evidence to support the first two arguments, recent experience indicates that the Legislature's objective of using regulation to control prostitution has met with some success.

**Potential for personal injury.** In our 1981 report, we found that no complaints alleging physical injury from the practice of massage had been filed during the five preceding years. However, two anecdotal cases of physical injury were reported relating to a broken vertebra and aggravated bursitis.

Our findings in 1986 are essentially the same. Only one complaint alleging physical injury was filed between July 1, 1981 and June 30, 1986. This case was investigated and closed when it was determined that the complaint related to a previous medical condition and there was no violation. There continue to be anecdotal reports of minor physical injuries from the practice of massage.

While the data do not support the contention that massage can lead to physical injury, those who are knowledgeable about the occupation believe that the incompetent use of massage on clients who are pregnant or physically disabled can lead to injury. They also believe that the improper application of pressure on certain parts of the body can cause harm. They stress that licensing is needed to ensure that massage therapists are knowledgeable about human anatomy and physiology, and aware that they should not massage patients with certain medical conditions such as skin irritations, acute inflammatory diseases, and tumors.

We acknowledge that there may be some validity in this argument. Massage is gaining recognition as an alternative health practice, and some massage therapists work on patients who are referred by independent medical practitioners such as physicians or chiropractors. Therefore, in order to ensure the safe and effective application of massage, it would be important for these massage therapists to know how the human body works and to recognize the contraindications to massage treatment.

**Potential for transmission of communicable diseases.** There is a slight danger that communicable diseases may be transmitted through the practice of massage. However, this danger is regulated by the Department of Health (DOH) rather than the board.

The DOH controls the risk of communicable disease transmission by enforcing rules which set sanitary standards for the practice of massage. A new set of rules specifically relating to massage establishments and out-call massage services was promulgated by the department in December 1981. The department routinely inspects new massage establishments for compliance with these rules, and responds to consumer complaints about sanitary conditions in massage establishments.

In 1981, DOH reported that it had received no complaints relating to massage during the preceding 30 years. In 1986, DOH reported that a few complaints had been filed regarding no handwashing sinks in massage areas and no clean sheets on massage tables.

**Control of prostitution.** The massage occupation is in a unique position because of the historical association between massage and prostitution. In 1981, we reported that this association was flourishing in Honolulu in the late 1970s. The

Honolulu Police Department (HPD) had made arrests for prostitution in 63 percent of the massage businesses listed in the telephone directory.

We recommended that the Legislature consider two alternative courses of action against prostitution in the massage industry. *First*, it could delegate the regulatory function to the counties. This would permit local police departments to exert closer control over the occupation. *Second*, it could continue state-level regulation with modifications to strengthen the licensing program.

The Legislature decided to continue state-level regulation and modify the licensing program. Between 1981 and 1986, the statutes were amended to: (1) establish an apprenticeship training requirement; (2) authorize the board to discipline licensees who are convicted of an offense involving moral turpitude; (3) improve the processing of consumer complaints; (4) prohibit advertising by unlicensed persons; and (5) strengthen departmental powers to pursue unlicensed activity.

These amendments appear to have reduced the use of massage as a front for prostitution. In 1986, HPD reported that most prostitutes had shifted their activity to other fronts such as escort and dating services. Industry representatives also reported that the use of massage as a front for prostitution had diminished. Since 1981, the board has revoked the license of one massage therapist who was convicted for prostitution (along with her massage establishment license). The Regulated Industries Complaints Office (RICO) has also taken numerous actions to discipline individuals and massage businesses for unlicensed activity.

We conclude that if the Legislature continues to find that it is in the public interest to prevent the use of massage for prostitution, then continued regulation is

desirable. However, additional improvements should be made to make the prevention program more effective.

*Revise definition of out-call massage service to cover all businesses.* The statutes define an out-call massage service as any business which engages in the practice of massage as its "*primary function*" at a location designated by the consumer. This definition permits some businesses to evade licensing by calling themselves "escort and massage" services. There is no apparent reason why these businesses should be exempted from the licensing requirements imposed on other massage services.

The ambiguity of the term "primary function" makes it difficult to enforce the licensing law because unscrupulous operators faced with an investigation of their operations can claim that their "primary function" is not massage. In such cases, it would be a very time-consuming process for RICO to attempt to prove otherwise.

These problems result in inequitable licensing decisions and unnecessarily increase the cost of regulation. In addition, they encourage the association between massage and prostitution since some escort and dating services are now fronts for the illegal activity.

If the Legislature wants to prevent the use of the massage occupation for prostitution, it should amend the statutes to require *all* businesses which provide *any* out-call massage services to be licensed.

*Exempt individual practitioners.* The out-call massage service licensing requirement is imposed on individual practitioners as well as businesses employing more than one massage therapist.

It is not necessary for individual practitioners to have a separate out-call license. As licensed massage therapists, they are qualified to practice in any

setting. The imposition of an out-call licensing requirement on these practitioners duplicates the massage therapist license and does not serve any public interest.

The statutes should be amended to exempt licensed massage therapists from the requirement for an out-call massage service license unless they operate a business employing other persons. This amendment will remove overly restrictive provisions relating to individual practitioners.

*Improve review of yellow page advertisements.* In 1985, the Oahu yellow pages directory published several advertisements for unlicensed out-call massage services. Instead of referring this matter to RICO for investigation, the executive secretary contacted the advertisers directly and asked them to apply for an out-call license. All the violators were eventually licensed.

It would be more appropriate and effective for the executive secretary to refer apparent licensing violations to RICO. In 1982, the board delegated the complaints resolution function to RICO, and it is RICO's responsibility to enforce the statutes on unlicensed activity. In addition, when licensing violations are referred to RICO, the agency can develop a "track record" to use in future complaint cases.

The statutes require the inclusion of a massage license number in all advertisements. Since this provision is designed to curb illegal as well as unlicensed activity, it would be appropriate for RICO to conduct an annual review of all yellow page advertisements in order to identify and discipline violators. This procedure would be relatively inexpensive to implement, and it would be paid for from the compliance resolution fund which includes assessments paid by licensed massage therapists, establishments, and out-call massage services.

*Improve reporting of prostitution convictions.* In order to control prostitution in the massage industry, the department must somehow obtain information on convictions for prostitution in the various counties. It currently relies on informal communication with police departments, consumer complaints, or the honesty of applicants in revealing their criminal history. These channels may be inadequate.

In order to strengthen the disciplinary program, RICO should consider establishing a closer working relationship with the various police departments. It should also explore the possibility of developing cooperative agreements for the reporting of prostitution convictions by the Hawaii Criminal Justice Data Center or the courts.

