
Sunset Evaluation Update: Message

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 92-17
November 1992



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
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Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



THE AUDITOR STATE OF HAWAII

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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Update: Massage

Summary

We evaluated the regulation of massage under Chapter 452, Hawaii Revised Statutes, and conclude that the public interest is best served by reenactment of the statute.

Massage is the manipulation by rubbing, pressing, or kneading of soft body tissues for therapeutic purposes. Massage therapists may also use mechanical or electrical apparatus and lotions.

In Hawaii, the regulatory program is placed under the five-member Board of Massage Therapy, which is administratively attached to the Department of Commerce and Consumer Affairs. The department's Professional and Vocational Licensing Division provides administrative services and the Regulated Industries Complaints Office (RICO) handles consumer complaints and pursues legal action when appropriate.

In our previous sunset evaluation in 1987 we found that massage therapists need continued regulation. We reach the same conclusion today because there is some potential for personal injury from the practice of massage. Regulation helps to reduce the potential for harm, diminish the association between massage and prostitution, and establish the boundaries of massage practice.

Since 1987, several improvements have been made in the regulatory program. Additional improvements are needed. For instance, we found that the administrative rules regarding out-call massage services are obsolete and should be deleted.

We also found that the board is trying to increase the hours of training required for licensure from 570 to 600 hours and to eliminate apprenticeship as an avenue for licensure. Both of these efforts would unnecessarily restrict entry into the profession. We found insufficient evidence that more training is necessary to protect consumers, and eliminating apprenticeship would mean that those wishing to become licensed would be required to attend a school of massage. Opponents of apprenticeship say that insufficient supervision of apprentices has led to the licensing of unqualified massage therapists and that harm to the public has resulted. We found little evidence of this.

In addition, we found that the licensing division does not ensure the reliability of the transcripts it receives and has some difficulty organizing applicants' files. Furthermore, the board has not always complied with the Sunshine Law. At times it has not stated specifically enough the reasons for going into executive session, recorded its vote to go into executive session, or kept minutes of these sessions, but improvements are being made.

Recommendations and Response

We recommend that the Legislature reenact Chapter 452, HRS to continue the regulation of massage. In addition, the Board of Massage Therapy should abandon its efforts to increase the hours of training required for licensure and should continue to use apprenticeship as a pathway to licensure.

The board should also delete all references to out-call massage services from the administrative rules. It should continue to comply with the Sunshine Law by fully documenting in the minutes of its open meetings the reasons for and vote of the members on going into executive session. The board should also keep minutes of all executive sessions.

The Professional and Vocational Licensing Division should require applicants for massage therapy licenses to have their transcripts sent directly from the massage school or hand delivered with a seal against tampering. In addition, the division should review applicant files against a checklist of licensing requirements.

The Board of Massage Therapy agrees with our recommendation to reenact Chapter 452 and to delete references to out-call massage services from the rules. It says that it will work to strengthen the apprenticeship program rather than eliminate it. The board does not agree that it should abandon its efforts to increase the required hours of training. The board feels that we overemphasized alleged violations of the Sunshine Law.

The Department of Commerce and Consumer Affairs disagrees with our recommendation concerning transcripts because transcripts are often not available from massage schools. The department says that it already uses a checklist form called the "Notice of Deficiency."

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Sunset Evaluation Update: Massage

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Governor
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Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 92-17
November 1992

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report evaluates the regulation of massage under Chapter 452, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate massage to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in Appendix B the draft legislation intended to implement our recommendations.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Massage Therapy, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of massage under Chapter 452, HRS, complies with policies for occupational licensing in the Sunset Law.

Background on Massage

Massage is the manipulation by rubbing, pressing, or kneading, of soft body tissues for therapeutic purposes. Mechanical or electrical apparatus and lotions may be used. There are about 1,800 massage therapists licensed in Hawaii, nearly a doubling during the past six years.¹

Massage therapists come from a wide range of education and training. They may be trained in Swedish massage, shiatsu, acupressure, reflexology, polarity therapy, deep muscle/connective tissue massage, trigger point massage, and hydrotherapy. Some therapists combine several methods.

The American Massage Therapy Association (AMTA) accredits massage schools that prepare applicants for licensure. The AMTA program has gained a good deal of recognition, but the U.S. Department of Education does not recognize AMTA nor any other national organization as an accrediting agency for massage therapy education.

Regulatory program

Chapter 452, HRS, governs the practice of massage. Those wishing to practice massage therapy must have a license from the Board of Massage Therapy, which is administratively attached to the Department of Commerce and Consumer Affairs. The board also licenses massage establishments that provide massage therapy or training. There are about 240 of these in Hawaii.²

The five-member board is appointed by the governor and serves without compensation. Three of its members must have three years of practical experience and be actively employed as massage therapists. The board also has two public members.

