
Study on the Licensing of Massage Schools

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

Report No. 97-17
December 1997

THE AUDITOR
STATE OF HAWAII

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Submitted by

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Foreword

This study was conducted in response to Senate Concurrent Resolution No. 128, Senate Draft 1 of the 1997 Regular Session which requested the State Auditor to conduct a study to determine whether continued regulation of massage schools by the Department of Education or some other state agency is appropriate. The study was to also consider the impact of repeal or changes in licensure on federal student aid eligibility and massage school accreditation.

We wish to express our appreciation for the cooperation and assistance extended to us by the officials and staff of the Department of Education, Department of Commerce and Consumer Affairs, Office of the State Director for Vocational Education, and others who provided information.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

Since 1939, the Department of Education has had the authority to license all private trade, vocational, and technical schools, including massage therapy schools. The 1939 Legislature found that regulation would protect vocational schools which maintain good standards from unfair competition.

Any premises occupied and used for the purpose of massage therapy training are required to be licensed by the Board of Massage Therapy under the Department of Commerce and Consumer Affairs. The actual practice of massage therapy, including massage therapy by a student under the direct supervision of a teacher, is subject to regulation by the Board of Massage Therapy. The board regulates licensing requirements, examinations, investigations, and disciplinary measures.

Concerns about the possible duplication of licensing functions by both departments and the unnecessary use of limited state resources led to the passage of Senate Concurrent Resolution No. 128, Senate Draft 1 of the 1997 Regular Session. The resolution requested the State Auditor to conduct a study to determine whether continued regulation of massage schools by the Department of Education or some other state agency is appropriate.

The study was to also consider whether repeal or transfer of massage school licensure functions would impact eligibility and participation by massage students receiving federal student aid and other grants and loans. Also, the study was to consider the impact of changes in licensure on massage school accreditation by private accrediting agencies.

The resolution asked the Auditor to submit findings and recommendations to the Legislature. This report responds to the Legislature's request.

Background

Section 302A-425, Hawaii Revised Statutes (HRS), requires all private trade, vocational, and technical schools to secure a license from the Department of Education to operate. The department must approve the method and content of a school's advertising, the standards and methods of instruction, and the equipment provided prior to issuing a license. Any person, firm, or corporation found to be in violation is guilty of a misdemeanor and shall be subject to a maximum fine of not more than \$100 or imprisonment for not more than ninety days, or both. During the

1996-97 school year, there were 42 various schools and school branches licensed by the department. Ten massage schools on the islands of Oahu, Hawaii, Maui, and Kauai were licensed by the department during the 1996-97 school year.

Definition of a private trade, vocational, or technical school

State statutes define a private trade, vocational, or technical school as any plan or method used by any person or persons, firm, or any other organization or corporation for giving instruction in any form or manner in a trade, occupation, or vocation for a consideration, reward, or promise. Correspondence schools are included in this definition. However, Section 302A-101, HRS, makes the following eight exceptions:

- Schools maintained, or classes conducted, by employers for their own employees where no fee or tuition is charged;
- Courses of instruction given by any fraternal society, benevolent order, or professional organization to its members, which courses are not operated for profit;
- Flying schools qualified under the Federal Aviation Administration;
- Classes conducted for less than five students at the same time;
- Classes or courses of instruction that are conducted for twenty or fewer class sessions during any twelve-month period;
- Avocational, hobby, recreation, or health classes or courses;
- Courses of instruction on religious subjects given under the auspices of a religious organization; and
- Schools registered by the Department of Commerce and Consumer Affairs or by boards and commissions placed in the department for administrative purposes.

The Department of Education has further defined a private trade, vocational, or technical school as one which provides only post-secondary courses below the college or university degree granting level.

During the 1996-97 school year, the Department of Education licensed the following schools: massage; security guard; electronics; dressmaking; tax preparation; acupuncture; barbering; travel; medical assisting; automotive mechanics, refrigeration, and air conditioning; airline, travel agency, hotel, and food and beverage management and operations; and business.

Massage therapy schools in Hawaii

Since 1993, the Department of Education has issued initial or renewal licenses to eleven massage therapy schools. The majority of massage schools are located on Oahu and most schools have existed for approximately ten years or longer. In the past five years, four new schools have opened on Maui and Oahu. During the same time period, the department revoked the license of one massage therapy school on Maui.

Massage therapy is a profession in which the practitioner applies manual techniques in order to positively affect the health and well-being of the client. Various techniques used by massage therapists and offered at massage therapy schools include cranio-sacral, deep muscle/connective tissue massage, reflexology, shiatsu, sports, Swedish, lomi lomi and trigger point therapy. Our 1992 *Sunset Evaluation Update: Massage*, Report No. 92-17, recommended the regulation of massage because of findings that the practice of massage could harm the public's health, safety, and welfare.

Massage schools structure their programs so students are able to meet the Hawaii State Board of Massage Therapy requirements to sit for the state professional license examination. Students who wish to take the exam must complete a 150-hour program of basic massage therapy training that includes classes in anatomy, physiology, and kinesiology. Also, students must complete a 420-hour program of practical massage therapy training under the supervision of a teacher in a school setting. Students must complete both programs in a school approved by the Department of Education to be eligible to sit for the written state examination. Completion of the total 570-hour program may take 6 months on a full-time basis or as long as 12 months on a part-time basis.

The tuition and fees at some licensed massage therapy schools exceed those at the University of Hawaii's two-year community colleges. For example, to complete a two-year program at Leeward Community College or Maui Community College, a Hawaii resident pays under \$2,000 for tuition and fees. In comparison, one licensed massage therapy school charges about \$3,800 in tuition and fees for the total 570-hour massage therapy program. Another licensed school's tuition and fees exceed \$6,600 for the 570-hour program, including books.

