



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

# 2021 Sunset Review

Massage Therapy Practice Act



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October 15, 2021



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2021

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Massage Therapy Practice Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2022 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 235 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit [coprrr.colorado.gov](http://coprrr.colorado.gov).

Sincerely,

Patty Salazar  
Executive Director



## Sunset Review: Massage Therapy Practice Act

### Background

#### ***What is regulated?***

Massage therapists provide treatment to their clients utilizing touch to manipulate soft tissues and muscles of the body. Massage therapy treatments may provide many health benefits including pain relief, accelerated healing, improved circulation, stress reduction, and increased relaxation.

#### ***Why is it regulated?***

Since massage therapy is therapeutic in nature, clients often receive massage therapy following an injury or the exacerbation of a medical condition to relieve pain and improve overall health. Massage therapy techniques may cause harm if not utilized properly, including the potential for further damage to existing injuries. Additionally, massage therapists hold a position of trust with their clients, since massage therapy is often performed in treatment rooms where the client and massage therapist are the only individuals present. The isolation and vulnerability of clients in this scenario can also lead to harm.

#### ***Who is regulated?***

During fiscal year 19-20, there were 14,265 massage therapists licensed by the Director of the Division of Professions and Occupations (Director and Division, respectively) at the Department of Regulatory Agencies (Department).

#### ***How is it regulated?***

The Director oversees the licensure and regulation of massage therapists in Colorado as specified in the Massage Therapy Practice Act (Act). License applicants must demonstrate minimum competencies through requirements established in statute including, but not limited to, the completion of an approved massage therapy educational program and passage of an examination approved by the Director.

#### ***What does it cost?***

In fiscal year 19-20 the Director expended \$808,016 and allotted 2.58 full-time equivalent employees to implement the massage therapy licensure program.

#### ***What disciplinary activity is there?***

During the sunset review period of fiscal years 15-16 through 19-20, 1,878 complaints were filed, 640 violations were established, and 474 disciplinary actions were taken against massage therapy licensees.

### Key Recommendations

- **Continue the Massage Therapy Practice Act for nine years, until 2031.**
- **Repeal statutory references to national organizations and national examinations.**
- **Amend section 12-235-111(1)(d), C.R.S., to include in the grounds for discipline, the submission of examination results that were obtained based on fraud, misrepresentation, deceit, or cheating.**
- **Amend section 12-235-111, C.R.S., to include in the grounds for discipline, failure to respond to the allegations of a complaint within the timeframe specified in the complaint letter.**

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## Background

### Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.



These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> <li>• Profile of the Profession.</li> <li>• Legal Framework: History of Regulation.</li> <li>• Recommendation 1.</li> </ul>
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> <li>• Legal Framework: Legal Summary.</li> <li>• Recommendation 2.</li> </ul>
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> <li>• Legal Framework: Legal Summary.</li> <li>• Program Description and Administration.</li> <li>• Recommendation 3.</li> </ul>
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> <li>• Program Description and Administration.</li> </ul>
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> <li>• Not applicable.</li> </ul>
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> <li>• Profile of the Profession.</li> </ul>
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> <li>• Program Description and Administration: Fining Activity.</li> <li>• Recommendations 3 and 4.</li> </ul>
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> <li>• Program Description and Administration: Licensing.</li> <li>• Program Description and Administration: Examinations.</li> <li>• Administrative Recommendation 1.</li> </ul>

Sunset Criteria	Where Applied
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> <li>• Program Description and Administration: Collateral Consequences.</li> </ul>
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> <li>• Recommendations 1 - 4.</li> <li>• Administrative Recommendation 1.</li> </ul>

## Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR’s website at [coprrr.colorado.gov](http://coprrr.colorado.gov).

The functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 235 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2022, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of massage therapists should be continued and to evaluate the performance of the Director. During this review, the Director must demonstrate that the program serves the public interest. COPRRR’s findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## Methodology

As part of this review, COPRRR staff interviewed Division staff, practitioners, and officials with state and national professional associations; and reviewed complaint file summaries, Colorado statutes and rules, and the laws of other states.