### **Licensing Program**

In 1981, the statutes were amended to require applicants to complete a six-month apprenticeship in order to qualify for a license. The board was also given the responsibility to establish qualifications for massage therapist apprentices. The board has adopted rules requiring applicants to complete 100 hours of academic training in order to qualify for a massage therapist apprentice permit and 420 hours of practical training in order to take the licensing examination.

In its deliberations, the board has been faced with the dilemma of setting licensing standards for an occupation that is full of variations. Approximately two dozen systems or methods of massage are practiced in the United States today. Each system has its own set of beliefs about what movements should be used under what conditions in order to achieve therapeutic results. In addition, individual

massage therapists within each system vary their approach to massage based upon the needs of their clients.

The variations in practice make massage more of an "art" than a "science." There is no scientific evidence that any one approach is superior to any other in achieving therapeutic results. Individual massage therapists tend to experiment with different approaches and incorporate movements that seem to work well with particular clients. This creative or artistic involvement helps to ensure results when dealing with a wide range of customers. However, it cannot be quantified or measured.

The lack of consensus about what constitutes "appropriate" massage practice across and within the various systems makes it difficult to set standards for the practical application of massage. Therefore, in establishing standards it is important to concentrate on the level of knowledge which is necessary for the safe application of massage regardless of what method or methods are employed. These standards should focus on knowledge of human anatomy and physiology and sanitary procedures.

In the following sections, we discuss the extent to which the board's current and proposed licensing standards relate to the basic knowledge required to safely practice *any* kind of massage. We recommend statutory changes to codify board rules that relate to general knowledge and to delete requirements that serve no useful purpose. We also recommend changes to clarify licensing requirements and protect apprentices. And we recommend some changes in the processing of license applications to ensure that applicants are treated fairly and equitably.

**Academic training.** The board has been able to agree upon the level of knowledge required for the entry-level practice of massage. It has issued rules

requiring applicants to complete academic (classroom) training on anatomy, physiology, and the theory and demonstration of massage in order to qualify for an apprentice permit.

These areas are fundamental to the safe and competent practice of massage regardless of what system is used. In addition, they do not limit theoretical training to any one system or method of massage.

The academic requirements should be incorporated into the statutes, which should be amended to require applicants to complete training in anatomy, physiology, and the theory and demonstration of massage in order to qualify for an apprentice permit. The statutes should also specify that this training may not be confined to any one system or method of massage.

*Unclear training guidelines.* The rules require applicants to complete 30 hours of training in anatomy and physiology and 70 hours of training in the theory and demonstration of massage. The training in anatomy and physiology must be taken from one of the following institutions: (1) a school licensed by the Department of Education, (2) the University of Hawaii, or (3) other institutions approved by the board. The theoretical training may be taken from these institutions or from a workshop taught by a board-approved massage therapist.

A definition of "other institutions" and what kinds of training qualify under this provision is not in the rules or application materials. The board and its executive secretary have differed in their interpretation of this section of the rules, and applicants have not been routinely informed of their options. This has led to inconsistent and inequitable treatment of applicants.

By policy, the board has agreed that courses approved by the American Massage Therapy Association (AMTA) and the Rolf Institute of Structural

Integration meet its definition of "other institution."<sup>1</sup> However, this information has not been routinely conveyed to applicants. The June 1986 license application instructions mention AMTA but not the Rolf Institute. The executive secretary's response to inquiries from applicants has also failed to mention the Rolf Institute.

In addition to the two board-approved programs, the executive secretary has approved academic training taken from mainland universities and massage schools that are not approved by a department of education, AMTA, or the Rolf Institute. While the approvals may be reasonable, routine correspondence with other applicants makes no mention of these options. Instead, it says that applicants *must* complete their academic training in a school accredited by a department of education or AMTA. This means that some applicants have been misinformed about their options.

In order to ensure fair and equitable treatment of all applicants, the board should clarify its policy relating to "other institutions." It would be reasonable to state on the application form that training received from mainland universities and certain massage schools that are not approved by a department of education, AMTA, or the Rolf Institute may be approved on a case-by-case basis. In addition, the department should revise its application instructions and routine correspondence to ensure that applicants receive complete information about their training options.

**Practical training.** It appears that the apprenticeship training requirement has helped to upgrade the massage industry without unreasonably restricting entry

---

1. The Rolf Institute operates a national certification program for individuals who are trained to use a system of connective tissue massage developed by Dr. Ira P. Rolf.

into the occupation. Apprentices have done well on the licensing examination, and the number of licensed massage therapists has increased significantly in the past several years.

There are two areas in which changes need to be made to ensure that applicants are treated fairly and equitably, and that apprentices' interests are protected.

*Waiver of practical training requirement.* The rules permit a waiver of the apprenticeship training requirement if an applicant has been licensed in Hawaii, another state, or a foreign country for at least one year, *and* has completed equivalent training.

The executive secretary has waived the practical training requirement for health professionals who do not meet these two criteria. For example, all or part of the training requirement was waived for a chiropractor, a nurse, and a respiratory therapist who were *not* licensed as massage therapists for at least one year and who had *not* received 420 hours of practical training from a licensed massage therapist.

The rules do not authorize a waiver of the practical training requirement for health professionals, and the board has not authorized the executive secretary to waive this training requirement. In addition, the department does not routinely inform applicants that the practical training requirement can be waived for health professionals. As a result, it appears that some applicants are receiving preferential treatment.

In order to ensure fair and equitable treatment of all applicants, the executive secretary should refrain from waiving the practical training requirement for health professionals unless a clear policy authorizing such waivers is established by the board and communicated to all applicants.

*Guidelines for sponsorship arrangements.* There is confusion over the number of apprentices a massage therapist may sponsor. The rules, the board's policy, and the department's official forms conflict on this matter.

The rules define "sponsorship" as the willingness of a massage therapist to directly supervise no more than *three* apprentices. They also state that the maximum ratio of apprentices for each massage therapist in any establishment shall be *five* to one. The board has interpreted the latter rule to mean that a licensed massage therapist can sponsor up to five apprentices.

The current Department of Commerce and Consumer Affairs (DCCA) apprentice registration form states that a sponsoring massage therapist may supervise up to *ten* apprentices. This ratio is drawn from a *proposed* board rule which has not yet gone to public hearing. Some massage therapists have expressed confusion over the ratio which conflicts with current rules.

There is also a question as to the appropriateness of the new ratio proposed by the board. In 1984, the board voted to amend its rules to permit massage therapists to sponsor *ten* apprentices. This action was taken because an applicant complained that she was unable to find a qualified sponsor. In transmitting the proposed rule for review by the Attorney General's office, the department reported that sponsors could train apprentices on different days of the week due to their part-time availability. Consequently, there would be no problem with this requirement.