Regulation of massage schools in Hawaii

Section 302A-424, HRS, states that no private trade, vocational, or technical school shall be operated unless there is first secured a license issued by the Department of Education in accordance with Sections 302A-424 to 302A-428, HRS. The department last adopted rules in May 1987 to enforce these sections. Hawaii Administrative Rules, Title 8, Chapter 101, covers the general requirements for applicants and specific requirements for facilities and equipment; curriculum; school staff;

advertising and student solicitation; tuition, fees, and charges; inspection; complaints; license revocation, suspension, or non-renewal; hearings; appeals; and penalty for non-compliance.

General oversight of the licensing and regulation program of massage therapy schools is currently assigned to the Office of Accountability and School Instructional Support's School/Community Based Management Group. General licensing duties include handling licensing inquiries and questions, reviewing and processing applications, conducting site visits, and recommending to the superintendent whether to grant licensure. Instructor applications are forwarded to the department's Office of Personnel Services for review and certification. The director of the Management Analysis and Compliance Branch is responsible for investigating formal complaints. The superintendent or designee is responsible for holding hearings, and rendering written decisions. The Board of Education is responsible for issuing final decisions on hearing appeals.

School licenses are granted for a one year period from September 1 to August 31 of the ensuing year. The fee for an initial license is \$50. Fees for licenses issued on or after March 1 are \$25. Licenses are renewed annually and the renewal fee is \$20. Teacher certifications are valid for the duration the instructor keeps his/her massage therapy license current.

Objectives of the Study

1. Determine whether there is a reasonable need to continue licensing and regulating massage schools.
2. Assess the adequacy of the current licensing and regulatory program.
3. Assess the appropriateness of the Department of Education to administer the licensing and regulation functions of massage schools.
4. Make recommendations based on findings in these areas.

Scope and Methodology

We reviewed and assessed the licensing and regulation of massage schools by the Department of Education. We examined the department's function and practices with respect to its licensing and regulation of all private trade, vocational, and technical schools. We also reviewed and assessed the Department of Commerce and Consumers Affairs' licensing and regulatory functions with respect to massage schools. In addition, we examined the appropriateness of other state agencies that could license and regulate all private trade, vocational, and technical schools.

We obtained and reviewed literature on state licensing and regulation of private trade, vocational, and technical schools. We also collected data on the number and nature of complaints on massage schools filed with the Department of Education, Department of Commerce and Consumer Affairs, Ombudsman, and Better Business Bureau. We reviewed pertinent federal regulations to determine eligibility requirements to participate in student financial assistance programs. We contacted officials from private accrediting agencies to obtain information on the requirements for private massage schools to receive accreditation.

We reviewed the missions, goals, objectives, and current functions and responsibilities of the Department of Education, Department of Commerce and Consumer Affairs, State Board for Vocational Education, and Office of the State Director for Vocational Education.

We reviewed relevant statutes, Department of Education rules, policies, and procedures for licensing. We reviewed the Department of Education's management controls and conducted a file review of licensed massage schools.

Fieldwork included interviews with administrators and staff at the Department of Education, Department of Commerce and Consumer Affairs, University of Hawaii, State Board for Vocational Education, Office of the State Director for Vocational Education, and Board of Massage Therapy. We also interviewed massage school owners, principals, and massage students from Oahu, Hawaii, Maui, and Kauai. We interviewed and obtained literature from state licensing officials from Washington, Rhode Island, and Colorado. We also obtained literature from the Kansas State Department of Education.

Our work was performed from May 1997 through October 1997 in accordance with generally accepted government auditing standards.

Chapter 2

State Licensing of Private Massage Therapy Schools Should Be Continued, But Changes Are Needed

This chapter presents the findings and recommendations of our study on the licensing of massage schools. We found that there is a reasonable need to continue state licensing and regulation of massage therapy schools to maintain minimum education standards and to protect students. However, we also found that the Department of Education has failed to properly manage the licensing program. Important licensing files and documents are missing, licensed schools do not meet state requirements, and non-certified instructors are teaching at licensed schools. The department's administrative rules should be amended to strengthen the requirements. The department also needs a licensing administrator with monitoring responsibility.

We considered and assessed three alternatives for state oversight of licensing and regulation: continuing the Department of Education's regulation; expanding the existing Department of Commerce and Consumer Affairs' responsibilities; and adding new authority to the State Board for Vocational Education. Although all three are appropriate to varying degrees, we found that the State Board for Vocational Education was the most appropriate agency of the three alternatives assessed.

Summary of Findings

1. It is reasonable to continue state licensing and regulation of massage therapy schools.
2. New legislation is needed to define the purpose of state licensing and regulation of private trade, vocational, and technical schools.
3. The Department of Education has failed to properly manage the licensing program.
4. Although there are various alternatives, the State Board for Vocational Education may be the most appropriate to oversee massage school licensing and regulation.

Continued State Licensing and Regulation of Massage Therapy Schools Is Warranted

Continued state licensing and regulation of massage therapy schools is warranted to ensure student protection and to maintain minimum education standards. State oversight should deter massage school owners from operating institutions that do not properly educate its students and or leave them financially stranded. The federal government also requires that schools be legally authorized by the appropriate state agency or official and accredited before participating in any student financial assistance programs authorized by Title IV of the 1965 Higher Education Act. Federal student financial assistance programs authorized by the 1965 act, as amended, include the Pell Grant Program, Stafford Loan Program, Consolidation Loan Program, and the Perkins Loan Program.

Protection for students is needed

State licensing of private massage therapy schools provides protection for students. Students expect schools to maintain minimum education standards. Student protection may range from ensuring general health and fire safety standards to more specialized concerns such as monitoring school advertising for deceptive practices and maintaining adequate student records. Minimum education standards ensure that the curriculum offered by schools are appropriate and adequate. State oversight of minimum education standards includes the approval of equipment and a prescribed curriculum for massage therapy where a license is required for a student to even practice.

