

# AB 1147

# Massage Therapy Regulation

Patrick Q. Sullivan  
City of Torrance

League of California Cities, City Attorneys' Spring Conference  
May 6, 2015

# A Special Thank You to

- Natalie Karpeles at Jenkins & Hogin, LLP
  - Deputy City Attorney for the Cities of Lomita, Malibu and Palos Verdes Estates
- Lauren Langer at Jenkins & Hogin, LLP
  - Assistant City Attorney for the Cities of Lomita and Hermosa Beach
- Lisa Kranitz at Wallin, Kress, Reisman and Kranitz
  - Assistant City Attorney for the Cities of Gardena, Los Alamitos, and La Verne
  - Deputy City Attorney for the City of San Gabriel

# History of Massage Regulation

- Prior to September 1, 2009
  - State of California did not uniformly regulate massage professionals and massage businesses
  - Cities were free to reasonably regulate massage
  - Regulations varied from city to city
  - Massage professionals had to obtain permits from each city that they operated in

# History of Massage Regulation (cont.)

- SB 731 (Massage Therapy Act)
  - Enacted in 2008
  - Effective September 1, 2009
  - Created the Massage Therapy Organization
  - Limits the power of cities to regulate massage professionals
    - Provides that land use and zoning requirements applicable to massage establishments must be no different than those uniformly applied to other professional or personal services businesses

# History of Massage Regulation (cont.)

- AB 619 (2011)
  - Renamed the Massage Therapy Organization the California Massage Therapy Council (CAMTC)
  - Changed definition of professional services as defined in Corporations Code § 13401(a)
    - State license, certification, or registration under the B&P Code, Chiropractic Act, or Osteopathic Act
    - Without uniform application to all professions, you cannot require
      - CUP
      - Hours of operation
      - Conditions specific to massage establishments

# History of Massage Regulation (cont.)

- SB 1238 (2012)
  - Made various changes to the law including
    - Additional requirements of credit hours and examinations
    - Grounds for suspension, denial, or revocation of certification
    - Sharing of information between local law enforcement and CAMTC
    - Responsibility of owner/operators of massage establishments for the conduct of employees and independent contractors

# What happened after SB 731?

- Unprecedented growth in the number of massage establishments
  - San Gabriel: 10 to 57
  - Ventura: 45 to 64
  - Rancho Cucamonga: 7 to 42
  - Huntington Beach: 9 to 74
- Increased complaints regarding prostitution and human trafficking
- Drain on city staff in regard to processing and enforcement
  - Undercover operations take lots of manpower and are very costly

# AB 1147

- SB 731 had a sunset date of January 1, 2015
- South Bay cities got together to discuss issues with massage establishments in 2012
  - Gardena, Lomita, Manhattan Beach, Redondo Beach, Rolling Hills Estates, and Torrance
- League of California Cities began to build a coalition to bring about needed change



# A quick note on lobbying

- Torrance worked extensively with the League of California Cities and other cities on this issue
- Torrance worked with our lobbyist Joe A. Gonsalves & Son to set up meetings with legislators
  - Sent representatives from City Manager's Office, Police Department, and City Attorney's Office to Sacramento to have face-to-face meetings

# Lobbying (cont.)

- Torrance sent the Mayor, Police Chief, and Assistant City Attorney to appear before the Joint Oversight Hearing of the Senate Business, Professions and Economic Development Committee and the Assembly Business, Professions and Consumer Protection Committee
  - One of the points I made during the hearing was that cities could regulate everything from doctors to strip clubs, but we could not regulate massage parlors.

# AB 1147

- Effective January 1, 2015
- Massage regulation divided between
  - **CAMTC:** Regulates the practice of massage and certification of massage professionals
  - **Cities and Counties:** Regulate the business of massage through land use authority and business license requirements

# Highlights of AB 1147

- Reconstitutes the CAMTC Board of Directors
- Discontinues the issuance of massage practitioner certificates
  - Massage practitioner was a lower level certificate than massage therapist
  - Massage practitioner required 250 hours while massage therapist required 500 hours
- Requires revocation of certificates for registered sex offenders
- Returns local land use authority to Cities and Counties
  - Can adopt and enforce local ordinances that govern zoning, business licensing, and reasonable health and safety requirements

# What cities and counties can and can't do

- Cities and Counties can adopt and enforce local zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses with CAMTC-certified practitioners. (B&P 460(b) limited by Government Code 51034)
- Cities and Counties can't prohibit a CAMTC-certified practitioner from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice. (B&P 460(a))
- No restrictions on city and county authority over an individual or a business with personnel without CAMTC certification

# Restriction on Local Government Authority

- Government Code 51034 imposes following restrictions on cities' and counties' authority
  - A city, county or city and county shall not enact or enforce an ordinance that conflicts with the provisions of Section 51034 or with Chapter 10.5 (commencing with 4600) of Division 2 of the B&P Code
  - But...restrictions do not apply to individual who provides massage for compensation *without* a valid CAMTC certificate. (B&P 4612)

# Government Code § 51034

- Prohibit a person of one sex from engaging in the massage of a person of the other sex.
- Define a massage establishment as adult entertainment business or otherwise regulating a massage establishment as adult entertainment.
- Require a massage establishment to have windows or walls that do not extend from the floor or ceiling or have other internal physical structures (such as windows) that interfere with a client's reasonable expectation of privacy.