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The major contacts made during this review include, but are not limited to:

- American Massage Therapy Association
- Associated Bodywork & Massage Professionals
- City of Lakewood
- City of Aurora
- City of Wheatridge
- City and County of Broomfield
- Colorado Attorney General's Office
- Denver District Attorney's Office
- Division of Professions and Occupations, Department of Regulatory Agencies
- Federation of State Massage Therapy Boards
- Colorado Counties, Incorporated
- Colorado Department of Higher Education
- Colorado Municipal League

In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all massage therapists who are licensed by the Director. The survey was sent to 11,942 massage therapists; 55 emails were returned as undeliverable. The survey received 1,769 responses, which is a 15 percent response rate. Survey results may be found in Appendix B.

## Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

Massage therapists provide treatment to their clients utilizing touch to manipulate soft tissues and muscles of the body. Massage therapy treatments may provide many health benefits including pain relief, accelerated healing, improved circulation, stress reduction, and increased relaxation. The type of massage treatment provided is often customized to the needs of the client. For example, prenatal massage is a treatment specifically tailored to meet the needs of pregnant women.<sup>2</sup>

An initial intake assessment is often performed by the massage therapist that may include talking to their clients about their medical history, symptoms, and desired

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<sup>2</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: How to Become a Massage Therapist*. Retrieved June 10, 2021, from <https://www.bls.gov/ooh/healthcare/massage-therapists.htm#tab-4>



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outcomes. Specific information regarding the client's progress and conditions may be documented, and massage therapists may also provide their clients with information regarding stretching, posture, and relaxation techniques.

Massage therapy may involve the use of lotions or oils and may utilize massage tables or chairs to perform treatments. A massage therapy session can vary in length and may be as short as a few minutes or may last over an hour.

In order to become a massage therapist, an individual must typically possess a high school diploma or equivalency to be admitted into a massage therapy training program. Massage therapists often complete a post-secondary program with a requirement of 500 or more hours of experience and training, although specific requirements may vary in each state. Most states require massage therapists to receive a license or certification to practice. Further, states typically require the completion of an approved massage therapy training program and the passing of an examination to become certified or licensed.<sup>3</sup>

In Colorado, there are approximately 39 massage therapy schools approved by the Division of Private Occupational Schools, with locations on the Western Slope and along the Front Range.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession.

As of May 2020, there were approximately 85,040 practicing massage therapists in the United States whose hourly mean wage was \$22.77 with an annual mean wage of \$47,350. According to the Division, Colorado licensed approximately 14,265 massage therapists in fiscal year 19-20. During the same year, massage therapists in Colorado averaged an hourly mean wage of \$22.12 and an annual mean wage of \$46,020.<sup>4</sup>

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<sup>3</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook: How to Become a Massage Therapist*. Retrieved June 10, 2021, from <https://www.bls.gov/ooh/healthcare/massage-therapists.htm#tab-4>

<sup>4</sup> Bureau of Labor Statistics. *Occupational and Employment Wage Statistics*. Retrieved June 10, 2021, from <https://www.bls.gov/oes/current/oes319011.htm>

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## Legal Framework

### History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

Following a sunrise review conducted by the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) in 2007 which recommended that the General Assembly not regulate massage therapists, the Colorado General Assembly proceeded to pass Senate Bill 08-219. This legislation tasked the Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies with the regulation of massage therapists in Colorado, through statutory authority known as the Massage Therapy Practice Act (Act).

The Act established a process for the application of practitioner registration and required all applicants to complete educational and examination requirements to demonstrate minimal competencies. Further, the Act established activities that would be grounds for discipline and developed a process for disciplinary action.

Following the sunset review conducted by COPRRR in 2012, the General Assembly passed Senate Bill 13-151, which modified the Act to require licensure in lieu of registration for all active massage therapists within the state of Colorado by July 1, 2014. The bill further required practitioners to report any actions or disciplinary proceedings that may be in process against a licensee in another state.

In 2016, the General Assembly passed House Bill 16-1320 (HB 1320), which authorized the Director to deny a license to an applicant who has pled guilty, pled *nolo contendere*, or who has received a deferred sentence for any charge related to unlawful sexual behavior, prostitution, or human trafficking. House Bill 1320 further modified requirements to include that all applicants must be at least 18 years of age at the time of licensure.