Evidence has shown that state licensing is needed to protect student consumers from duplicitous institutions and to ensure educational standards. In 1986, the American Massage Therapy Association received complaints from students alleging fraudulent advertising by licensed massage therapy schools. In 1994, the Department of Education received a similar complaint from a student. The student maintained that instruction provided by the schools did not include all course work advertised in the promotional literature. In 1986, three students filed a joint complaint with the department alleging that their school employed an incompetent instructor. The most recent student complaint alleged that the school was not operating at its registered address. In December 1995, that school's license was revoked following a department investigation of the complaint.

Despite the low level of reported complaints, education officials and those in the massage therapy industry believe that licensing and regulation is needed to protect consumers and to ensure that schools maintain minimum educational standards. They say that state licensing is necessary to ensure that schools provide students with a quality education. Licensing administrators from other states believe that state licensing protects students from sudden school closures and prevents "fly-by-night" schools from opening in their states.

State licensing is required for accreditation

State licensing of massage therapy schools is necessary for accreditation. Repeal of licensing would make schools ineligible to apply for accreditation. Accreditation is a private, voluntary, non-governmental peer review process that verifies the quality of education provided and promotes institutional accountability. Nationally recognized accrediting agencies are deemed to be reliable authorities as to the quality of training offered at institutions. To be listed as a nationally recognized accrediting agency by the Secretary of the U.S. Department of Education, an accrediting agency must accredit only those institutions that are legally authorized under applicable state law to provide a program of education beyond the secondary level.

Although there are currently no massage therapy schools in Hawaii that are accredited, a repeal of state licensing would preclude any school from applying for accreditation. One massage therapy school on Oahu is currently working towards accreditation through the Accrediting Commission of Career Schools and Colleges of Technology, a nationally recognized accrediting agency. School officials indicate that accreditation is expected by September 1999. Furthermore, the owner of a school on Maui has also expressed interest in applying for accreditation in the future.

State licensing is required for participation in financial assistance programs

To participate in federal student financial assistance programs, an eligible institution must be legally authorized by the appropriate state agency or official. Although the federal government exercises no direct control over the establishment of post-secondary institutions or over the standards they maintain, virtually all laws authorizing federal assistance to eligible institutions require that institutions meet minimum state licensing and accreditation standards. To be eligible to participate in any student financial assistance program, a proprietary institution of higher education must meet several requirements, including:

1. Accreditation by an agency recognized by the Secretary of the U.S. Department of Education;
2. A license by the state in which the institution operates; and
3. School demonstration to the federal government that it is administratively and financially capable of properly and efficiently administering federal funds.

These three requirements are known as the “triad of institutional eligibility” and promote the partnership of the federal government, state governments, and accrediting agencies. Financial assistance programs available were identified earlier.

New Legislation Is Needed To Define the Purpose of Licensing

New legislation is needed to statutorily define the current purposes for licensing. In 1939, the Legislature noted that state licensing of private trade schools would protect all vocational schools maintaining good standards of sanitation, equipment and instruction from unfair competition. However, this 58-year-old reference no longer accurately reflects the current reasons for licensing—that of protecting student consumers and maintaining minimum educational standards.

A statutorily defined purpose for licensing and regulation clarifies the intent and responsibilities of the state and the oversight agency. By first establishing the purpose of licensing and regulation, the Legislature or the Department of Education can then amend statutes or rules as necessary to ensure that the stated objectives of the program continue to be effectively met. Sections 302A-424 to 302A-428, HRS, do not include the legislative purpose of licensing and regulating. Nor does the law clarify the department's responsibilities.

The Legislature may consider the statutes enacted by other states. For example, Colorado's Private Occupational Education Act of 1981 states the need for statewide administration of private occupational schools in order to provide standards for, foster improvements of, and protect the citizens of Colorado from fraudulent or substandard educational services in private occupational schools. The intent of Washington's Revised Code 28C.10.010 is to protect against practices by private vocational schools that are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality.

The Department of Education Has Failed To Properly Manage the Licensing Program

The Department of Education has the statutory responsibility for issuing licenses to private trade, vocational, and technical schools. However, we found that the department is not adequately managing the licensing program. It has adopted administrative rules that are inadequate to govern and guide the licensing program. Furthermore, the department's lack of commitment to the licensing program has resulted in assignment of insufficient resources to effectively carry out licensing duties, poor communication with schools, and inadequate recordkeeping. Also, the department does not certify instructors in a timely manner and has licensed schools that do not meet state requirements.

Current administrative rules governing program are inadequate

Hawaii Administrative Rules, Title 8, Chapter 101, *Licensing of Private Trade, Vocational or Technical Schools*, set forth the Department of Education's statutory responsibilities and establish specific licensing and regulatory policies and requirements. However, the department has not adopted rules that ensure consumer protection or maintain minimum

education standards. A review of national standards on state licensing of proprietary schools and rules adopted by other states indicates that the department's rules do not address a number of important licensing issues. The Department of Education should review and revise its administrative rules based on national standards and on licensing standards adopted by other states.

National standards should be considered

The Department of Education's current administrative rules for licensing of private trade, vocational, and technical schools do not reflect the recommended national standards. Two national organizations, the State Higher Education Executive Officers and the Education Commission of the States, have published studies that describe standards for the licensing of these schools. The State Higher Education Executive Officers' study recommends that states adopt national standards for licensing. The Education Commission of the States' model legislation offers a broad set of provisions that states can use to develop or revise laws and regulations. These studies were conducted in response to concerns over lax state licensing standards, widely publicized abuses, and increased efforts to control questionable, unethical, or fraudulent practices by these institutions.

The Department of Education's current administrative rules for licensing of private trade, vocational, and technical schools do not address several recommended standards that protect students. Standards relating to the financial and administrative capabilities of a school are especially important indicators of a school's general well-being. Studies have shown that poorly managed schools are those that perform poorly in areas of education standards and consumer protection.

The department's administrative rules do not provide for adequate assessment of school owners to determine if they have the financial capability, general management skills, or administrative skills to successfully operate a school. The State Higher Education Executive Officers organization recommends that credit checks of all owners be performed as a condition of licensure. Furthermore, the general management and administrative skills of owners should be examined through statements of work experience and personal references. Owners should be subject to a thorough review, but the department only requires owners to submit a bank reference.