An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day licensing operations. The department's Regulated Industries Complaints Office mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous sunset report

Our previous sunset evaluation of massage in 1987 recommended that Chapter 452 be reenacted to continue regulation.³ We proposed that license applicants be required to have academic training in anatomy, physiology, and the theory and demonstration of massage, but not be confined to any one system of massage. We also found that the State's practical examination was too subjective, and we recommended that it be dropped.

To reduce the association between massage and prostitution, we recommended that the department collect better information on convictions for prostitution and license all businesses that provide out-call massage services. This would prevent businesses not specializing in massage such as "escort and massage" services from escaping the licensing requirement. To correct apparent violations of the state ethics code by some board members, we recommended prohibiting the appointment of board members who had any interests in training applicants for licensure.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of massage therapy complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate massage therapy to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on massage and its regulation. We reviewed statutes and rules on massage therapy in Hawaii and the changes in these since our last sunset evaluation in 1987.

We also reviewed evidence of harm to consumers including complaints. We interviewed members of the Board of Massage Therapy, personnel from the Department of Commerce and Consumer Affairs, and practitioners in the field. We also obtained information from the American Massage Therapy Association and its Hawaii chapter. At the department, we reviewed files on board operations, licensing, enforcement, and correspondence. Finally, we attended one of the licensing examinations to observe procedures.

Our work was performed from January 1992 through September 1992 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We recommend that the regulation of massage continue. Most of the problems we identified in our 1987 sunset evaluation have been corrected. For example, license applicants now must have academic training. The practical examination was replaced by a professionally administered written examination. To avoid conflicts of interest, board members must disclose whether they are involved in massage education or training. In the current review, we suggest further improvements in the rules and in the administration of the licensing program.

Summary of Findings

1. The practice of massage can cause injury and should continue to be regulated.
2. Regulation probably helps to diminish the once-thriving association between massage and prostitution.
3. The rules on out-call massage services are obsolete.
4. The Board of Massage Therapy is trying to introduce licensing requirements that are unnecessarily restrictive.
5. The department does not maintain files in an organized manner nor does it ensure the reliability of licensing documents.
6. The board has not always complied with the Sunshine Law.

State Should Continue to Regulate Massage

The practice of massage could harm the public's health, safety, and welfare. Incompetent massage therapists could cause injury to consumers. The regulation of massage helps to reduce the potential harm to consumers and to diminish the association between massage and prostitution.

Potential for harm

There is a slight potential for personal injury from the practice of massage. During the past six years, 135 complaints against massage therapists or establishments were filed with the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs. Most were complaints of unlicensed activity or advertising violations, but four complainants claimed physical injury to

the neck or back due to negligence. RICO sent an advisory letter in the first case, found no violation or insufficient evidence in the second and third cases, and the fourth is still pending.

Despite the scarcity of reported injuries, those knowledgeable about the profession state that incompetent massage of pregnant clients or physically disabled clients can cause harm, as can pressure improperly applied on certain parts of the body. They say licensing is needed to make sure that massage therapists know anatomy and avoid massaging persons with certain medical conditions such as skin irritations, acute inflammatory diseases, and tumors.

Regulation is also needed to establish the boundaries of the practice. To define by law the scope of practice helps ensure that massage therapists do not stray into activities that are the province of other health specialists such as physicians, chiropractors, and physical therapists.

Association with prostitution

About 10 years ago, massage was often used as a front for prostitution. Between 1981 and 1986, the Legislature strengthened Chapter 452 to reduce this association. For example, the board was authorized to discipline licensees who were convicted of a crime involving moral turpitude, and unlicensed persons were prohibited from advertising as massage therapists.

In our 1987 sunset evaluation, we reported that tighter regulation apparently had succeeded in reducing this association. The Honolulu Police Department reported that instead of using massage as a front, prostitutes had shifted their activity to other fronts, such as escort and dating services. The Board of Massage Therapy had revoked the license of a massage therapist who was convicted of prostitution, and RICO had disciplined individuals and massage businesses for unlicensed activity.

If the Legislature still finds that it is in the public interest to prevent the use of massage as a front for prostitution, continued regulation is useful. Since 1987, RICO has revoked another massage license for prostitution, and has continued to act against unlicensed persons. Chapter 452 has been strengthened to prohibit the advertising of licensed massage therapy services with escort or dating services; to prohibit massage advertisements in the media (including the Yellow Pages) that depict the human form other than hands, wrists, or forearms; and to require the media to reject massage advertisements submitted by unlicensed persons. If regulation were ended, the once-common association of massage with prostitution could revive.