During the 2019 legislative session, the General Assembly recodified Title 12, C.R.S. At that time, Article 35.5 was repealed and reenacted as Article 235. Though there were changes in the manner in which the law reads, and many provisions of law were combined with common elements of other laws, none of those changes affected the implementation or enforcement of the Act.

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## Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

While some municipalities across the state currently regulate massage businesses, the Act, which is the subject of this sunset review, applies to the regulation and licensure of massage therapists specifically.

As specified in the Act, the Director oversees the licensure and regulation of massage therapists in Colorado. The Director is tasked with the issuance of initial massage therapy licenses.<sup>5</sup> Additionally, the Director is required by statute to establish an application process for license renewal and the reinstatement of expired licenses.<sup>6</sup>

Applicants requesting a massage therapy license must demonstrate minimum competencies through the following requirements, including, but not limited to:<sup>7</sup>

- Completion of a massage therapy program with a minimum of 500 hours of combined coursework and clinical work from an approved massage therapy school;<sup>8</sup>
- Passage of the Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards (MBLEx and FSMTB, respectively), the National Certification Examination for Therapeutic Massage (NCETM), the National Certification Examination for Therapeutic Massage & Bodywork (NCETMB) offered by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB), or an examination approved by the Director.<sup>9</sup>
- Submission of the application and fee required by the Director;
- Submission of an attestation that the applicant has obtained and will continue

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<sup>5</sup> § 12-235-107(1), C.R.S.

<sup>6</sup> § 12-235-109(2), C.R.S.

<sup>7</sup> 3 CCR § 722-1-1.1, Massage Therapy Licensure Rules and Regulations.

<sup>8</sup> 3 CCR § 722-1-1.2.C, Massage Therapy Licensure Rules and Regulations.

<sup>9</sup> 3 CCR § 722-1-1.3, Massage Therapy Licensure Rules and Regulations.

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- to maintain liability insurance;
  - Submission of a criminal history check; and
  - Demonstration that the applicant is at least 18 years of age.

Exemptions from the Act include:<sup>10</sup>

- Massage therapy students enrolled in an approved massage therapy program;
- Employees of the United States government or any other federal government entity if they are performing official duties; and
- Massage therapists from other states who are temporarily offering massage therapy services under the following circumstances, including, but not limited to:
  - Travelling with and administering massage therapy to members of a professional or amateur sports organization, dance troupe, or other such athletic organization;
  - Providing massage therapy without compensation at a public event such as the Olympic Games, Special Olympics, Youth Olympics, or marathons, as long as the massage therapy services are performed no earlier than 48 hours prior to the start of the event and no later than 24 hours after the event concludes;
  - Providing massage therapy as a part of an emergency response team if assisting with a disaster situation;
  - Participating in an educational program either as a student or an instructor; or
  - Providing massage to an immediate family member.

Licensees are further required to provide the Director with any contact information changes including name, address, telephone number, or email address within 30 days of the change.<sup>11</sup>

The Director may take disciplinary action against any licensee who has, among other things:<sup>12</sup>

- Advertised, represented, or referred to themselves as a licensed massage therapist after the expiration, suspension, or revocation of his or her license;
- Engaged in a sexual act with a client while a therapeutic relationship exists;
- Falsified any information contained on any application, or attempted to obtain a license by fraud, misrepresentation, or deception;
- A substance use disorder, dependence or addiction to alcohol or any habit-forming drug, or excessive use or abuse of alcohol or any habit-forming drug;
- Failed to notify the Director of a physical, mental, or substance use condition that may affect the licensee's ability to treat clients with reasonable skill and safety;

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<sup>10</sup> § 12-235-110(1), C.R.S.

<sup>11</sup> 3 CCR § 722-1-1.11, Massage Therapy Licensure Rules and Regulations.

<sup>12</sup> § 12-235-111, C.R.S.