The basic purpose of practical training is to enable apprentices to benefit from a close working relationship with an experienced practitioner. By permitting a massage therapist to sponsor up to ten apprentices at any given time, this close working relationship cannot be established.

Furthermore, in order to gain experience in the application of massage each apprentice needs to have an adequate supply of customers. It is conceivable that a massage therapist who sponsors ten apprentices will not be able to provide them all with a sufficient number of customers. This would reduce the amount of training that takes place.

The board should clarify its policy with regard to sponsorship arrangements. In doing so, it should consider whether it is in the best interests of apprentices to increase the number of apprentices per sponsor to ten. The department should also amend the registration form to conform with current rules.

**Practical examination.** Chapter 452, Hawaii Revised Statutes, requires applicants for a massage therapist license to pass a practical examination. The board's rules specify that this examination shall include a one-part demonstration of knowledge and ability in "practical massage." A score of 75 percent must be obtained to pass the examination.

In 1981, we found that the practical examination was of questionable value in determining competency and recommended that the board revise the examination to make it more valid and reliable. Although the board and the department have made some improvements, the practical examination is still seriously deficient.

In July 1986, DCCA recommended that the board eliminate the practical examination in favor of a strengthened written examination. This recommendation was based on departmental findings that the practical examination lacked objectivity, suffered from a chronic shortage of examiners, and presented a risk for litigation.

The department's testing consultant reported that the written examination could be revised to test for all aspects of massage practice except the "application

of pressure." He also noted that it is difficult to grade fairly the application of pressure during a practical demonstration, because pressure is a subjective measure relating to consumer satisfaction.

The board was reluctant to eliminate the practical examination because massage is a "hands-on" occupation. Some board members expressed concern that the "aspect of touch" could not be evaluated through a written examination. Others were concerned that the improper application of pressure could harm consumers. One board member felt that apprentices might complete their training and pass a written examination without really becoming proficient in the application of massage.

The department noted that the "aspect of touch" is a subjective and unmeasurable concept, and there were no consumer complaints relating to the application of pressure. One board member reported that the quality of applicants had vastly improved since the apprenticeship program was established in 1982. The consultant observed that the practical examination did not appear to be necessary since nearly all applicants passed the examination on the first attempt, and the handful of applicants who did not pass on the first attempt passed on the second.

The board finally agreed to recommend that the Legislature eliminate the requirement for a practical examination, but only if a written examination of "clinical" skills was established in its place. Under this approach, applicants will be required to solve clinical problems relating to the application of massage. However, they will no longer have to give a "hands-on" demonstration of their massage technique.

The board has also decided to modify the format of the practical examination pending implementation of the new written examination in June 1987. The modified

testing format will require applicants to administer one 15-minute massage instead of three 8-minute massages. Under the new approach, each applicant will be graded by three examiners, including one examiner who will receive the massage and two examiners who will observe the procedure.

Our review indicates that the decision to eliminate the practical examination was reasonable and prudent. However, the decision to *modify* the practical examination pending implementation of the new written examination will aggravate problems relating to the lack of objectivity, anonymity, and qualified examiners that were present under the old system.

*Lack of objectivity.* The former practical examination required applicants to administer eight-minute massages to three different examiners. Applicants were graded on such items as their ability to establish a relationship with the examiner, to use "appropriate" strokes and pressures, and to apply the strokes and pressures in an "appropriate" direction. These grading criteria were subjective.

A review of grading sheets for examinations administered between December 1985 and September 1986 reveals that examiners used vague and subjective reasons to justify giving unsatisfactory grades to applicants. These included comments such as "his breath was not clean," "inconfident, maybe just shy," "no English," and "all no good lack of practice."

A review of the September 1986 practical examination reveals that approximately *15 percent* of the candidates received grades from two examiners that varied by 20 or more points. Eight of the 43 candidates had a 25-point spread or greater. This means that at least one examiner gave a perfect score of 100 points, while another gave a borderline passing score of 75 points or lower.

In response to complaints about high/low grading, the board decided to modify the practical examination by switching from a point-based scoring system to a pass or fail system. However, the new system (which is scheduled for implementation in 1987) will only obscure the subjectivity of grading. It will not create a more valid examination.

The board also decided to revise the grading sheet for the practical examination. It assigned the task of developing more objective grading criteria to two industry board members. However, it does not appear likely that better criteria can be developed.

One reason is simply the nature of the occupation itself. Massage therapists tend to blend elements from many different systems or methods of massage to achieve therapeutic results. In the absence of a universally agreed upon approach to the administration of massage, objective grading criteria cannot be developed.

Furthermore, the only real indicator of a "successful" massage is consumer satisfaction which also cannot be measured objectively. An examiner's requirements for satisfaction will vary over time, and no two examiners will have the same set of requirements. This makes it difficult to develop a fair and equitable grading system.

*Lack of anonymity.* Under the old system, the department instructed examiners to maintain complete anonymity in testing and provided them with blindfolds to wear during massage demonstrations. Nevertheless, we observed numerous instances where examiners asked candidates about their background or inadvertently ran into them without a blindfold. In addition, one examiner consistently removed his blindfold to "peek" at the candidates as they left the room and before grading their work.

Anonymity in testing is necessary to maintain objectivity and avoid complaints about discrimination. However, the nature of massage practice makes it difficult to construct a "blind" testing situation. Even under the best of circumstances, where the department carefully briefed examiners on proper procedures, provided them with blindfolds, and supervised the testing site, anonymity could not be ensured. Under the new modified testing format, anonymity will be completely impossible.

*Insufficient supply of trained examiners.* The board has always been faced with a chronic undersupply of trained examiners. In June 1986, there were only three examiners to administer the practical examination to 41 candidates. This created a situation where each of the three examiners spent nearly eight hours on the massage table without a break. It is inconceivable that they were able to fairly evaluate candidates' performances under such circumstances.

Only eight individuals served as board-appointed examiners between September 1985 and September 1986, despite efforts to increase the pool of trained examiners. Two factors impeded these efforts. *First*, potential examiners were screened by a board member who used subjective criteria for recruiting, including asking personal questions of applicants and requiring them to administer a massage. *Second*, the board required applicants to have been licensed for three years in order to become an examiner. The small pool of applicants considered for appointment by the board's recruiter coupled with the experience requirement precluded the appointment of a sufficient number of examiners.