The department also does not address the following recommended areas:

1. *School personnel credentials:* To ensure the competency of school personnel, directors and teachers should be required to complete a course in private school administration and teaching methods, respectively.

2. *Agents*: Agents represent schools and solicit or recruit students. To reduce the potential for deception or misrepresentation, agents should be required to apply for agent permits. They should also be required to submit to background checks and be bonded by a surety.
3. *Audited financial statements*: Audited financial statements provide the opportunity to learn a significant amount of information about a school and should be a condition for renewal licensure.
4. *Tuition protection funds*: Tuition protection funds conveniently and readily provide students with financial compensation in the event a school suddenly closes. States have created tuition protection funds as an alternative to surety bonding.
5. *Teach-out plans*: Teach-out plans outline how students can obtain their certificate or credential in the event of a sudden school closure. Schools should be required to submit plans which outline the arrangement they have with other schools as a condition of licensure.

Hawaii's rules are weak in comparison with other states' rules

The Department of Education's weak licensing program is further evidenced through a comparison of its administrative rules with those adopted by other states. Hawaii's rules are especially weak in areas of school financial requirements and contingencies. The licensing rules and regulations of Rhode Island, Colorado, and Washington ensure greater consumer protection and educational standards than those of Hawaii's rules.

Rhode Island, Colorado, and Washington have adopted many of the national standards described earlier. All three states have adopted standards relating to teach-out plans in the event a school ceases operation. The Rhode Island Board of Governors for Higher Education requires audited financial statements of the school and its owners. The Colorado Department of Higher Education has detailed standards for school educational staff. Full-time personnel must complete six semester credit hours in teacher education or continuing education in the occupation being taught. The Washington Workforce Training and Education Coordinating Board has a tuition recovery trust fund. Trust moneys are used for the benefit and protection of students in the event of school closures or claims settlement. Hawaii's Department of Education does not require any of these practices under its current administrative rules.

The Department of Education's administrative rules, last amended in 1987, are outdated. The Rhode Island Board of Governors for Higher Education periodically reviews and amends its licensing regulations.

Rhode Island last amended its licensing standards in January 1996. Colorado and Washington last revised their statutes and regulations applying to licensing of private vocational schools in 1993.

The department is not committed to the licensing program

Although the Department of Education is responsible for licensing private trade, vocational, and technical schools, it is not committed to the licensing program. The department believes that licensing and regulation of massage schools or any type of private vocational, technical, or trade school is not its primary mission—that of managing the public school system. The department’s lack of commitment to its licensing and regulation responsibilities is evidenced by the insufficient resources provided to the program, the lack of communication with massage schools, missing documents, and unreliable licensing files.

The department has not provided appropriate resources

The department does not provide the licensing program with adequate resources and guidance. A full-time licensing administrator, training for licensing personnel, and comprehensive policies and procedures are nonexistent. Instead, the department relies on the administrative rules and on personnel with the lightest workload to carry out its licensing responsibilities.

The department does not perceive licensing to be a full-time commitment and has not assigned appropriate personnel to oversee the program. According to a department administrator, the licensing program is assigned to a staff person who administers licensing duties simultaneously with the regular workload. For example, in January 1997, the department assigned the licensing program to an Educational Specialist III whose regular responsibilities included the statewide summer school program, incentive grants, and after-school instruction programs. Since January 1997, the turnover has been high. Three different staff persons have handled the licensing responsibilities.

In addition to not providing adequate personnel for the program, the department does not provide personnel with adequate guidance. No staff training and policies and procedures for licensing are available. Licensing personnel say they rely on the administrative rules to provide guidance. However, the rules are not a substitute for and do not serve the same purpose as a policies and procedures manual. Without a policies and procedures manual, we found that assigned staff appear unsure of general licensing policies, instructor certification procedures, and the location of specific licensing files. The potential for inconsistent procedures is great without written guidelines. Without proper guidance, the department cannot license and regulate massage therapy schools efficiently.

The department does not communicate with massage schools

The department's contact with licensed massage therapy schools is too limited to effectively monitor them and avoid incidents of noncompliance. The department is only required to inspect schools prior to initial licensure, but we believe that continuous communication and contact with schools are a necessary part of licensing. Evidence shows that the department does not visit sites or correspond regularly with schools once they are licensed. For example, the department failed to inform school owners about the incomplete status of their instructor certifications, which are necessary to protect students from potentially fraudulent or untrained personnel.

With regular school contact, the department can avoid potential problems or complications and costly and difficult enforcement. The department could reduce incidents of noncompliance by developing good relations with schools through effective and regular communication. Site visits permit the department to better understand what schools do and thereby protect student consumers. The department should have few problems with schools that teach and administer properly as confirmed through department site inspections.

The department cannot locate licensing documents

The department's lack of commitment and weak oversight over the licensing program is further evidenced by its inability to locate licensing documents. According to the administrative rules, the department is required to be the repository of student records when schools cease operations. However, the department was unable to locate the student records of a massage therapy school that closed in 1995. The department's failure to protect student records seriously impedes those students from sitting for the professional licensing examination—their primary purpose for attending a massage therapy school.

Massage therapy students need access to their school records. The Board of Massage Therapy's rules state that an applicant for the professional licensing examination must provide written proof of the applicant's successful completion of a course of required studies in a licensed massage school.

The department's licensing does not protect students

Students may feel assured knowing that massage therapy schools are licensed by the State. However, the Department of Education fails to protect students through its licensing program. Massage therapy students believe that state licensing and oversight ensures that school instructors are qualified educators and that essential guidelines and standards are in place. Students are confident that the department can protect them against potentially fraudulent and illegitimate schools.

However, the Department of Education's "stamp of approval" does not ensure student protection. We found that the department has licensed schools that do not meet state requirements. Furthermore, the department does not certify instructors in a timely manner and possibly unqualified instructors have taught at licensed massage schools without the required certification.