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- Failed to act within the limitations created by a physical, mental, or substance use condition;
  - Failed to notify the Director of a final judgement of malpractice of massage therapy entered by any court, or failure to notify the Director of any settlement by the licensee regarding any charges of malpractice of massage therapy;
  - Committed an act that does not meet the generally accepted standards of massage therapy;
  - Been convicted of, pled guilty, or entered a plea of *nolo contendere* to, or received a deferred sentence for, a felony or crime related to the practice of massage therapy; and
  - Been convicted of, pled guilty or entered a plea of *nolo contendere* to, or received a deferred sentence for, a charge of unlawful sexual behavior.

Further, section 12-235-108(5), C.R.S., specifically states,

Notwithstanding any provision of this section, the Director may deny a license if the applicant has committed any act that would be grounds for disciplinary action under section 12-235-111, [C.R.S.,] or if the Director determines, subsequent to the criminal history record check, that the applicant was convicted of, plead guilty or *nolo contendere* to, or received a deferred sentence for a charge of unlawful sexual behavior...any prostitution related offense, or a human trafficking-related offense..., whether or not the act was committed in Colorado.

A licensee must also report to the Director within 90 days the occurrence of certain events, including, but not limited to:<sup>13</sup>

- Conviction of any offense that would be considered a violation of the Act, including a guilty verdict, a plea of guilty or a plea of *nolo contendere*;
- Disciplinary action imposed on the licensee in another jurisdiction;
- Suspension or revocation by another state board, municipality, federal or state agency of any health services related license or registration; or
- Judgement, award, or settlement of civil action or arbitration in which a final judgement or settlement was imposed against the licensee for malpractice in massage therapy.

Additionally, the Director is authorized to investigate, hold hearings, and gather evidence in any matter related to the powers and duties of the Director.<sup>14</sup>

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<sup>13</sup> 3 CCR § 722-1-1.9, Massage Therapy Licensure Rules and Regulations.

<sup>14</sup> § 12-235-112(3), C.R.S.

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Upon the completion of an investigation, the Director shall find one of the following:<sup>15</sup>

- The complaint is without merit and no further action is needed;
- There is no reasonable cause to warrant further action; or
- The complaint discloses misconduct that warrants the initiation of disciplinary proceedings.

If a disciplinary proceeding occurs and the Director finds that charges warrant discipline, the Director must also determine the extent of the discipline imposed<sup>16</sup> including license denial, suspension or revocation; probation; refusal to renew a license; or the issuance of a letter of admonition.<sup>17</sup>

Additionally, the Director may impose fines for any violation of the Act of up to \$5,000 per violation, and each day of a continuing violation is considered a separate violation.<sup>18</sup> Once received, fines are relayed to the General Fund.

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<sup>15</sup> § 12-235-112(5), C.R.S.

<sup>16</sup> § 12-235-112(6)(c), C.R.S.

<sup>17</sup> § 12-20-404, C.R.S.

<sup>18</sup> § 12-235-112(10), C.R.S.



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## Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third and fourth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters; and

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Director of the Division of Professions and Occupations (Director and Division, respectively), located in the Department of Regulatory Agencies (DORA), oversees the licensure and regulation of massage therapists in Colorado as specified in the Massage Therapy Practice Act (Act).

Table 1 highlights the total program expenditures and the number of full-time equivalent (FTE) employees dedicated to the program for fiscal year 15-16 through fiscal year 19-20.

**Table 1**  
**Program Expenditures and FTE**

Fiscal Year	Program Expenditures	FTE
15-16	\$850,694	3.25
16-17	\$836,285	3.65
17-18	\$823,315	3.10
18-19	\$909,266	2.95
19-20	\$808,016	2.58

While FTE remained stable in fiscal years 15-16 through 17-18, staffing for the program in fiscal years 18-19 and 19-20 decreased, and has stayed lower than preceding years. According to the Division, there is no apparent reason for this decrease, although programmatic structural changes may have resulted in position vacancies.

The expenditures in fiscal year 18-19 are substantially higher within the years reviewed. According to the Division, legal expenses and FTE fluctuations may have contributed to this change.

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The number of FTE reflected in the table does not include employees in the centralized offices of the Division that provide management, licensing, administrative, technical, and investigative support to the Director. However, the cost of those FTE is reflected in the total program expenditures.