Out-Call Rules Are Obsolete

In 1987, the Legislature required all out-call massage services to be licensed. Later, in 1990, it deleted all mention of out-call services from Chapter 452 because massage therapy licensees were already permitted to work at locations outside their place of business. The rules, however, still contain many provisions on out-call services. For example, the rules require out-call services to have a principal massage therapist as manager and to display the license. Since out-call services are no longer in the statutes, these rules are obsolete and should be deleted.

Board's Approach Is Restrictive

Minutes of the board and its education committee and board testimony reveal an attempt by the board to increase the hours of training required for licensure and to eliminate apprenticeship. Both of these efforts would unnecessarily restrict entry into the profession.

Increase in hours

Chapter 452 requires that applicants for the licensing examination have academic training in anatomy, physiology, structural kinesiology, and the theory and demonstration of massage. They must also have spent at least six months as a massage therapist apprentice or massage therapist student in a school approved by the board. The rules say that applicants must have at least 150 hours of academic training and 420 hours of practical training, for a total of 570 hours.¹

The board's education committee wants to increase the number of training hours from 570 to 600 hours. The hours given to the theory, demonstration, and practice of massage would be increased and the hours given to supervised practical training would be decreased.²

Proponents contend that more training is needed to protect consumers, but many have questioned the need to increase the entry-level standard. We found insufficient evidence to support any increase in training hours.

The rationale for increasing the hours of training appears to be unrelated to protecting consumers. A member of the education committee who has supported the increase reported in 1990 that it was apparently the consensus of the Coalition of State Regulatory Boards that each state should aim for a goal of 500 hours to facilitate reciprocity in licensing of massage therapists.³

Apprenticeship program

The board is also attempting to end the apprenticeship program. Those wishing to become licensed would be required to attend a school of massage. The board has recently supported legislation (which did not pass) to eliminate the apprenticeship program.

Eliminating the apprenticeship program would unreasonably restrict entry into the profession. The apprenticeship program is a major avenue for licensure. From a group of 83 massage therapists recently licensed, 57 came through the apprenticeship program and 26 through massage therapy school.⁴ As of April 8, 1992, there were about 136 apprentices in the program.⁵ The need for an apprenticeship program has been amply pointed out to the board. Board members have been told that apprenticeship facilitates entry into the occupation because of its lower costs and its accessibility to people whose English skills are limited.⁶

At a meeting of the board's Education Committee in November 1991, many supporters of the apprenticeship program voiced their concern. One massage therapist said that she has had many apprentices over the years and considers apprenticeship an age-old, invaluable teaching technique. She pointed out that apprenticeship allows students a wider range of experience with both healthy and unhealthy clients than would be available in a school setting. Another individual pointed out that apprenticeship can provide a mentoring relationship. Still another questioned whether the board should be trying to upgrade the profession rather than simply ensuring the minimum qualifications for public safety.

Opponents of apprenticeship say that insufficient supervision of apprentices has led to the licensing of unqualified massage therapists and that harm to the public has resulted. We found little evidence of this. Among the complaints filed at RICO since 1986, only two involved unsupervised activity. The first case involved a massage therapy school and was closed for insufficient evidence. The second involved a massage therapy establishment, and the case is pending.

In the four cases discussed earlier where personal injury was charged, two of the massage therapists under investigation had been licensed through the apprenticeship route and two through the school route. All four therapists had been licensed for over two years prior to the allegation.

Licensing Division Should Ensure Reliability and Completeness of Applicant Files

Reliability of transcripts

The department's Professional and Vocational Licensing Division does not ensure the reliability of the transcripts it receives and has some difficulty organizing applicants' files.

Currently, applicants for licenses in massage therapy are permitted to hand-carry or personally mail transcripts of their education. This could raise questions about the reliability of transcripts. To ensure

authenticity, the division should require transcripts to be sent directly from the school or hand-carried with a seal that would signify that the contents had not been tampered with. The division currently has this policy for physicians and physical therapists. In adopting the policy, the department should make corresponding changes to the rules.

Checklist for licensing files

As part of our evaluation, we reviewed whether applicants who received licenses had met all the requirements for licensure. The individual applicant files were sometimes bulky and disorganized and sometimes gave the impression that the applicant had not met all requirements, even when this was not the case.

To better organize applicant files and to make them easier to use, we recommend that the division attach checklists for verifying receipt of required documents. This approach is already being used for physicians and physical therapists.

Board Has Not Always Complied With the Sunshine Law

Chapter 92, HRS, Hawaii's Sunshine Law, requires that board meetings be open to the public and that closed meetings be held only under certain specified circumstances. The Board of Massage Therapy has not always complied with the statutes governing closed meetings but has been improving in this regard. Staff of the licensing division informed us that representatives of the attorney general's office have been educating department staff and board members on their statutory responsibilities. We hope that improvements already made will continue.