Since then, the board has agreed to let the executive secretary solicit nominations for examiners from the community and to lower the licensing requirement from three to two years. In October, it appointed eight new examiners to administer the modified practical examination. However, the newly appointed

examiners have not been adequately trained to be examiners. There was only one short night meeting for all of the examiners. The absence of such training could lead to serious problems in the grading of applicants.

We conclude that it is unlikely that a practical examination can be devised that will ensure fair and equitable treatment of candidates for a massage therapist license. Furthermore, the apprenticeship training requirement is adequate, and the written examination can be strengthened to include practical considerations.

We believe strongly that the practical examination should be dropped entirely pending the implementation of a revised written examination. There is no indication that this action will endanger public health, safety, or welfare.

*Written examination.* In 1986, the Legislature amended the statutes to permit the board or the department to contract with professional testing services to prepare, administer, and grade the licensing examination. The board subsequently contracted with a private testing firm to handle the written examination. Under current rules, the written examination consists of three parts which test knowledge of massage laws, anatomy and physiology, and the theory of massage. A score of 75 percent must be obtained on each part in order to pass the examination.

Upon advice from the testing consultant, the board has drafted new rules which will permit it to administer a one-part written examination. Under this plan, the testing consultant will be developing a new written examination for implementation in 1987. It would be cost-efficient for the new "clinical" test questions to be incorporated into the revised examination. However, there is no certainty as to when the board's new rules will be finalized.

In order to facilitate the board's plan, the statutes should be amended to specify that the written examination will consist of a one-part examination.

**Unnecessary paperwork requirements.** The board currently requires the principal massage therapist to sign all apprenticeship training documents along with the sponsoring massage therapist. These signatures must each be notarized. Some massage therapists have pointed out that the notarization process is time-consuming and unnecessary. Since most other boards and commissions accept the signature as proof of validity, the board should consider eliminating this requirement.

### **Possible Violations of State Ethics Code**

Chapter 84, HRS, prescribes standards of conduct for all public officers and employees, including board members. Three of these standards relate to: (1) confidential information; (2) fair treatment; and (3) conflict of interest.

The confidential information standard states that board members may not disclose information which is not available to the public, and they may not use such information for personal gain or anyone's benefit. The fair treatment standard states that board members may not use their official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others. And the conflict of interest standard states that board members may not take any official action directly affecting a business or undertaking in which they have a substantial financial interest.

In 1983, the State Ethics Commission issued an opinion (Advisory Opinion No. 519) concerning the applicability of these standards to board members who were certified by their board to offer private instruction to candidates for licensure, or who operated board-approved schools. The commission determined that:

- . the confidential information and fair treatment standards would prohibit the board members from participating in formulating licensing examinations or having access to these examinations;
- . the conflict of interest standard would prohibit the board members from participating in policy decisions affecting the qualifications of instructors or schools, if the board members privately instructed candidates for board licensure or had their own schools offering such instruction; and
- . the conflict of interest standard would also prohibit the board members from participating in policy decisions affecting education and training requirements for licensure candidates.

**Questionable activities.** In recent years, industry board members appear to have violated these ethical standards. One board member may have violated the confidential information and fair treatment standards by sponsoring an apprentice while serving as an examiner on the practical examination. This board member subsequently had the former apprentice appointed as an examiner, although the apprentice did not meet a three-year experience requirement set by the board.

Another board member filed an unlicensed activity complaint with the board and joined in a consensus to forward the complaint to RICO for investigation. Shortly thereafter, the person named in the complaint applied for an apprentice permit to train under the board member. The board member then voted to advise RICO that the respondent's activity (as noted in the complaint) constituted the practice of massage but agreed to drop the complaint.

The board member's participation in decisionmaking on the disposition of the member's own complaint could have jeopardized prosecution of the case if it had gone to administrative hearing.

This board member owns a massage school, teaches board-approved academic training workshops, and sponsors apprentices. The member has participated in formulating policy relating to the qualifications of instructors, the number of apprentices who may be sponsored by a licensed massage therapist, and the licensing examination. The board member's participation in these issues may have violated all three standards of conduct.

A review of board activities reveals that between January 1984 and September 1986 this board member participated in discussions and took the following official actions:

- . Voted to require all instructors who teach board-approved academic training programs to be licensed massage therapists.
- . Voted to amend the rules to permit sponsors to supervise *ten* rather than five apprentices.
- . Voted to appoint examiners for the practical examination.
- . Voted to have the other industry board members review test questions on the written examination using the member's own written recommendations.
- . Voted to revise the practical examination according to the member's own specific guidelines.

The latter three actions were taken after the executive secretary informed the board member about the ethics commission's opinion and after he advised the member to abstain from decisionmaking relating to formulating policy for the licensing examination.

In October, the department's licensing administrator again advised the board member to refrain from participating or voting on issues relating to the licensing

examination. Despite this warning, at the October board meeting the board member discussed the practical examination and voted to revise the examination format and appoint new examiners.

In November, the board decided to enter into an executive session to discuss the practical examination, and the board member was asked to leave the room due to the conflict of interest. This new procedure indicates that the board is more willing to tackle the ethical problems associated with the board member's professional activities. However, it is not clear how the board will handle the problem of the board member's participation in other issues.

*State Ethics Commission's opinion.* In September, the licensing division asked the ethics commission for advice on the extent to which the board member could participate in issues relating to the formulation of educational and training requirements for licensure. The ethics commission was informed that the board member owns a massage school.

The commission's executive director issued a staff opinion which stated that the conflict of interest standard would *not* prohibit the board member from participating in policy decisions relating to educational or training standards for schools, because these matters would not affect the member's school more than any other school. It stated that the board member would only be prohibited from taking actions that "directly and specifically" affect the member's school, such as the issuance of some kind of permit by the board. The staff opinion differs from the formal advisory opinion issued by the ethics commission, and it is our understanding that it is being reviewed by the commission.

*Need for clarification.* The licensing division's request for advice from the ethics commission was limited to the issue of how the board member's ownership of

a massage school would affect the member's participation on issues relating to education and training standards. It did not explain that the board member privately instructs candidates for licensure and sponsors apprentices. Since the board sets standards for the qualifications of instructors and sponsors, these professional activities have a bearing on the case.

Furthermore, the staff opinion was limited to a consideration of how the conflict of interest standard would apply to the board member's activities. It did not discuss the applicability of the confidential information and fair treatment standards.

The massage board needs guidance on how to handle this case. Because the commission was not provided with complete information on the board member's activities and because the staff opinion was limited in scope, the commission should be asked to review the full facts in this case and issue a formal opinion clarifying how the confidential information, fair treatment, and conflict of interest standards apply to the board member's activities.

In addition, the board member should be instructed to refrain from participating in policy decisions relating to educational and training requirements pending the issuance of a formal opinion on the case by the ethics commission.