The department licenses schools that do not meet state requirements

Massage therapy schools must disclose certain information to prevent misrepresentation and unethical practices. Disclosure of accurate, fair, and adequate information allows students to objectively evaluate schools. Schools should not improperly induce prospective students through false or misleading literature. The department has issued licenses to massage therapy schools that do not meet state requirements.

Schools are required to have a catalog or brochure available for students that provides essential information about the school and the courses of instruction it offers. Schools are also required to update the brochure or catalog periodically to ensure that the information is current and accurate. The department requires each brochure or catalog to contain at least 17 specific items of information including the school's entrance requirements, schedule of charges, course descriptions and objectives, and the school's policy on grading and student conduct.

During our review of the most recent school brochures found in the Department of Education's licensing files, we found that none of the ten schools currently licensed by the department met the 17 state requirements regarding accurate disclosure of school information. The department should be more vigilant in reviewing school brochures and catalogs for accuracy and objectivity because students rely on them in assessing the schools' purposes, practices, and qualifications.

Certification for instructors is not timely

The department has failed to ensure that massage therapy instructors are qualified to teach at licensed massage therapy schools in a timely manner. The department requires all instructors to be licensed and to meet three qualifications: (1) have a minimum of three years of successful practical experience beyond the standard learning period recognized for the trade; (2) possess a license or certificate for the trade if required by law; and (3) have evidence of completing training in the trade to be taught. However, the department has not enforced its criteria, resulting in possibly unqualified instructors teaching at licensed schools. The department also has not processed teacher certifications in a timely manner.

During our review, we found that one school listed 11 instructors as faculty members in its Fall 1996 brochure but those instructors did not possess an instructor's license. These 11 uncertified, and possibly unqualified, instructors taught classes in clinical massage, deep tissue, myofascial release with deep tissue therapy, foot reflexology, Swedish massage, and structural kinesiology. The instruction occurred in late 1996 and early 1997 at a licensed massage therapy school. The department reports that it does not even have the applications on file for two of the faculty members. The department also needs to verify required information from seven other faculty members. Two of the listed faculty members do not meet minimum requirements for an instructor's license.

Several massage therapy school owners have noted the lack of timely teacher certification by the department. School owners reported an approximate two-year delay before their instructors received department approval. Our review of the department's certification status of instructors for the ten licensed massage therapy schools confirmed that teacher certification applications were not processed in a timely manner. To illustrate, the department issued four trade certificates in July 1997 but the certificates were effective retroactively to July 1996, June 1995, and September 1992. Although these instructors are now certified, the department did not certify them to teach until July 1997. However, we found that one instructor, prior to being certified, taught classes in pregnancy massage, senior citizens massage, and shiatsu in 1996. The department does not conduct timely reviews of massage therapy instructors to adequately protect students from fraudulent or untrained personnel.

Although There Are Various Alternatives, the State Board for Vocational Education May Be the Most Appropriate To Oversee Massage School Licensing and Regulation

There is no single state agency that is comprehensively appropriate to oversee the licensing and regulation of massage therapy schools. We considered and assessed three agencies: the Department of Education, the Department of Commerce and Consumer Affairs, and the State Board for Vocational Education. We reviewed each agency's missions, objectives, and current functions to determine which agency had the appropriate expertise and willingness to oversee the program. We also considered the effect of the potential increase in resources and personnel needed to manage the licensing program properly.

Each agency was found to be appropriate to some degree because of the State's oversight role in consumer protection and education. However, based on our analyses, we believe that the State Board for Vocational Education is the *most* appropriate alternative of the three.

***Maintain program
within the Department
of Education***

Based on a review of the pros and cons, we believe that the arguments against maintaining the program within the Department of Education indicate that the department may not be the most appropriate agency to license and regulate massage therapy schools. The Department of Education opposes retaining the program because it is not in keeping with the department's primary mission and the department does not possess the specialized, technical knowledge for overseeing massage therapy schools. Proponents of this alternative say that the department is appropriate because it is the expert in education and schools.

Pros

The primary argument for maintaining the licensing program of massage therapy schools within the Department of Education is that the department's expertise is in education. The department is responsible for managing the statewide systems of public schools. Furthermore, the superintendent's responsibility, broadly set in statute, is to administer programs of education and public instruction throughout the state.

Key arguments for this alternative include the following:

- The department has experience in vocational education. It may pursue programs in the areas of agriculture and industry. Vocational education programs offered include the vocational student internship and school-to-work transition programs. The department also plans, develops, and evaluates curricula in vocational and applied technology.
- The department has experience in adult education. It offers adult and community education programs to provide increased opportunity for the people of Hawaii.
- The department is also experienced in administering schools and personnel. District offices exercise line supervision over public schools and the Office of Personnel Services certifies teachers and educational officers.
- Lastly, massage therapy school owners are generally satisfied with the current program. One school owner praised the program because it is streamlined, inexpensive, and simple.

Cons

The primary argument against this alternative is that the Department of Education's primary focus is on public schools and education at the secondary level and below. The department does not have any experience in providing postsecondary education or administering postsecondary schools.

Key arguments against this alternative include the following:

- The Board of Education, the executive board which heads the Department of Education, has a mission to set education policies for the “*public*” school system.
- Vocational education programs are targeted for public school students, and courses offered by the department for adult and community education programs are of less than college grade (e.g., basic elementary education, secondary education, adult literacy, and homemaking and parent education).
- The department no longer wants oversight of the licensing program and is trying to discharge itself of the responsibility. The department is adamant in its belief that its main charge is kindergarten through grade 12 schools and that licensing private massage therapy schools should not be its concern or responsibility.