Insufficient reasons and vote for executive session

Sections 92-4 and 92-5 permit the board to go into closed executive session for certain purposes such as considering personal information on license applicants and consulting with the board's attorney about the board's legal rights and responsibilities. A majority of the board's five members must vote to go into executive session. The reason for the executive session must be publicly announced and the minutes of the open meeting must record each member's vote on whether to go into session.

The minutes of the open meetings of the Board of Massage from January 1989 through March 1992 show that the board went into executive session 20 times. Almost without exception, the open-meeting minutes stated the reasons for going into executive session.

In 1989, however, the reasons were sometimes stated vaguely, for example, to consult with attorney or to review license applications. From 1990 on, the reasons were specific and clearly in compliance with

the Sunshine Law, for example to “consult with the Board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities”⁷ or to “consider and evaluate personal information relating to license applications.”⁸ Also, beginning in 1990 the reasons usually included specific references to the statutes authorizing the executive session.

In two instances, both in 1989, no mention was made in the open-meeting minutes of a vote to go into executive session.⁹ This means that there is no evidence that the board complied with the requirement of a majority vote.

Incomplete file of executive session minutes

Section 92-9 requires that minutes be kept of the executive session and that minutes not be withheld from the public any longer than necessary to protect the purpose of the executive session.

Department staff informed us that minutes have not always been kept. The executive secretary of the massage board provided minutes of executive sessions from 1990 through April 1992, but could locate nothing prior to that.

Without a full set of executive-session minutes, we could not determine whether the activities occurring in each executive session fell within the statutory exceptions and whether the activities matched the purposes stated in the minutes of the open meetings.

Recommendations

1. The Legislature should reenact Chapter 452 to continue the regulation of massage.
2. The Board of Massage Therapy should abandon its efforts to increase the hours of training required for licensure and should continue to use apprenticeship as a pathway to licensure.
3. The board should delete all references to out-call massage services from the rules.
4. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should require applicants for massage therapy licenses to have their transcripts sent directly from the massage school or hand delivered with a seal against tampering. In addition, the division should review applicant files against a checklist of licensing requirements.

5. The Board of Massage Therapy should continue to comply with the Sunshine Law by fully documenting in the minutes of its open meetings the reasons for and vote of the members on going into executive session. The board should keep minutes of all executive sessions as well.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), February 6, 1992, p. 15.
2. Ibid., p. 14.
3. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Massage*, Report No. 87-3, Honolulu, January 1987.

Chapter 2

1. Sections 16-84-23(a), (i), (j) and 16-84-48(b), Hawaii Administrative Rules.
2. Minutes of the Board of Massage Therapy Education Committee, Honolulu, February 27, 1992, pp. 2-3.
3. Minutes of the Board of Massage Therapy, Honolulu, December 18, 1990, p. 2 and Attachment A, p. 9.
4. Review of licensing files at the Department of Commerce and Consumer Affairs.
5. Hawaii, Department of Commerce and Consumer Affairs, *Licensing Branch Stats Sheet*, Fiscal Year 1991-92.
6. Minutes of the Board of Massage Therapy, Honolulu, July 16, 1991, p. 3 and February 20, 1992, p. 2.
7. Minutes of the Board of Massage Therapy, Honolulu, July 31, 1990, p. 2.
8. Minutes of the Board of Massage Therapy, Honolulu, January 31, 1990, p. 6.
9. Minutes of the Board of Massage Therapy, Honolulu, June 27, 1989, p. 3 and November 29, 1989, p. 4.

Responses of the Affected Agencies

Comments on Agency Responses

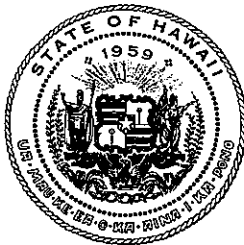
We transmitted a draft of this report to the Board of Massage Therapy and to the Department of Commerce and Consumer Affairs on October 2, 1992. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendation to reenact Chapter 452, Hawaii Revised Statutes, and to delete references to out-call massage services from the administrative rules. Concerning our recommendation that the board continue to use apprenticeship as an avenue to licensure, it says that it plans to strengthen the apprenticeship program, not eliminate it. The board does not agree that it should abandon its efforts to increase the hours of training required for licensure. It says that a growing number of massage therapists are working on rehabilitating sick or injured people and they need more training. The board suggests that we overemphasized and were overcritical about its alleged noncompliance with the Sunshine Law in 1989.