**Need to amend statutes to prohibit appointment of board members whose participation may be limited by the ethics code.** Most of the board's deliberations focus on setting standards for academic training, practical training, and licensing examinations. Problems such as those described above affect the integrity of board proceedings because they give the appearance of unethical behavior. The board's ability to deliberate on substantive policy issues is also diminished when a board

member must abstain from participation and the expertise of all board members is not brought to bear on the development of policy.

In September 1986, one industry board member announced the intention to resign from the board. If that member resigns before a new member is appointed, the board will have only *three* members who can participate fully in the licensing program. Should any of these members be subject to an ethical restriction on participation, no board action can be taken.

In order to strengthen the licensing program by ensuring that all board members can fully participate in every issue under discussion, the Legislature should amend Chapter 452 to prohibit the appointment of board members who have any interest in the training of candidates for licensure.

### *Recommendations*

*We recommend as follows:*

1. *Chapter 452, Hawaii Revised Statutes, be reenacted. In reenacting the statute, the Legislature should consider making the following amendments:*

- . Require all businesses that provide any out-call massage services to be licensed.*
- . Exempt licensed massage therapists from the requirement for an out-call massage service license unless they operate a business employing other persons.*
- . Require applicants to complete academic training in anatomy, physiology, and the theory and demonstration of massage, and specify that this training may not be confined to any one system or method of massage.*
- . Eliminate the requirement for a practical examination.*

- . *Specify that the written examination will consist of a one-part examination.*
- . *Prohibit the appointment of board members who have any interests in the training of candidates for licensure.*
- 2. *The Department of Commerce and Consumer Affairs should take the following actions:*
  - . *Refer all unlicensed activity cases to the Regulated Industries Complaints Office for processing.*
  - . *Require the Regulated Industries Complaints Office to conduct an annual review of advertisements relating to massage in the yellow pages directory in order to identify and discipline violators.*
  - . *Develop ways to improve the collection of information relating to convictions for prostitution.*
  - . *Revise application instructions and routine correspondence to ensure that all applicants receive complete and consistent information about their academic training options.*
  - . *Refrain from waiving the practical training requirement for individuals who do not meet current provisions in the rules.*
  - . *Amend the registration form to conform with current rules regarding sponsorship of apprentices.*
  - . *Instruct the board member who trains candidates for licensure to refrain from participating in any issues relating to education and training and the licensing examination, and request the State Ethics Commission to issue a formal advisory opinion on the applicability of the State Ethics Code to the board member's activities.*

3. *The Board of Massage should take the following actions:*
- . *Clarify and expand its policy relating to the approval of "other" academic training programs that meet licensing standards.*
  - . *Clarify its policy relating to the number of apprentices a massage therapist may sponsor.*
  - . *Drop the practical examination entirely pending the implementation of the new written examination.*
  - . *Eliminate the notarization requirement for apprenticeship training documents.*
  - . *Prohibit fellow board members with conflicts of interest from participating in decisions relating to education and training and the licensing examination.*

---

**APPENDICES**

---

## APPENDIX A

### COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 15, 1986, to the Board of Massage and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3. Included in the board's response are separate comments which the chairperson wanted to have made a matter of record. The board notes that other members of the board may not concur with all aspects of the separate comments.

The board agrees that applicants should be required to complete academic training, that the practical examination and the notarization requirement should be dropped, and that the policy on sponsoring apprentices should be clarified. While it agrees that all businesses providing out-call massage services should be licensed, it is concerned that exempting licensed massage therapists who do not employ other persons from this requirement might result in an increase in prostitution. We do not believe that a second license is necessary since individual massage therapists dealing directly with the public must already conform with board rules relating to conduct.

Concerning our recommendation that the board clarify its policy relating to the approval of "other" academic training programs, the board states that proposed amendments to the rules will do so. However, our review indicates that the proposed rules do not amend this provision.

The board does not address directly our recommendation to prohibit board members with conflicts of interest from participating in decisions relating to education and training and the licensing examination. However, the board states that it will do its utmost to enforce the ethics code utilizing guidelines recently issued by the State Ethics Commission. As to our recommendation to prohibit the appointment of board members who have any interests in the training of candidates for licensure, the board states that this is an issue for the Legislature to evaluate. We agree.

The board disagrees with our recommendations to mandate a one-part written examination and to drop the practical examination pending implementation of the new written examination.

In her comments separate from those of the board, the chairperson indicates that she wanted to point out "misleading and inaccurate statements" in our report. We do not agree with her comments.

The Department of Commerce and Consumer Affairs agrees with most of our recommendations to improve licensing operations and enforcement. However, the department states that our report did not specify the ways through which it could improve the collection of information relating to convictions for prostitution. Our report does suggest that the department should explore the possibility of developing agreements for the reporting of convictions by the Hawaii Criminal Justice Data Center or the courts.

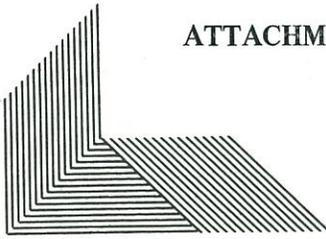
Concerning our recommendation that the department refrain from waiving the practical training requirement for individuals who do not meet current provisions in the rules, the department states that by board approval, authority was given for such actions and that proposed rule changes will reflect this policy. However, board

records do not show such authorization, and the proposed rules continue to restrict waivers to only those persons who have completed an equivalent apprenticeship training program.

In responding to our recommendation relating to the handling of conflicts of interest, the department states that it has on numerous occasions advised a board member about concerns in this area. The department believes that guidelines recently issued by the State Ethics Commission will lead to an understanding of the issues by all parties.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR  
STATE OF HAWAII  
465 S. KING STREET, RM. 500  
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA  
AUDITOR

December 15, 1986

*COPY*

Ms. Eve Clute, Chairperson  
Board of Massage  
Department of Commerce and Consumer Affairs  
State of Hawaii  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Ms. Clute:

Enclosed are six preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Report, Massage, Chapter 452, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of massage. If you have any comments on our recommendations, we would appreciate receiving them by January 14, 1987. Any comments we receive 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, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. 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

ATTACHMENT 2



John Waihee  
GOVERNOR

Robert A. Alm  
DIRECTOR

NOE NOE TOM  
LICENSING ADMINISTRATOR

BOARD OF MASSAGE

STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

January 13, 1987

RECEIVED

JAN 14 4 17 PM '87

OFFICE OF THE AUDITOR  
STATE OF HAWAII

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

Dear Mr. Tanimura:

Thank you for the opportunity to comment on the Sunset Evaluation Report on Massage. We commend your office for a thorough report.