In fiscal year 20-21, the Division allocated a combined total of 2.58 FTE to administer the Act, apportioned in the following manner:

- Administrator III - 0.60 FTE - This position is commonly referred to as the program director. The position provides complaint intake and follow-up, case management, and issues disciplinary correspondence and enforcement actions.
- Program Management III - 0.03 FTE - This position provides overall management to multiple programs as senior program manager by directing the implementation of policies, rules, and regulations as well as providing support regarding the strategic goals of the Division. The Division has indicated that this position is no longer part of the current program FTE due to organizational restructuring.
- Administrative Assistant III - Two positions totaling 1.45 FTE - These positions provide complaint intake, correspondence, case summary preparation, and final action processing.
- Technician IV - 0.50 FTE - This position provides correspondence and follow-up, case summary preparation, case management, practice monitoring, and case referrals.

## Licensing

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Director is tasked with the issuance of initial massage therapy licenses and is further required by statute to establish an application process for license renewal and the reinstatement of expired licenses.

To practice massage therapy in Colorado, an individual must first obtain a license from the Director. Applicants requesting a massage therapy license must demonstrate minimum competencies through the following requirements established in statute, including, but not limited to:<sup>19</sup>

- Completion of a massage therapy program with a minimum of 500 hours of combined coursework and clinical work from an approved massage therapy school;<sup>20</sup>

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<sup>19</sup> § 12-235-108(1), C.R.S.

<sup>20</sup> 3 CCR § 722-1-1.2.C, Massage Therapy Licensure Rules and Regulations.

- Passage of the Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards (MBLEx and FSMTB, respectively), the National Certification Examination for Therapeutic Massage (NCETM), the National Certification Examination for Therapeutic Massage & Bodywork (NCETMB) offered by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB), or an examination approved by the Director.<sup>21</sup>
- Submission of an application and fee required by the Director;
- Submission to a criminal history check; and
- Demonstration that the applicant is at least 18 years of age.

Table 2 provides the number of initial, endorsement, and renewal licenses, as well as the total number of active licenses for fiscal years 15-16 through 19-20.

**Table 2**  
**Licensing Information by License Type**

Fiscal Year	Initial	Endorsement	Renewal	Total
15-16	1,059	262	Not applicable	14,001
16-17	995	271	11,565	12,392
17-18	1,036	233	Not applicable	14,010
18-19	809	279	12,206	13,242
19-20	554	222	Not applicable	14,265

License renewal takes place on a two-year cycle, which is demonstrated by the lack of renewal data for fiscal years 15-16, 17-18, and 19-20. The decrease in initial licenses issued during fiscal year 19-20 may have been affected by a disruption of school programs and examinations impacted by the COVID-19 pandemic, although the Division did not specifically track this information.

Table 3 depicts the costs of initial, renewal, and reinstatement license fees during fiscal years 15-16 through 19-20.

<sup>21</sup> 3 CCR §772-1-1.3, Massage Therapy Licensure Rules and Regulations.

**Table 3**  
**Massage Therapy License Fees**

Fiscal Year	Initial	Renewal	Reinstatement
15-16	\$80	Not applicable	\$92
16-17	\$200	\$177	\$192
17-18	\$200	Not applicable	\$192
18-19	\$200	\$77	\$92
19-20	\$200	Not applicable	\$92

Renewal and reinstatement fees increased in fiscal year 16-17 but had predominantly returned to previous levels by fiscal year 18-19. Any fee increases were utilized to cover litigation costs and were reduced once the costs were recovered.

## Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Applicants for initial licensure are required to pass the Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards (MBLEx and FSMTB, respectively), the National Certification Examination for Therapeutic Massage (NCETM), the National Certification Examination for Therapeutic Massage & Bodywork (NCETMB) offered by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB), or an examination approved by the Director.<sup>22</sup>

### MBLEx Examination

The MBLEx is offered year-round across the United States, and Pearson Vue, the testing vendor, has three testing locations in Colorado including Westminster, Greenwood Village, and Colorado Springs.<sup>23</sup> The application fee is \$265 for both initial and retake examinations.<sup>24</sup>

<sup>22</sup> 3 CCR § 772-1-1.3, Massage Therapy Licensure Rules and Regulations.