The department disagrees with our recommendation that it require applicants for massage therapy licenses to have their transcripts sent directly from the school or hand-delivered with a seal against tampering. It says that transcripts may not be available because massage therapy schools sometimes go out of business or do not retain transcripts. The department feels that its "Notice of Deficiency" form meets our recommendation that it review license applicant files against a checklist of licensing requirements.

ATTACHMENT 1

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MARION M. HIGA
State Auditor
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October 2, 1992

C O P Y

Ms. Charlotte A. Carter-Yamauchi, Chair
Board of Massage
Department of Commerce and Consumer Affairs
Professional and Vocational Licensing Division
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Carter-Yamauchi:

Enclosed for your information are six copies, numbered 9 to 14 of our draft report, *Sunset Evaluation Update: Massage*. We ask that you telephone us by Tuesday, October 6, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, November 2, 1992.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in its final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF MASSAGE THERAPY

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
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November 2, 1992

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa, Auditor
Department of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

Dear Ms. Higa:

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

We would like to address the recommendations contained at the end of your report.

The Board of Massage Therapy ("Board") agrees with Recommendation 1 to reenact Chapter 452, HRS, to continue the regulation of massage therapy. Further, the Board has no objection to Recommendation 3, to delete all references to out-call massage services in the rules.

With respect to your Recommendation 2 that the Board abandon its efforts to increase the hours of training required for licensure, the Board strongly disagrees. The following is the Board's position on this matter.

Surveys were conducted by the Board in 1987 and 1990. In addition, numerous committee meetings were held by the Board from 1987 to 1988 and 1990 to 1992 to discuss the results of these surveys. Throughout the survey process and ensuing discussions, the Board sought active participation by all segments of the massage therapy community. The surveys and testimonies indicated that a growing number of licensed massage therapists are working in rehabilitative areas; i.e., working on sick or injured people. The minutes of the Board's May 21, 1992 meeting reflected that 20% of the survey respondents reported they worked in chiropractic offices and another 5% worked in rehabilitation centers. Thus, there is evidence that 25% of licensed massage therapists are working in rehabilitative settings.

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Further, the Board feels strongly that it is essential that an entry level massage therapist have sufficient knowledge in human anatomy, physiology, structural kinesiology, theory, demonstration and practice of massage therapy and properly supervised practical training. Adequate training is even more important should the licensee opt to work on sick or injured clients. Indeed, the Auditor's report acknowledges that incompetent massage therapy of pregnant clients or physically disabled clients can cause harm as can pressure improperly applied on certain parts of the body, and that licensing is needed to ensure massage therapists know anatomy and avoid massaging persons with certain medical conditions. Therefore, with consumer interests in mind, the Board focused on education and training requirements that would be minimally adequate for any massage therapist to work on sick or injured people.

With respect to training and education, the Board was concerned to find that survey respondents, which included a cross-section of licensees and representatives from the various massage therapy schools and workshop providers, generally agreed that the current minimum requirement of 50 hours for anatomy, physiology, and structural kinesiology provides an inadequate basis of knowledge for massage therapists. Moreover, survey results and discussion with licensees and massage therapy educators indicated that 50 hours is even more inadequate within the context of rehabilitative massage therapy. In fact, the results of the surveys and testimonies suggested that an average of 48 to 50 hours of study in each of the areas of anatomy, physiology, and kinesiology, respectively, would be necessary to achieve a minimum level of adequacy.

In view of these findings and considering that there is evidence of a greater number of massage therapists now working in the rehabilitative setting, the Board believes that 600 hours of education and training are minimal. We note that the increase of 30 hours is not an undue hardship on applicants and is supported by all those participating with the Board in setting these new minimum standards. By comparison, we point out that a hairdresser, who basically does arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching and coloring of another person's hair, needs to complete 2500 hours of apprenticeship training or 1200 hours of training in a licensed beauty school.

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With respect to the Education Committee's proposal to restructure the education and training requirements, the sunset report further stated, "The hours given to the theory, demonstration, and practice of massage therapy would be increased and the hours given to supervised practical training would be decreased." We would like to flag this inaccurate conclusion and feel that a correction is warranted. There apparently is a misunderstanding of the components that comprise the total massage therapy education and training. Discussions with educators and sponsoring massage therapists made it clear that there is an overlap between the theory, demonstration, and practice of massage therapy that takes place in the academic setting and the supervised practical training portions of the massage curriculum. On the theory, demonstration, and practice segment of the academic training, the instructor walks students through these steps. Later, in the supervised practical training segment, whether held in a classroom under supervision of an instructor or in a massage establishment under supervision of a sponsoring licensed massage therapist, the student or apprentice should be walked through the same sequence of theory, demonstration, then actual practice, to learn proper procedures and massage techniques. Consequently, there would be no actual decrease in practical training under the proposal currently being discussed by the Board.