While the Board of Massage does not necessarily concur with all the opinions in your report, we do recognize that there is room for improvement in the laws, rules, and board activities. The Board offers the following comments to the recommendations made to the Legislature to amend Chapter 452, HRS, and to the Board as presented at the end of your report.

"1. Chapter 452, Hawaii Revised Statutes, be reenacted. In reenacting the statute, the Legislature should consider making the following amendments:

- Require all businesses that provide any out-call massage services to be licensed."

The Board agrees with this recommendation and to a proposed amendment to section 452-1(6), HRS to delete the reference to "the primary function of."

- "Exempt licensed massage therapists from the requirement for an out-call massage service license unless they operate a business employing other massage therapists."

We have no basic opposition to this recommendation, but the following should be considered before the law is changed. Exempting a massage therapist from the requirement for an out-call service license may result in an increase in prostitution since there will be no control over who deals directly with public. As your report indicated on page 24, the statutory amendments made during 1981 through 1986 appears to have reduced the use of massage as a front for prostitution. Deleting this requirement may mitigate the enforcement powers and open the door to activities we have strived to eliminate.

- . "Require applicants to complete academic training in anatomy, physiology, and the theory and demonstration of massage, and specify that this training may not be confined to any one system or method of massage."

The Board agrees with this recommendation.

- . "Eliminate the requirement for a practical examination."

The Board at its meeting on September 3, 1986 voted unanimously to delete the requirement for a practical demonstration examination from the statute. Subsequently an administrative bill has been proposed by the Board to be submitted during the 1987 Legislative Session.

- . "Specify that the written examination will consist of a one-part examination."

The Board disagrees with this recommendation.

The Board feels that the statute regarding examination be general in nature. The Board can prescribe by rules the format and contents of the examinations. Since the format for examinations are subject to change it would be an unnecessary burden on the Legislature to consider such non-substantive amendments which could easily be addressed through rule changes. While you indicate amending the law would facilitate the board's plan, the impact it will have in future years may prove more troublesome.

- . "Prohibit the appointment of Board members who have any interests in the training of candidate for licensure."

The Board believes this is an issue for the Legislature to evaluate.

- "3. The Board of Massage should take the following actions:

- . Clarify and expand its policy relating to the approval of "other" academic training program that meet licensing standards."

We agree with the above recommendation. The Board has already proposed amendments to the board rules to clarify its out-of-state academic training program. The proposed rules have been forwarded to the Governor's Office for preliminary approval for public hearing.

- . "Clarify its policy relating to the number of apprentices a massage therapist may sponsor."

We agree with the above recommendation. The Board has already proposed amendments to the board rules to clarify its policy relating to the number of apprentices a massage therapist may sponsor. This is part of the proposed rules awaiting preliminary approval for public hearing.

- . "Drop the practical examination entirely pending the implementation of the new written examination."

Statutorily, the Board is required to give a practical examination and must continue to do so until the law is changed. If our administration bill, as mentioned earlier, is passed the practical examination will no longer be an issue. We are at this time already exploring with a professional testing agency regarding a more comprehensive written examination.

- . "Eliminate the notarization requirement for apprenticeship training documents."

Mr. Clinton T. Tanimura  
January 13, 1987  
Page 4

We agree with the above recommendation. The Board will take steps to eliminate this requirement.

- "Prohibit fellow board members with conflicts of interest from participating in decisions relating to education and training and the licensing examination."

The Board has and will continue to do it's utmost in upholding the ethics code. By recent opinion, there are now clearer guidelines on this matter.

Again, we thank you for the opportunity to respond to your recommendations. We do not anticipate any problems in following your suggestions since most have already been addressed by proposed rules changes and legislation. We would also like to thank you and your staff for supporting the work of the Board and seeking its continuance.

Also, by request of the Chairman, enclosed are her comments which she wished to have made a matter of record. Other members of the Board may not concur with all aspects of her comments.

Very truly yours,

*Eve Clute*  
for *Eve Clute*, Ex. Sec.  
EVE CLUTE  
Chairman of the Board

*Lawrence H. Dawson*  
LAWRENCE H. DAWSON

*Mitsuru Fujimoto*  
MITSURU FUJIMOTO

*Edson Hoo*  
EDSON HOO

Enclosure

COMMENTS BY EVE CLUTE ON  
SUNSET EVALUATION REPORT ON MESSAGE

Please accept my written comments to be included in the comments to the Sunset Evaluation Report.

Since those reading the auditor's report may be influenced by it and are relying on it for correct info, we would like to point out misleading and inaccurate statements.

Some examples are:

Page 10 statement reads: "The AMTA sets standards for and approves the curriculum of massage schools." Does this mean for all massage schools, only for those that accept massage therapists as members; only for those schools that are associated with AMTA?

Page 11 statement reads: "Shiatsu which is a [...] form of physical therapy." "At point in text marked by brackets, the word "Japanese" was omitted from the text, without any notation or indication that any matter had been omitted." Correction needed. Shiatsu is a form of massage therapy not physical therapy. Does the auditor know the difference between these two separately licensed occupations?

Page 28 statement reads: "The variations in practice make massage more of an 'art' than a 'science.' There is no scientific evidence that any one approach is superior to any other in achieving therapeutic results. Individual massage therapists tend to experiment with different approaches and incorporate movements that seem to work well with particular clients. This creative or artistic involvement helps to ensure results when dealing with a wide range of customers. However, it cannot be quantified or measured."

We find this misleading and not applying to the basic massage forms. These are a few examples to substantiate a scientific, measurable approach exists in massage.

According to a Board approved textbook: Theory and Practice of Body Massage by Frank Nichols - Page 6: "It is not until the latter part of the 19th century that a scientific system of massage was formulated, applied for certain purposes and according to definite rules. Metzger of Holland and Ling of Sweden were responsible for placing massage on a scientific basis.

Shiatsu massage is based on specific points founded by Tokujiro Namekoshi who created the Nippon Shiatsu school over 50 years ago. Other schools of Shiatsu base this pressure point massage work on specific acupuncture points such as are taught in the Amer Asian School of Acupuncture of Hawaii.

Source: Shiatsu by A. Bergson.

Sports massage uses four basic therapeutic strokes to reduce muscle spasms, muscle fatigue, contracted muscles, loss of mobility and slowing down of reflexes. These symptoms can be reduced and hastened to healing by sportsmassage when applied correctly.

Source: Sportsmassage by Jack Meagler.

Massage technique is an important part of massage training. To add to the recommendations on page 44, the Board adds that the apprentice program have a set of guidelines written to assure a standard and basic practical application of massage for all techniques.