<sup>23</sup> Federation of State Massage Therapy Boards. *Taking the Exam*. Retrieved June 23, 2021, from <https://www.fsmtb.org/mblex/taking-the-exam/>

<sup>24</sup> Federation of State Massage Therapy Boards. *MBLEx and Licensure FAQ*. Retrieved July 16, 2021, from <https://www.fsmtb.org/mblex/mblex-and-licensure-faq/#MBLExQFee>

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Candidates have up to two hours to complete the 100 multiple-choice questions administered in a computer-based format. Five minutes of the time allotted is utilized for a survey, and five minutes is utilized to complete a security and confidentiality agreement. Candidates must complete the test within the timeframe allocated or they will receive a failing score.

Content areas tested by the MBLEx include:<sup>25</sup>

- Anatomy and Physiology - 11 percent;
- Kinesiology - 12 percent;
- Pathology, Contraindications, Areas of Caution, Special Population - 14 percent;
- Benefits and Physiological Effects of Techniques that Manipulate Soft Tissue - 15 percent;
- Client Assessment, Reassessment, and Treatment Planning - 17 percent;
- Ethics, Boundaries, Laws and Regulations - 16 percent; and
- Guidelines for Professional Practice - 15 percent.

Table 4 provides MBLEx examination data for first-time test takers for calendar years 2015 through 2020, including the number of examinations administered in Colorado per year as well as the average pass rate.

**Table 4**  
**MBLEx Examination Data**

Calendar Year	Number of Written Examinations Given	Pass Rate (%)
2015	954	75.3
2016	932	78.8
2017	826	81.0
2018	739	83.9
2019	682	77.9
2020	442	75.8

The table indicates that a significant drop in written examinations occurred in 2020. According to FSMTB, Pearson Vue was required to close for a period of time and/or severely limit test center availability due to COVID-19 restrictions. Test center availability remained limited upon reopening to prioritize certain professions deemed essential which continued to limit test center examination appointments.

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<sup>25</sup> Federation of State Massage Therapy Boards. *Taking the Exam*. Retrieved June 23, 2021, from <https://www.fsmtb.org/mblex/exam-content/>

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## NCETM and NCETMB Examinations

As of February 2015, these examinations, offered by NCBTMB, are no longer offered for licensure eligibility.<sup>26</sup> However, the Director still accepts previously completed examinations from NCBTMB as a prerequisite to licensure since some applicants utilized these examinations at the time of their initial licensure or in other states.

## **Complaint and Disciplinary Activity**

The Director reviews complaints and takes disciplinary actions resulting from violations of the Act. Table 5 details the number of alleged violation types received from complaints for fiscal years 15-16 through 19-20.

**Table 5**  
**Complaint Information**

<b>Alleged Violation</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
Practicing without a License	135	111	91	73	36
Standard of Practice	13	26	27	43	19
Fee Dispute	3	0	1	3	1
Scope of Practice	1	1	2	0	3
Sexual Misconduct	41	20	25	42	24
Substance Abuse	19	3	4	1	11
Theft	0	0	0	0	0
Felony Conviction	39	1	60	95	61
Other	266	313	176	41	47
<b>TOTAL</b>	<b>517</b>	<b>475</b>	<b>386</b>	<b>298</b>	<b>202</b>

The table indicates that the most frequent complaints filed during the years reviewed related to allegations of practicing without a license, sexual misconduct, felony convictions, and standard of practice. Additionally, the table demonstrates a steady decline in the number of complaints filed against licensees for the alleged violation of practicing without a license. According to the Division, there is no known reason for this decline.

The “other” category listed in the table predominantly includes the alleged violations of unprofessional conduct and aiding and abetting unlicensed practice. According to the Division, most complaints filed for unprofessional conduct typically relate to complaints received regarding professional boundaries. However, the Division was not able to supply more specific information as this complaint type is evaluated on a case-

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<sup>26</sup> FSMTB and NCBTMB. *Joint Press Release*. Retrieved June 25, 2021, from <http://files.ctctcdn.com/1c2f0dbb001/bcec3d82-014b-4649-a085-76ac2b99cb0b.pdf>



by-case basis. It should be noted that one complaint may contain several allegations, which are tabulated separately in the table above.