As to the report's recommendation regarding the apprenticeship program, the Board is continuing this option for individuals to acquire the practical massage therapy training. The Board, however, wishes to present its comments to the analysis provided on the apprenticeship pathway.

The Sunset evaluation mentions that "apprenticeship facilitates entry into the occupation because of its lower costs and its accessibility to people whose English skills are limited." The Board takes exception to this over-simplified analysis.

First, the Board would like to note that an apprenticeship is not necessarily a lower cost alternative to a school program. It is not an uncommon practice for an apprentice to have to pay a sponsoring massage therapist one

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or two thousand dollars in an apprenticeship agreement. In return, the apprentice may or may not receive properly supervised practical training -- the 1987 survey results and testimony of sponsoring therapists and apprentices indicated that adequate supervision has not been occurring in many cases.

Secondly, all applicants for massage therapist apprentice permits, regardless of any limitation in English skills, are required to have successfully completed 150 hours of academic coursework in human anatomy, physiology, structural kinesiology, theory, demonstration, and practice of massage therapy. It appears from our records that even those with limited English skills have been able to complete the currently required academic portion of their training. Thus it would be inaccurate, and possibly a disservice, to imply or suggest that this group of applicants would not be able to enter the profession in the absence of an apprenticeship pathway. Furthermore, in committee discussions of the Board, the educators have reported and assured the Board that additional assistance and support are provided to students whose English skills are limited.

The Board strongly believes that if the apprenticeship program is to be left intact, there needs to be a strengthening of the program to ensure that apprentices are properly supervised and adequately trained and that abuses are eliminated. The 1987 Ad Hoc Committee of the Board found that, in many cases, direct supervision of apprentices was not being carried out. Survey results support this conclusion. At this time, the Board feels that strengthening the apprentice program is a more reasonable recommendation than eliminating it altogether, and intends to pursue this course of action.

The Sunset evaluation relies heavily on the small number of complaints to the Regulated Industries Complaints Office (RICO) to support its conclusion that there is little evidence to support the contention that insufficient supervision of apprentices has resulted in licensed massage therapists who are unqualified and who have harmed the public. Although reliance on RICO statistics is pertinent, these statistics should not lead to such simple conclusions. One reason for the low statistics is that it has always been difficult to get apprentices to file formal complaints against their sponsors or massage establishments with RICO

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for fear of reprisals. Apprentices are in a "catch 22" situation as they are, by and large, at the mercy of their sponsors to provide them with a training report to fulfill licensing requirements. If the apprentice files a complaint after completing licensing requirements, the apprentice faces the possibility that his or her credentials might be invalidated. More importantly, however, the Board does not believe that it should wait until a large number of complaints or complaints of serious harm to consumers are filed with RICO before taking action to remedy problems that have come to the Board's attention.

Finally, although not listed as a Recommendation, the Auditor's reference to a discussion held in 1990 by the Coalition of State Regulatory Boards ("Coalition") concerning reciprocity based on a standard training program needs to be clarified to indicate that this discussion was preliminary and informal. This Coalition meeting was attended by representatives of only half of the states that have massage therapy regulatory boards. At this meeting, it was suggested that a 500-hour training program might be a goal for each state in order to achieve reciprocity. It should be noted that the 500-hour suggestion was intended primarily as a starting point for the states to begin a discussion of the issue of reciprocity. Of the 14 other states that did have massage therapy licensing requirements in place in 1990, five required a minimum of 600 hours or more (up to a high of 1000 hours) of massage therapy training for licensure. Information is not available whether these five states were a part of the 1990 Coalition discussion. Other states have no licensing requirements and thus no minimum training program. Given the diversity among the various states with respect to regulations, an initial suggestion of a 500-hour program for purposes of reciprocity does not seem unreasonable. However, from the report referenced by the auditor, it is clear that this is still in the early discussion stages and no final decisions were made. Furthermore, it should be noted the discussion took place two years ago. Since that time, the Board's surveys (as noted earlier) show that greater numbers of massage therapists are entering rehabilitative areas of work for which a 500-hour program would not be adequate. Consequently, the Board feels that this preliminary discussion of a 500-hour goal for all states to achieve reciprocity should be viewed in the context within which it took place.

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In reference to Recommendation 3, the Board had already incorporated such housekeeping amendments in a draft of proposed revisions to the rules dated May 21, 1991. Because of the considerable expense to rule changes, however, the Board decided to consolidate other needed changes together with the deletion of references to out-call massage services. The other changes contemplated have resulted in lengthy discussions and a longer period of time to resolve issues. Thus, the rule adoption process has been delayed. However, our intention to delete references to out-call massage services is clearly evident were one to review the current draft of proposed revisions to the rules.