Rolfing.

The founder of Rolfing is Ida Rolf an organic chemist. Her technique of rolfing is scientifically based on the integrated structure of bone and muscle. The movements in Rolfing specifically are aimed at releasing fascia membranes that hold muscles in a contracted form.

Source: Rolfing by Ida Rolf.

Bottom page 32 statement reads: "By permitting a massage therapist to sponsor up to ten apprentices at any given time, this close working relationship cannot be established."

Top page 33 statement reads: "Furthermore, in order to gain experience in the application of massage each apprentice needs to have an adequate supply of customers."

These statements are inaccurate. Apprentices can be scheduled to work over a seven day period--allowing

the sponsor to work with one or two apprentices at a time. Not all sponsors will choose to work with ten apprentices. So the teacher-apprentice ratio will be kept at a minimum. Apprentices, as part of their business practice can supply their own customers by bringing in friends, fellow students, relatives, co-workers etc.

Top page 38 statement reads: "Furthermore, the apprentice training is adequate, and the written examination can be strengthened to include practical considerations."

As mentioned above, there are no guidelines for the instruction phase of the 420 hour apprentice program, therefore what exam can be given without there being first--a standard of what is being taught?

How can an exam be written based on the apprentice program when each sponsor decides what the individuals program will be? (The Board is in the process of developing a standard guide for the apprentice program)?

Page 39 The Board questions the strong approach of the auditor to members activities in the event of a conflict of interest. As pointed out by the auditor a final statement has not been made by the Ethics Commission. The qualifications to become a board member are vague--three years license in massage.

The Board would like to add a clearer statement as taken from Chapt. 457.

Nurses. Page 2 457-3.

\*Both massage education and massage service shall be represented on the Board. \*Substantiation and justification.

Since 1982 with the establishment of the apprentice program, the Board to this date has been unable to create an (instructional) guideline for the apprentice program. Outside therapists were asked to give input at massage meetings and through letters. Insufficient data and poor participation has resulted over the four year period.

The Board needs expertise from people actively working in the field:

1. to assure the training is adequate to protect the public from harm.
2. to assure apprentices receive instruction and direction as so mandated by law.
3. to create the minimum standard for education and training to the apprentice.
4. to assist apprentice sponsors in the instruction phase of the apprentice program.
5. to assure sanitation procedures contraindications are taught to all apprentices.
6. to provide the minimum requirements for a skilled massage therapist.
7. to have a standard system from which to base a clinical written exam.

The Board would be more effective by the participation of representative(s) in massage education.

Sincerely,

  
Eve Clute

ATTACHMENT 3



JOHN WAIHEE  
GOVERNOR

ROBERT A. ALM  
DIRECTOR  
COMMISSIONER OF SECURITIES

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

DEPUTY DIRECTOR

1010 RICHARDS STREET  
P. O. BOX 541  
HONOLULU, HAWAII 96809

January 14, 1987

RECEIVED

JAN 14 4 17 PM '87

OFFICE OF THE AUDITOR  
STATE OF HAWAII

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

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your Sunset Evaluation Report on Massage.

We would like to respond to the recommendations made to the Department of Commerce and Consumer Affairs as follows:

"Refer all unlicensed activity cases to the Regulated Industries Complaints Office for processing"

We have no opposition to this recommendation.

"Require the Regulated Industries Complaints Office to conduct an annual review of advertisements relating to massage in the yellow pages directory in order to identify and discipline violators."

Based on our availability of resources we will give consideration to this recommendation.

"Develop ways to improve the collection of information relating to convictions for prostitution."

We concur with this recommendation, but from a practical standpoint it has been and will probably continue to be a difficult mission to accomplish. It may be evident that you realize the difficulty since your advise to us was that we "must somehow obtain information on convictions for prostitution in the various counties", however that "somehow" wasn't identified by your office. Perhaps we all recognize the problem but have no ready solutions.

Mr. Clinton T. Tanimura  
January 14, 1987  
Page 2

"Revise application instructions and routine correspondence to ensure that all applicants receive complete and consistent information about their academic training options."

We find no problems with this recommendation. We however, would like to make clear in the event there may be misunderstanding, that applicants have been treated fairly and equitably with regard to dissemination of information on applying for licensure.

"Refrain from waiving the practical training requirement for individuals who do not meet current provisions in the rules."

By Board approval the authority was given for the above actions. Proposed rule changes by the board (which will soon go to public hearing) incorporates this policy by the board.

"Amend the registration form to conform with current rules regarding sponsorship of apprentices."

Upon review of the forms to be disseminated to apprentices, we did find that handwritten corrections were made to reflect the correct information. Should your staff person have acquired a form which did not have the correction, please be assured the forms are in order.

Instruct the board member who trains candidates for licensure to refrain from participating in any issues relating to education and training and the licensing examination, and request the State Ethics Commission to issue a formal advisory opinion on the applicability of the State Ethics Code to the board member's activities."

As shown by your report, we have followed through on numerous occasions by advising this board member, not only verbally but in writing, of the concerns regarding this matter. Further, as you are aware, we had already filed a request with the State Ethics Commission in October 1986, for an opinion based on our concerns for clarification of a previous opinion rendered by the Commission and its

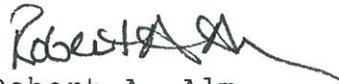
Mr. Clinton T. Tanimura  
January 14, 1987  
Page 3

applicability to the current situation with this particular board member. The State Ethics Commission has subsequently responded to our initial request and rendered very clear and concise guidelines on the issues raised. With this in hand, and with the board member's cooperation, we foresee a better understanding by all parties.

We do appreciate your comments as contained in the report and the recommendations offered and we will continue to give our attention to the continued improvement of our operations.

You and your staff should be commended for the thoughtful assessment of the regulation on massage.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert A. Alm", with a long, sweeping horizontal line extending to the right.

Robert A. Alm  
Director

## APPENDIX B

### DIGEST

#### A BILL FOR AN ACT RELATING TO MASSAGE

Extends the massage licensing program to December 31, 1993. Amends the definition of "outcall massage service" to mean any business which provides massage at a location designated by the customer, client, or service, and not any business whose "primary function" is to provide such service. Exempts licensed massage therapists who do not operate a business employing other persons from the requirement for an out-call massage service license. Prohibits board members from affiliation with a school teaching massage and from sponsoring apprentices for licensure. Requires massage therapist applicants to complete academic training in anatomy, physiology, and the theory and practice of massage which is not confined to any specific system or method. Deletes the requirement for a practical examination and requires only a one-part written examination for licensure.

