



Summary of Changes to CAMTC's Statute

On September 22, 2016, California Assembly Bill AB 2194 was signed into law by Governor Jerry Brown. The revisions to the Massage Therapy Act ("Act") and Government Code section 51034 will become operative on January 1, 2017. The bill made some technical edits, provided much needed clean up after the sweeping changes made by AB 1147, extended the Act for another four years, made some clarifying changes to CAMTC's denial and disciplinary provisions, and made some other more substantive changes.

Changes Applicable to Local Regulation of Massage Businesses

- One of the more significant changes made to the Act (Business and Professions Code sections 4600 et. seq.) is the change of current section 4600.5(c) from intent language to its placement in 4603.1 as directive language. The current statute states that it is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations. The new version of the law, Business and Professions Code section 4603.1, now provides:

Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers.
- Changes were also made to the intent language in Business and Professions Code section 4600.5(b), where the legislature showed their strong support of revocable registrations by adding the following language:
 - "Local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations."
- Changes were also made to Government Code section 51034. This section was partially renumbered and the following provisions were added:

- Local governments can't require a massage business or establishment to have a shower or a bath; and
- While the law already provides that local governments can't require a CAMTC certificate holder to pass a background check, this provision has been clarified to state that this includes a criminal background check or submission of fingerprints for a state or federal background check.

Changes Applicable to Procedures for Denial and Discipline

- The procedures related to denials and discipline have been clarified in the following ways:
 - Provision that allows a certificate holder to request a hearing on a suspension based on evidence has been clarified to state that the hearing is an "oral hearing or consideration of a written statement." This makes it clear that "hearing" doesn't mean an in person hearing;
 - Written statements and declarations signed under penalty of perjury can currently be used to "determine the basis" of the denial or discipline. This provision has been clarified to state that this includes using those statements and declarations to make a final decision on denial or discipline;
 - The procedures set forth in CAMTC's law are deemed to meet the requirements for fair procedure;
 - Final decisions to deny or impose discipline are specifically authorized to be made based solely on written statements or declarations made under penalty of perjury, and those providing the statements or declarations can't be required to appear at an oral hearing or provide additional documents; and
 - It has been clarified that certification is not a fundamental vested right, and the legal standard on review has been defined as the substantial evidence test.
- Lawsuits against CAMTC related to individual certification denials or discipline must now be brought within 90 days.

Technical Changes

- The law was changed to state (as it previously did before AB 1147) that all education be from "approved schools" instead of "schools approved by the council," so that the law again requires approval by BPPE or one of the other organizations listed in Business and Professions Code section 4601.

- The provision stating that owners and operators of massage businesses or establishments are responsible for the conduct of all those providing massage for compensation on the premises of their business has been clarified to state that this includes applicants as well as certificate holders.
- The law again requires (as it previously did before AB 1147) that when a certificate holder is suspended based on an arrest with charges filed for 647(b) or another act punishable as a sexually related crime, that their employer of record be notified of the suspension by mail (current statute only specifies notification by email).
- The deadline to submit the feasibility study has been extended until January 1 of 2017.
- The Act has been extended for a four year time period.



CALIFORNIA
MASSAGE THERAPY COUNCIL

One Capitol Mall, Suite 320 | Sacramento, CA 95814
tel 916.669.5336 fax 916.444.7462 www.camtc.org

Example of cities or counties that provide a good approach to abating illicit activities under the guise of massage while respecting the profession of therapeutic massage.

Over time numerous cities and counties have been developing best practices in the effective regulation of massage establishments. There are a number of factors that may be considered in determining whether a city or county is effectively reducing the number of illicit so-called “massage” establishments while complying with the Intent of the 2014 Massage Therapy Act. Business and Professions Code Section 4600.5 (c) states:

It is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers, during the transition period after this act becomes law and thereafter for the sake of developing a healthy and vibrant local economy.

The following are three components that CAMTC observes in the most successful jurisdictions.

- First of all, and of most importance, is that the jurisdiction makes a commitment to adequate enforcement of their own municipal codes, as well as state laws relating both specifically to the profession, and to criminal violations in general.
- Second is having a well-constructed municipal code that maximizes the ability to discipline or close illicit establishments easily and cost effectively, using administrative citations or penal codes, with violators paying for enforcement through the imposition of fines. Many of the cities and counties with the most

effective regulations have drafted them with input from the local community of massage therapists and business owners to minimize unintended consequences that harm the legitimate profession.