Regarding Recommendation 5, pertaining to compliance with the Sunshine Law, the report's concern is that in 1989, the Board did not always comply with the statutes governing executive sessions. The report does acknowledge, however, that beginning in 1990 and up to the end of the auditing period (March 1992), the Board fully complied with these statutes. The Board appreciates this acknowledgment and recognition of improvement.

It, however, is surprised with the over emphasis and criticalness of the Board's alleged non-compliance in 1989. For example, the report cites concerns that the Board's reasons for entering into executive session as recorded in the open-meeting minutes were "sometimes stated vaguely, for example to consult with (the) attorney or to review license applications." Should one read section 92-5, HRS, these are exact grounds under which an executive session may be held. Perhaps an amendment to Chapter 92, HRS, would be more in order should the Auditor desire more specificity in this area. Further, we would like to point out from the period January 1989 to March 1992, the Board went into executive session 20 times, and had its attorney in attendance on all but two occasions. If there was a concern of non-compliance, our own attorney would have flagged us, which they did not.

We again wish to express appreciation for allowing us the opportunity to respond to your report.

Very truly yours,

Charlotte A. Carter-Yamauchi
Charlotte A. Carter-Yamauchi
Chairperson

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

November 2, 1992

RECEIVED

Nov 4 11 23 AM '92

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Mrs. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs the opportunity to comment on the Sunset Evaluation Update on Massage.

To ensure the reliability and authenticity of transcripts, the report recommends that the Professional and Vocational Licensing Division ("division") require applicants for massage therapy licenses to have their transcripts sent directly from the massage school. Alternatively, the report recommends that the division require hand-delivered transcripts to have a seal placed on it to prevent tampering. The report points out that the division currently has this requirement for physicians and physical therapists.

The division agrees that ensuring the authenticity and reliability of transcripts is important. However, the requirement for physicians and physical therapists cannot be easily adopted for massage therapy.

Applicants for a physician or physical therapist license must be graduates of an appropriately accredited college or university. On the other hand, applicants for a massage therapy license must be graduates of a program that is approved by the department of education, the American Massage Therapy Association, or the Rolf Institute. A critical distinction is that accredited universities are usually financially stable and have been in existence for many years. Massage schools on the other hand often lack one or both criteria. Different consequences flow from this distinction. Unlike accredited colleges and universities, massage therapy schools sometimes go out of business, resulting in loss, displacement, or destruction of student transcripts.

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The division has therefore found it necessary not to adopt the policy applied for physicians and physical therapists to massage therapy. Rather, the division has found it necessary to accommodate massage therapy applicants by accepting transcripts that are in the applicants' own personal files, or transcripts that the applicant produces after his/her own search (for example, the school may be closed, but a faculty member may have retained transcripts). To reject transcripts in this type of situation would work an injustice to these applicants, and penalize them for a situation over which they have no control. If a question arises as to the reliability and authenticity of these transcripts, the Board does further research, such as contacting the department of education to verify whether a particular school was in operation during the period that the transcripts cover.

In addition, massage therapy schools that are still in existence may not possess student transcripts. This is due to a number of reasons. The department of education does not require massage therapy schools to retain transcripts for a certain time period, rather this is left to the states to impose. Some states do not have a record retention requirement for massage therapy schools, in which case the school determines how long transcripts are kept. In addition, those states that have a record retention requirement are not necessarily uniform with other states. Given the above, a school may or may not have in its possession an applicant's transcripts. Consequently, the division has found it necessary to accommodate applicants by accepting transcripts that are in the applicants' own personal files, or that the applicant produces after his/her own search.

For these reasons, the division does not believe that the recommendation regarding transcripts should be adopted.

The report also recommends that the division review applicant files against a checklist of licensing requirements to verify receipt of required documents. This recommendation is based on the report's conclusion that "applicant files were sometimes bulky and disorganized and sometimes gave the impression that the applicant had not met all requirements, even when this was not the case." We can't help but mention that the use of the word "sometimes" in the report can only indicate that this is not a significant problem, despite the emphasis given this issue.

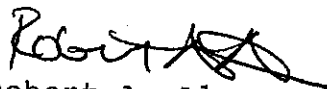
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For your information the division, in fact, has been using a checklist form for many years now. This form is more commonly known as the "Notice of Deficiency." This form utilized by staff, identifies all the requirements for licensure, is used to organize applicants' files, is used to determine whether applicants meet licensing requirements, and is used to notify applicants of any deficiencies. One form therefore serves four purposes.

The recommendation for a checklist is duplicative of a document already in existence serving more purposes than is being suggested in the report.

Again, thank you for the opportunity to comment.