# A BILL FOR AN ACT

RELATING TO MASSAGE.

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1           SECTION 1. Section 26H-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§26H-4 Repeal dates. (a) The following chapters are  
4 hereby repealed effective December 31, 1987:

5           (1) Chapter 458 (Board of Dispensing Opticians)

6           (2) Chapter 459 (Board of Examiners in Optometry)

7           [(3) Chapter 452 (Board of Massage)

8           (4)] (3) Chapter 471 (Board of Veterinary Examiners)

9           [(5)] (4) Chapter 441 (Cemeteries and Mortuaries)

10          [(6)] (5) Chapter 463 (Board of Detectives and Guards)

11          [(7)] (6) Chapter 455 (Board of Examiners in Naturopathy)

12          (b) The following chapters are hereby repealed effective  
13 December 31, 1988:

14          (1) Chapter 465 (Board of Psychology)

15          (2) Chapter 468E (Board of Speech Pathology and Audiology)

16          (3) Chapter 468K (Travel Agencies)

17

18

1 (4) Chapter 373 (Commercial Employment Agencies)

2 (5) Chapter 442 (Board of Chiropractic Examiners)

3 (6) Chapter 448 (Board of Dental Examiners)

4 (7) Chapter 436E (Board of Acupuncture)

5 (c) The following chapters are hereby repealed effective  
6 December 31, 1989:

7 (1) Chapter 444 (Contractors License Board)

8 (2) Chapter 448E (Board of Electricians and Plumbers)

9 (3) Chapter 464 (Board of Registration of Professional  
10 Engineers, Architects, Surveyors and Landscape  
11 Architects)

12 (4) Chapter 466 (Board of Public Accountancy)

13 (5) Chapter 467 (Real Estate Commission)

14 (6) Chapter 439 (Board of Cosmetology)

15 (7) Chapter 454 (Mortgage Brokers and Solicitors)

16 (8) Chapter 454D (Mortgage and Collection Servicing Agents)

17 (d) The following chapters are hereby repealed effective  
18 December 31, 1990:

19 (1) Chapter 447 (Dental Hygienists)

20 (2) Chapter 453 (Board of Medical Examiners)

21 (3) Chapter 457 (Board of Nursing)

22 (4) Chapter 460J (Pest Control Board)

1 (5) Chapter 462A (Pilotage)

2 (6) Chapter 438 (Board of Barbers)

3 (e) The following chapters are hereby repealed effective  
4 December 31, 1991:

5 (1) Chapter 448H (Elevator Mechanics Licensing Board)

6 (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

7 (3) Chapter 457B (Board of Examiners of Nursing Home  
8 Administrators)

9 (4) Chapter 460 (Board of Osteopathic Examiners)

10 (5) Chapter 461 (Board of Pharmacy)

11 (6) Chapter 461J (Board of Physical Therapy)

12 (7) Chapter 463E (Podiatry)

13 (f) The following chapters are hereby repealed effective  
14 December 31, 1992:

15 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)

16 (2) Chapter 437B (Motor Vehicle Repair Industry Board)

17 (3) Chapter 440 (Boxing Commission)[.]

18 (g) The following chapter is hereby repealed effective  
19 December 31, 1993:

20 (1) Chapter 452 (Board of Massage)."

21 SECTION 2. Section 452-1, Hawaii Revised Statutes, is  
22 amended by amending the definition of "out-call massage service"  
23 to read:  
24

1            "Out-call massage service" means any business[, the  
2 primary function of] which [is to] engages in or carr[y]ies on  
3 the practice of massage, not at a fixed location but at a  
4 location designated by the customer, client, or service."

5            SECTION 3. Section 452-3, Hawaii Revised Statutes, is  
6 amended to read as follows:

7            "§452-3 Massage establishments and out-call massage  
8 services to be licensed. No massage establishment or out-call  
9 massage service shall be operated unless the same has been duly  
10 licensed as provided for in this chapter[.]; provided that a  
11 licensed massage therapist who does not operate a business  
12 employing other persons is exempt from the requirement for an  
13 out-call massage service license."

14           SECTION 4. Section 452-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16            "§452-4 Creation of state board[.]; qualifications. (a)  
17 There is established within the department of commerce and  
18 consumer affairs for administrative purposes a state board of  
19 massage consisting of five members appointed by the governor as  
20 provided in section 26-34.

21            (b) Three members shall have at least three years of  
22 practical experience as licensed massage therapists, and two  
23 shall be public members. No member shall be affiliated with  
24  
25

1 any school teaching massage nor shall any member sponsor an  
2 apprentice for licensure."

3 SECTION 5. Section 452-13, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 §452-13 Requisites for admission to examination and  
6 licensing of massage therapists, massage establishments, and  
7 out-call massage services. (a) The executive secretary of the  
8 board shall determine the sufficiency of the preliminary  
9 qualifications of applicants for admission to examination and  
10 licensing.

11 (1) A non-refundable application fee shall be paid to the  
12 board at the time of the application.

13 (2) The examination fee shall be refunded only if the  
14 applicant is found not qualified to take the license  
15 examination.

16 (3) An applicant for examination shall have completed  
17 academic training in anatomy, physiology, and the  
18 theory and demonstration of massage which is not  
19 confined to any specific system or method of massage,  
20 spent at least six months as a massage therapist  
21 apprentice, and [have] met all other requirements set  
22 for apprentices by the board pursuant to section  
23 452-6([d]c)."   
24  
25

1 SECTION 6. Section 452-14, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§452-14 Examination. The board may contract with  
4 professional testing services to prepare, administer, and grade  
5 the examinations [and tests] for applicants as may be required  
6 for the purposes of this chapter. The examination of  
7 applicants for a license[s] to practice massage shall be  
8 conducted under rules prescribed by the board and shall  
9 [include both practical demonstrations and] consist of a  
10 one-part written [or oral tests] examination [and shall] which  
11 is not [be] confined to any specific system or method[,] and  
12 [such examination shall be] which is consistent with the  
13 practical and theoretical requirements of the occupation as  
14 provided by this chapter.

15 Any law to the contrary notwithstanding, the department of  
16 commerce and consumer affairs, or the board, may contract with  
17 professional testing services to prepare, administer, and grade  
18 examinations [and tests] for [license] applicants under this  
19 chapter. For these purposes, the department of commerce and  
20 consumer affairs or the board may require applicants to pay the  
21 examination fee directly to the testing agency."

22 SECTION 7. Statutory material to be repealed is  
23 bracketed. New statutory material is underscored.  
24  
25

1 SECTION 8. This Act shall take effect upon its approval.

2  
3 INTRODUCED BY: \_\_\_\_\_  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25