- The third factor that may influence the success of fair and effective local regulation of massage establishments depends on how dynamic the sharing of information with CAMTC is. Whether a city or county ordinance requires CAMTC certification is not as important as whether the jurisdiction commits to cooperation with CAMTC in terms of sharing police reports and citation/ municipal code violation information related to applicants and certificate holders. While Business and Professions Code section 4614 requires that CAMTC "shall" provide information concerning an applicant or a certificate holder upon the request of a local agency, these same local jurisdictions are authorized, but not mandated, to share information with CAMTC. While certainly the level of cooperation from local agencies has increased significantly with the implementation of AB 1147, not all jurisdictions have committed to robust systems for information sharing with CAMTC¹.

San Mateo County

San Mateo County, with a population of 747,373, has established a target of being the first urban county with no illicit massage establishments. In 2012, San Mateo County passed an ordinance requiring revocable registrations for massage establishments and amended it in 2014 to prohibit the opening, within one year, of a new massage establishment in the same location where one had been closed for illegal activity.

¹ It should be noted that according to a study of California DOJ figures, since 2005 there has been a 28% reduction in the number of arrests for prostitution in California. Yet at the same time, the pressure from the public to abate a perceived proliferation of illicit establishments has increased. With a frequent lack of arrests, filing of charges and convictions for sexual crimes, CAMTC's authority to take action against applicants and certificate holders for conduct-based violations becomes even more important. Such evidence is most often obtained in the form of officer declarations, which can only be obtained with the cooperation of local law enforcement personnel.

San Mateo County has encouraged all cities within the county to adopt similar ordinances. San Mateo County also conducts, at county expense, any hearings to close or otherwise discipline violating establishments. Thus far, only three cities within the county have not followed suit. Fees for the registration of massage establishments range from none to several hundred dollars for non-certified owners. Background checks are imposed on non-certified owners only. Health and safety inspections are charged at reasonable fees for cost recovery.

The County has closed 11 illicit establishments in the unincorporated county since 2012, most having been in operation for ten years or more. As the cities within the county have directed resources towards enforcement, they too are successfully abating illicit “parlors.” The County has chosen not to use land use restrictions, such as making massage a conditional use, as a mechanism to achieve their goal. This may be the most welcoming county for the legitimate profession in terms of reasonable regulations and fees while reducing the number of problem establishments that harm both the profession and the community.

San Rafael

San Rafael (population 57,713) was the first city to enact an ordinance with revocable registrations for massage establishments in 2010, shifting its enforcement program from criminal to civil administrative. However, the city did not have the resources for enforcement until it contracted with an outside firm for code enforcement in June of 2014. In 2015 the city extended the contract and updated its municipal code. After a brief and controversial moratorium, the city chose not to impose conditional use or distance limitations on massage establishments. The staff report makes a strong case for why they rejected these alternatives, after a study of choices made by other cities and careful analysis of the options. [SEE SAN RAFAEL STAFF REPORT, SECTION 12, EXHIBIT ---.] For many years San Rafael has had a very engaged Massage Ordinance Advisory Committee (“MOAC”) of local massage therapists. As of this writing, San Rafael has also closed 11 illicit establishments and has one in suspended status.

Annual fees range from \$62.50 per year for a certified sole proprietor to \$175 per year for a non-certified owner (\$350 the first year). Like San Mateo county and its cities, San Rafael has been very pro-active in sharing information with CAMTC and providing CAMTC with the evidence needed to suspend, deny, and discipline applicants and certificate holders.

Vacaville

Vacaville (population 118,837) was one of the first cities to require certification in 2010, and this year updated their ordinance. Like San Rafael, city staff participated in the conference calls of CAMTC's Public Policy and Local Government Committee in 2009-2011, which resulted in many of the policies and information sharing practices that CAMTC implemented from the start. So far the city has closed about 10 illicit establishments through diligent police work, robust information sharing, and an effective ordinance. This city is respectful and supportive of the role of professional massage in serving the public.

Fresno City

Fresno city has a population of 520,000. Their 2013 massage ordinance requires certification and a no fee registration of massage establishments. The code includes adequate grounds for suspension and revocation of the registration certificate, and imposes fines for administrative citations ranging from \$1,000-\$2,000.

* <http://www.eastbayexpress.com/oakland/oakland-city-council-takes-stand-against-sex-workers/Content?oid=4563294&showFullText=true>