***Transfer program to the
Department of
Commerce and
Consumer Affairs***

While the arguments for transferring the program to the Department of Commerce and Consumer Affairs are compelling, we believe that this alternative would result in undue financial hardship on private massage therapy schools and their students. The Department of Commerce and Consumer Affairs opposes the transfer of the program because it does not have any experience in teaching or education and has limited experience in licensing trade schools. Only two out of the department’s 35 boards and commissions are responsible for licensing its schools and instructors. Proponents of this alternative believe that oversight of schools involving regulated occupations and professions can and should fall on the department responsible for licensing such occupations and professions.

Pros

The primary argument for transferring the licensing program of massage therapy schools to the Department of Commerce and Consumer Affairs is that the department has expertise in consumer protection and massage therapy. By statute, the department is responsible for protecting the interests of consumers throughout the state. Furthermore, the Board of Massage Therapy is considered to be the state’s “expert” in the occupation of massage therapy.

Key arguments for this alternative include the following:

- As businesses, private massage therapy schools currently fall under the scope of the department’s oversight. According to the

department's Business Registration Division, eight of the ten massage therapy schools currently licensed by the Department of Education are registered with the division.

- The Professional and Vocational Licensing Division has experience in licensing professions and businesses. The division also has some limited experience in licensing schools. The Board of Cosmetology and the Real Estate Commission, which are administratively attached to the division, are responsible for licensing their respective schools and instructors. The division has a record-keeping system via computer, reviews and processes all applications for licensure, maintains pending license application records, and maintains records of all licenses.
- The Board of Massage Therapy has expertise in the occupation of massage therapy and has experience in reviewing and assessing proposed massage school curriculum. The Department of Education has previously sought out the expertise and technical assistance of the board as to the adequacy of a massage school's proposed curriculum. Since 1990, the department has requested assistance from the board three times to review curricula to determine if they met the board's requirements for licensing practitioners in massage therapy.

Cons

The primary argument against transferring the program is that the department may need to assess high fees to administer the regulatory program for massage therapy schools. The Professional and Vocational Licensing Division is completely self-sufficient and operates on revenues generated through assessed fees.

The division projects that the cost to run the licensing program for massage therapy schools would exceed \$67,500 annually for personnel and operating expenses. The fees needed to generate this revenue would include a fee of \$6,010 for an initial or renewal massage therapy school license and \$1,127 for each massage therapy instructor's license. Currently, the fees for initial and renewal school licenses are \$50 and \$20, respectively. Massage therapy schools are not assessed a fee for instructor licenses.

An initial and renewal school license fee in excess of \$6,000 may place an undue financial burden on the smaller massage therapy schools. For example, a large Oahu school which averages over 100 students a year would pay about \$45 per student per year to be licensed by the State. In comparison, a smaller school on Kauai which averages about 20 students per year would pay about \$300 per student per year for its state license. Furthermore, in comparison to licensing fees assessed by other states, the

proposed fee of \$6,010 appears to be extreme. For example, Kansas imposes an initial fee of \$250, and Rhode Island's initial fee is \$1,000. Colorado assesses an initial fee of \$1,500, and the maximum fee assessed by Washington is \$2,500. To offset a high licensing fee, schools may pass on the cost to students in the form of higher tuition and fees.

Other key arguments against transferring the program are the following:

- Neither the department nor the Board of Massage Therapy seem willing to accept a transfer of massage school licensing responsibility from the Department of Education. Both believe that the effectiveness of licensing and oversight of massage therapy schools will be diminished if the program is transferred.
- In 1990, the Legislature amended Chapter 446E, HRS, by adding a section that requires the department to register unaccredited degree-granting institutions. However, according to the department, no rules to govern registration of these institutions have ever been developed and the department has never taken steps to register these institutions. This failure is indicative of the department's reluctance to assume this responsibility.
- Although the argument that jurisdiction over schools involving regulated occupations and professions, such as massage therapy, should be placed with the department responsible for licensing those occupations and professions is compelling, we must point out that not all private trade schools offer training in an occupation that is regulated by a board or commission in the Department of Commerce and Consumer Affairs. For example, the Department of Education currently licenses schools in the following eight trades for which the Department of Commerce and Consumer Affairs does not have a regulatory board or commission overseeing the occupation: travel; airline; dressmaking/tailoring; refrigeration; air conditioning; hotel; food and beverage management and operations; and business.

***Transfer program to the
State Board for
Vocational Education***

Based on the analyses of the pros and cons of this option, we believe that transferring the program to the State Board for Vocational Education may be the best alternative. The board is comprised of the Board of Regents of the University of Hawaii. The chairperson of the Board of Regents serves as the State Board for Vocational Education's chairperson and the president of the university serves as the administrative officer of the state board. The State Board for Vocational Education is the sole state agency responsible for the administration and

supervision of the state's vocational and applied technology education programs as funded by the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

Pros

The primary argument for transferring the program to the state board is that it has expertise in lower and higher vocational education. The state board has appointed a State Director for Vocational Education to assist it with its duties and functions. The Office of the State Director for Vocational Education assists the Department of Education and the University of Hawaii Community Colleges in the planning, coordination, and evaluation of vocational education programs and services. The office's assistance and expertise could be extended to private massage therapy schools.

Other key arguments for this alternative include the following:

- The State Director for Vocational Education is responsible for vocational education in Hawaii. The director provides leadership, direction, and coordination for vocational education in the state and cooperates in the planning and development of vocational education programs.
- The Office of the State Director for Vocational Education's primary objectives focus on vocational education. The office provides leadership, direction, and coordination for the vocational education programs in the state. It also coordinates with other institutions or agencies engaged in workforce education and training.
- The State Director for Vocational Education is open to the idea of licensing and regulating private massage therapy schools. Furthermore, the director believes that the office may be able to absorb the additional responsibility without additional funding or personnel.
- The University of Hawaii and community colleges have experience in a wide array of trades and occupations. For example, although the university system does not offer a program in massage therapy, it does offer degrees in anatomy, physiology, and kinesiology — three of the academic requirements to sit for the Board of Massage Therapy professional examination. The university system also offers degrees or certificates in business careers, cosmetology, fashion design, fashion technology, food service, hotel operations, refrigeration and air conditioning technology, and travel industry management.