Very truly yours,


Robert A. Alm
Director

A BILL FOR AN ACT

RELATING TO MASSAGE THERAPY.

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, 1991:

5 (1) Chapter 468K (Travel Agencies)

6 (b) The following chapters and sections are hereby repealed
7 effective December 31, 1992:

8 (1) Chapter 467D (Social Workers)

9 (2) Sections 321-13 to 321-15 only as they relate to
10 sanitarians

11 (3) Sections 445-131 to 136 (Pawnbrokers)

12 (c)] (a) The following chapters and sections are hereby
13 repealed effective December 31, 1993:

14 [(1) Chapter 452 (Board of Massage)

15 (2)] (1) Chapter 453 (Board of Medical Examiners)

16 [(3)] (2) Chapter 460 (Board of Osteopathic Examiners)

17 [(4)] (3) Chapter 461J (Board of Physical Therapy)

18 [(5)] (4) Chapter 463E (Podiatry)

19 [(6)] (5) Chapter 514E (Time Sharing Plans)

1 [(7)] (6) Sections 804-61 and 804-62

2 [(d)] (b) The following chapters are hereby repealed
3 effective December 31, 1994:

4 (1) Chapter 447 (Dental Hygienists)

5 (2) Chapter 457 (Board of Nursing)

6 (3) Chapter 457A (Nurse Aides)

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

9 (5) Chapter 461 (Board of Pharmacy)

10 (6) Chapter 468L (Travel Agencies)

11 [(e)] (c) The following chapters are hereby repealed
12 effective December 31, 1995:

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

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

15 (3) Chapter 440 (Boxing Commission)

16 (4) Chapter 448H (Elevator Mechanics Licensing Board)

17 (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

18 (6) Chapter 445 Part V (Pawnbrokers)

19 [(f)] (d) The following chapters and sections are hereby
20 repealed effective December 31, 1996:

21 (1) Chapter 321, Part XXX, (Tattoo Artists)

22 (2) Chapter 321, Part XXXI, (Midwives)

- 1 (3) Chapter 448F (Electrologists)
- 2 (4) Chapter 466J (Board of Radiologic Technology)
- 3 (5) Sections 321-13 to 321-15 (laboratory directors,
- 4 laboratory technologists, laboratory supervisors,
- 5 laboratory technicians, and sanitarians)
- 6 (6) Sections 431:10A-116(4) and 432:1-605 (Mammogram
- 7 Screening)

8 [(g)] (e) The following chapters are hereby repealed
9 effective December 31, 1997:

- 10 (1) Chapter 438 (Board of Barbers)
- 11 (2) Chapter 448 (Board of Dental Examiners)
- 12 (3) Chapter 455 (Board of Examiners in Naturopathy)
- 13 (4) Chapter 459 (Board of Examiners in Optometry)
- 14 (5) Chapter 471 (Board of Veterinary Examiners)
- 15 (6) Chapter 460J (Pest Control Board)
- 16 (7) Chapter 462A (Pilotage)

17 [(h)] (f) The following chapters are hereby repealed
18 effective December 31, 1998:

- 19 (1) Chapter 373 (Commercial Employment Agencies)
- 20 (2) Chapter 441 (Cemetery and Funeral Trusts)
- 21 (3) Chapter 443B (Collection Agencies)
- 22 (4) Chapter 463 (Board of Private Detectives and Guards)

1 (5) Chapter 468 (Solicitors; Business of Taking Orders)

2 [(i)] (g) The following chapters are hereby repealed

3 effective December 31, 1999:

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

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

6 (3) Chapter 444 (Contractors License Board)

7 (4) Chapter 448E (Board of Electricians and Plumbers)

8 (5) Chapter 464 (Professional Engineers, Architects,

9 Surveyors and Landscape Architects)

10 (6) Chapter 465 (Board of Psychology)

11 (7) Chapter 468E (Speech Pathology and Audiology)

12 [(j)] (h) The following chapters are hereby repealed

13 effective December 31, 2000:

14 (1) Chapter 439 (Board of Cosmetology)

15 (2) Chapter 448F (Electrologists)

16 (3) Chapter 454 (Mortgage Brokers and Solicitors)

17 (4) Chapter 454D (Real Estate Collection Servicing Agents)

18 (5) Chapter 466 (Board of Public Accountancy)

19 (6) Chapter 467 (Real Estate Commission)

20 [(k)] (i) The following chapter is hereby repealed effective

21 December 31, 2001:

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

1 (j) The following chapter is hereby repealed effective
2 December 31, 2003:

3 (1) Chapter 452 (Board of Massage Therapy)."

4 SECTION 2. Statutory material to be repealed is bracketed.
5 New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

7

8

INTRODUCED BY: _____