# Government Code § 51034 (cont.)

- Impose client draping requirements that extend beyond the covering of genitalia and female breasts or otherwise require clients to wear special clothing.
- Prohibit a massage establishment from locking its external doors if the business is owned by one individual with one or no employees or independent contractors.
- Require a massage establishment to post any notice in an areas that may be viewed by clients that contains explicit language describing sexual acts, mentions genitalia, or specific contraceptive devices.



# Government Code § 51034 (cont.)

- Require a person certified by CAMTC to take any test, medical examination, or background check or comply with education requirements beyond what is required in statute.
- Imposing a requirement that a CAMTC certified individual obtain a local license, permit, certificate, or other authorization to provide massage for compensation but may require a massage business obtain a license, permit, certificate or other authorization in order to lawfully operate within the jurisdiction.
- Imposing a dress code requirement on a certified massage professional more restrictive than imposed in B&P Section 4609.

# Government Code § 51034 (cont.)

- Prohibiting a certified massage professional from performing massage for compensation on the gluteal muscles, prohibiting specific massage techniques recognized by CAMTC as legitimate, or imposing any other specific restriction on professional practice beyond those set forth in B&P Section 4609.

# Changes to CAMTC Board

- Under SB 731, there were up to 20 CAMTC board members
  - There were some concerns about the representation on the Board and whether the massage industry was overly represented while other stakeholders were underrepresented

# Changes to CAMTC Board

- Under AB 1147, effective September 15, 2015 at 12:00 pm, there will be 13 Board Members
  - Three chosen by 3 local government organizations
  - Two chosen by massage professionals
  - One chosen by the Office of the Chancellor of the California Community Colleges
  - One chosen by Department of Consumer Affairs
  - One chosen by the California Association of Private Postsecondary Schools
  - Five chosen by CAMTC including an attorney representing a city, a local government or state public health official, and a member of an anti-human trafficking group

# CAMTC's Authority and Responsibilities

- The council *may* discipline a certificated massage business owner or operator for the conduct of all individuals providing massage for compensation on the business premises.
- The council *may* deny an application for a certificate or impose discipline on a certificate holder for: unprofessional conduct, engaging in sexually suggestive advertising, engaging in any form of sexual activity on the premises of a massage establishment, engaging in sexual activity while providing massage, or dressing inappropriately while engaged in the practice of massage.

# CAMTC's Authority and Responsibilities

- The council *must* deny an application for a certificate, or revoke the certificate of a massage professional if the applicant or certificate holder is required to register under the Sex Offender Registration Act or is required to register as a sex offender in another state.
- The Council *must* provide information upon request of local government concerning an applicant or a certificate holder with work address within the jurisdiction including: current status of application or certificate; history of disciplinary actions; the home and work addresses of the applicant or certificate holder; the name and home and work addresses of any person whose certificate has been suspended and the length of the suspension, and any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

# General Comments

- AB 1147 recognizes the broad Constitutional authority of local governments to regulate businesses, including businesses providing massage, through land use and local licensing, and health & safety requirements. Unless the statute specifies that a local government is prohibited from regulating in a specific way (e.g. defining a massage establishment as adult entertainment), local governments can regulate a massage business (e.g. requiring conditional use permit).
- AB 1147 does not allow local governments to regulate the practice of massage similar to the way state law prohibits local governments from regulating the practice of medicine or other professions. This is the responsibility of CAMTC.

# What to Expect

- CAMTC has adopted strategic priorities that include “improving relationships with all stakeholders.” **Expect** CAMTC to reach out to cities through their city attorneys, police chiefs and city council to work with cities to update their ordinances so that they are “reasonable and comply with the new law.”
- AB 1147 sunsets as of January 1, 2017. **Expect** to defend the ability to regulate massage businesses. Collect information including: the number of establishments your city was able to discipline or close, the number of declarations filed with CAMTC, etc.



# What to Expect

- The massage community is wary of jurisdictions enacting unreasonable ordinances. **Expect** that if jurisdictions adopt moratoriums, unreasonable caps and huge business licenses the massage community will seek to take the authority away for all cities. Cities need to be good stewards of the law and be thoughtful in their ordinances to ensure that legitimate massage businesses can operate.
- AB 1147 asks stakeholders for a model ordinance. (Gov. Code § 4600.5(d)) **Expect** the League to be a resource. The League has posted ordinances on its web site that have been updated in accordance to AB 1147. Please share any and all information.

# League Resources

- The League has a “Hot Issues” tab on its web site that contains:
- Background information
- Resources (webinar slides, FAQ document etc.)
- News Articles
- Ordinances (if your city has a newly adopted ordinance as a result of AB 1147, please forward to the League so that they can post)
- <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Massage-Regulation>

# CAMTC Comments

CAMTC has commented on League's FAQ – Areas of disagreement (this is for information only – NOT to indicate CAMTC is correct):

- Cities may not prohibit massage professionals from working out of their homes
- No moratoriums on the massage business of CAMTC certificate holders
- No caps on the number of massage businesses of CAMTC certificate holders

# CAMTC Comments

- No ban on outcall services of a CAMTC massage professional
- No background checks on massage business owners that are CAMTC certified
- **Expect** to be contacted by CAMTC as you go through your ordinance adoption

# What are cities doing after AB 1147

- Adopt moratorium to allow time to development new ordinances and regulations
- Adopt new ordinance that complies with AB 1147
  - Proof that employees are CAMTC certified
  - Business license
  - Operating requirements
  - Land use restrictions (CUP, distance requirements, and zoning)
  - Health and safety requirements

# Picture of typical massage establishment

- Courtesy of Kathy Jenson