Cons

The primary argument against transferring the program to the state board is the potential conflict of interest. Although none of the University of Hawaii's community colleges offer programs in massage therapy, there may be a conflict of interest if the State Board for Vocational Education were to assume responsibility for licensing and regulating private massage therapy schools. As the governing body of the university and state board, the Board of Regents would be responsible for overseeing the public community colleges and private trade schools—perceived competitors in some vocational areas.

Another key argument against this alternative is the following:

- The board's statutory power and authority is specific to administering the provisions of congressional acts which promote vocational education and appropriate federal funds. However, the board's bylaws state that its duties, functions, and powers shall not be considered definitive or exclusive. The bylaws allow the board or its administrative officer to prescribe other duties, functions, and powers.

Conclusion

The State should continue to require that massage therapy schools be licensed. Although there is little documented evidence of harm, the potential for harm exists.

Problems with state licensing and regulation of massage therapy schools identified in this study center on the Department of Education's improper management of the program. The department's failure to manage the program has resulted in unqualified schools being licensed, instructors teaching without proper certification, and the loss of important documents and files. Although the study focused on massage therapy schools, we believe that the problems we found may be widespread. The department's failure to manage the licensing and regulation of massage therapy schools indicate that there may be additional problems with all private trade, vocational, and technical schools. If the department retains oversight of massage therapy schools, or all private trade, vocational, and technical schools, the superintendent should ensure that the program administrator adequately monitors the schools and that the department revises the administrative rules which govern the program.

Due to the dual purpose of licensing, there are a variety of alternatives for state oversight of the licensing program. Each alternative has its pros and cons, and we recommend that the Legislature consider each

alternative presented and weigh each of them in light of our analysis. Finally, we recommend amendments to Hawaii Revised Statutes based on our findings.

Recommendations

1. The State should continue to require that massage therapy schools be licensed.
2. The Legislature should consider amending Hawaii Revised Statutes to define the purpose of private trade, vocational, and technical school licensing and regulation as follows: “To protect consumers against practices by private trade, vocational, and technical schools that are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality at private trade, vocational, and technical schools.”
3. If licensing and regulation of massage therapy schools remains with the Department of Education, the department should revise its administrative rules that govern the program to achieve the objectives of the amended statutes. Specifically, the department should:
 - a. Require schools to submit audited financial statements as a condition for initial and renewal licensure;
 - b. Strengthen the requirements for school owners, principals, and instructors;
 - c. Regulate agents and require them to obtain permits from the department;
 - d. Consider developing a tuition protection fund into which all licensed schools are required to contribute;
 - e. Require schools to submit teach-out plans as a condition for initial licensure;
 - f. Require schools to list the names of certified faculty in their brochures; and
 - g. Conduct annual site visits to schools.
4. If licensing and regulation of massage therapy schools remains with the Department of Education, the superintendent should ensure that the administrator of the program:

- a. Develops and implements comprehensive policies and procedures;
 - b. Certifies massage school instructors and issues temporary certificates in a timely manner;
 - c. Regularly monitors, contacts, and visits licensed massage therapy schools; and
 - d. Maintains orderly and complete licensing files.
5. If the Legislature considers transferring the massage school licensing program to the State Board for Vocational Education, any amendments to Hawaii Revised Statutes should include a definition of the purpose of regulating these schools, as stated in recommendation two above.
6. If the licensing program is transferred to the State Board for Vocational Education, the board should take into account recommendations three and four above.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Department of Education, the Department of Commerce and Consumer Affairs, and the University of Hawaii on November 28, 1997. A copy of the transmittal letter to the Department of Education is included as Attachment 1. Similar letters were sent to the Department of Commerce and Consumer Affairs and the University of Hawaii. The responses of the Department of Education, Department of Commerce and Consumer Affairs, and the University of Hawaii are included as Attachments 2, 3, and 4, respectively.

The Department of Education concurs with all the recommendations. The department is especially supportive of the recommendation to transfer the massage licensing program to the State Board for Vocational Education. In its response, the department recommends that licensing and regulation of all private trade, vocational, and technical schools be placed with the State Board of Vocational Education. It further recommends that adequate personnel and financial support be appropriated to ensure consumer protection.

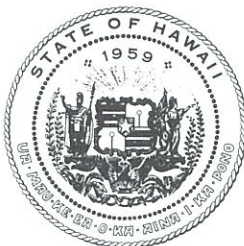
In its response, the Department of Commerce and Consumer Affairs requested the correction of two statements made in our draft report. The department noted that the Business Registration Division does not have any oversight or responsibility for operations of massage therapy schools. Our statement regarding the division is not meant to imply that it is involved in the operation of any massage therapy schools. Rather, our point is that massage therapy schools are businesses and a majority of licensed massage therapy schools are registered with the Business Registration Division. Massage therapy schools which are registered business organizations fall under the oversight of the department. We concluded this based on the department's statutory responsibility to set standards and enforce all laws and rules governing the licensing and operation of, and register and supervise the conduct of businesses.

The department also noted that it has not and does not register unaccredited degree-granting institutions. Our report was modified to reflect this fact. However, in doing so, we note that the department is statutorily required to register unaccredited degree-granting institutions, but has thus far failed to develop and implement any administrative rules to govern this registration as required by law.

The University of Hawaii responded that the university and the State Director for Vocational Education are open to discussing with the Legislature the possibility of transferring the massage school licensing

program to the State Board for Vocational Education. They note that any transfer would require a reorganization due to the additional workload function. They also note that while the Office of the State Director for Vocational Education has the expertise and staff to carry out the massage school licensing function, it cannot accommodate the operating costs of the licensing program within existing funding levels.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

November 28, 1997

COPY

The Honorable Herman M. Aizawa
Superintendent of Education
Department of Education
Queen Liliuokalani Building
1390 Miller Street
Honolulu, Hawaii 96813

Dear Dr. Aizawa:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Study on the Licensing of Massage Schools*. We ask that you telephone us by Tuesday, December 2, 1997, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, December 9, 1997.

The Department of Commerce and Consumer Affairs, University of Hawaii, 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 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,

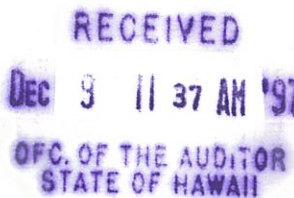
Marion M. Higa
State Auditor

Enclosures

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 8, 1997



TO: The Honorable Marion M. Higa, State Auditor
Office of the Auditor

FROM: Herman M. Aizawa, Ph. D., Superintendent

SUBJECT: Response to Auditor's Report, Study of the Licensing of Massage Schools

Thank you for the opportunity to comment on the *Study on the Licensing of Massage Schools*. The Department of Education concurs with all recommendations presented in the report. It is especially supportive of the recommendation to transfer the massage school licensing program to the State Board for Vocational Education. The Department of Education acknowledges its inability to properly administer a regulatory program that does not receive additional funding and more importantly, one that is not compatible with the Department's primary mission.

1. Department of Education's Mission:

The Department of Education's primary mission is the education of children in 247, K-12 public schools. As such, the responsibility of licensing and regulating private massage schools as well as all post secondary private trade, vocational and technical schools is inappropriately placed with the Department of Education. As noted in the Auditor's Report, other states with stronger licensing controls have assigned these responsibilities to departments that handle post secondary responsibilities. The Department of Education does not have expertise with post secondary vocational subjects as it is not a part of the Department's mission.

2. Resources:

The Department of Education receives no additional personnel and/or financial support to administer the licensing of private massage schools as well as all post

The Honorable Marion M. Higa
December 8, 1997
Page 2

secondary private trade, vocational and technical schools. Since the Department has reduced its administrative staff by approximately 43%, over the past three years, licensing has not been a Department priority. Our attempt to carry out licensing responsibilities within current resources has been difficult.

3. Added Recommendation:

The Auditor's Report limited its investigation to private massage schools, however, the Department of Education recommends that licensing and regulating of all post secondary private trade, vocational and technical schools be placed with the State Board of Vocational Education. The Department further recommends that adequate personnel and financial support be appropriated to ensure the protection of consumers who enroll in these schools.

We hope these comments provide added information in addressing this issue. If you have any questions, please contact Art Kaneshiro, Director, School Improvement and Community Leadership Group at 586-3124.

HMA:ATK:gm

c: DOE Internal Audit
Office of Accountability and School Instructional Support

BENJAMIN J. CAYETANO
GOVERNOR



KATHRYN S. MATAYOSHI
DIRECTOR

BENJAMIN I. FUKUMOTO
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

RECEIVED
DEC 10 1 44 PM '97
OFF. OF THE AUDITOR
STATE OF HAWAII

December 10, 1997

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

Dear Ms. Higa:

RE: Draft Report on Massage Therapy Schools

Thank you for providing the department with an opportunity to comment on the above draft report. We have the following two items to bring to your attention:

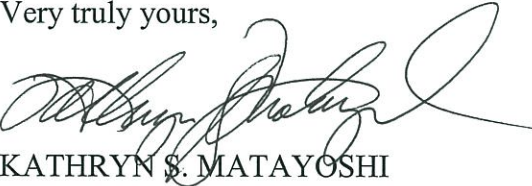
Page 18-19: The report comments that the department has "oversight" over eight of the ten schools, as they are registered with the Business Registration Division. This is not correct. The Business Registration Division does not have any oversight or responsibility for operations of the school. They are merely a registry for business organizations (e.g. corporations, partnerships, tradenames and trademarks). For example, a school may be registered as a corporation or partnership, or may register its name for purposes of protecting its tradename. However, there is no involvement of the division in their operation or any differentiation between a school organization from any other business organization.

Page 19: The report comments that the department "registers unaccredited degree-granting institutions". This is not correct. The department has not and does not register such schools. The Office of Consumer Protection's only involvement is to ensure that schools properly disclose in their publications and advertising that they are not accredited, and not licensed or otherwise approved by the State.

Ms. Marion Higa
December 10, 1997
Page 2

We would appreciate correction of the above statements in the final report. If you have any questions or comments, please call me at 586-2850. Again, thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathryn S. Matayoshi', written in a cursive style.

KATHRYN S. MATAYOSHI
Director

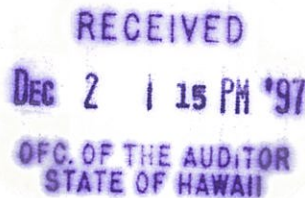


UNIVERSITY OF HAWAI'I

PRESIDENT, UNIVERSITY OF HAWAI'I AND
CHANCELLOR, UNIVERSITY OF HAWAI'I AT MĀNOA

December 2, 1997

Mrs. Marion M. Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, HI 96813-2917



Dear Mrs. Higa:

The State Director for Vocational Education and I appreciate the opportunity to comment on the draft report entitled *Study on the Licensing of Massage Schools*, which we received on November 28, 1997.

We are open to discussing with the legislature, the possibility of transferring the massage school licensing program to the State Board for Vocational Education under the conditions stipulated in the recommendations of the draft report. However, since the licensing of massage schools adds a significant workload function to the Office of the State Director for Vocational Education (OSDVE), an OSDVE reorganization is required. The reorganization process must follow University of Hawai'i procedures and requires appropriate union consultation.

Finally, while OSDVE has the expertise and staff to carry out the massage school licensing function, it is clear that the operating costs of this licensing program cannot be accommodated within existing OSDVE funding levels. The State Director for Vocational Education is prohibited from using federal vocational education administration funds for non-Perkins Vocational Education Act activities.

Again, thank you for the opportunity to comment on the recommendations.

Sincerely,

Kenneth P. Mortimer
President, University of Hawai'i and
Chancellor, University of Hawai'i at Mānoa