The Act articulates specific violations that may result in discipline. Table 6 displays violations that the Director has found to have occurred from fiscal year 15-16 through fiscal year 19-20 by complaint type.

**Table 6  
Found Violations**

<b>Found Statutory Violations</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>	<b>FY 18-19</b>	<b>FY 19-20</b>
License requirement	5	75	92	19	4
18 years of age requirement	0	0	1	0	0
Competency/moral character	28	8	0	0	0
Criminal record evaluation	0	0	0	3	0
Represented as massage therapist after expiration, suspension, or revocation of license	15	6	5	3	6
Sexual act while in a therapeutic relationship	11	15	7	7	11
Failed to refer patient to general health care practitioner	0	0	1	0	0
Falsified information	3	3	2	1	7
Fraudulently obtained or furnished license	0	2	0	0	1
Substance use disorder, dependance or addiction	7	12	8	4	0
Failure to notify the Director of a health condition	0	1	2	2	0
Refusal to submit to mental or physical examination	0	1	0	2	0
Failure to notify the Director of a final judgement	1	2	2	0	0
Convicted of, plead guilty, <i>nolo contendere</i> or deferred sentence for a crime	12	17	33	15	8
Represented as massage therapist without a license	3	4	6	2	1
Violated, aided, or abetted a violation of any provision of the Act	3	14	24	9	13
Unlawful sexual behavior	3	4	3	2	0
Failure to report adverse action against licensee in another state or territory	1	0	0	1	0
Failure to meet generally accepted standards of practice	7	22	21	12	7
Fraudulent, coercive, or dishonest practices	0	2	1	3	0
Exposed intimate part of body	0	1	0	0	0
Fraudulent use of medical title	0	1	0	0	0
<b>Total Found Violations</b>	<b>99</b>	<b>190</b>	<b>208</b>	<b>85</b>	<b>58</b>

The table indicates that the most frequently found violations occurred relating to license requirements, standard of practice violations, and criminal history. It should be noted that found violations relating to sexual acts while in a therapeutic relationship and falsified information rose significantly in fiscal year 19-20. The Division has indicated that these found violations may have increased due to law enforcement actions taken within local jurisdictions, which are typically reported to the Division.

Table 7 summarizes disciplinary actions taken by the Director in fiscal years 15-16 through 19-20.

**Table 7  
Final Agency Actions**

Type of Action	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Confidential Agreement	0	0	0	0	0
Suspension (With no other requirements)	0	0	0	0	6
Cease and Desist Order	7	8	36	28	1
Letter of Admonition	22	25	14	13	7
Final Agency Order	2	11	3	12	16
Citation	5	0	0	0	0
Revocation	4	20	10	0	5
Stipulation	14	37	24	19	19
Voluntary surrender/relinquishment	12	18	11	11	4
Court Judgment	1	1	0	0	0
Injunction	5	1	2	1	0
Probation	1	2	2	0	0
<b>Total Disciplinary Actions</b>	<b>68</b>	<b>158</b>	<b>102</b>	<b>84</b>	<b>62</b>
Dismiss	127	217	194	99	34
Letter of Concern	156	153	85	52	46
<b>Total Dismissals</b>	<b>283</b>	<b>370</b>	<b>279</b>	<b>151</b>	<b>80</b>

Table 7 demonstrates a consistent downward trend in the number of total dismissals, relinquishments, and letters of admonition, while final agency orders appear to trend upward during the years reviewed. The Division has indicated that final agency actions are directly linked to specific complaint allegations, and no known reason exists for the appearance of trends in the data provided.

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The type of action listed above as a confidential agreement includes predominantly non-public stipulated agreements related to health conditions or impairments that have not led to violations. Substance abuse issues are not considered for confidential agreements.

Further, the type of action listed as a final agency order predominantly includes cases in which a decision has been reached by the Office of Administrative Courts, and the Director may then make a determination regarding the findings. Any final agency actions ordered by the Director may be appealed to the Colorado Court of Appeals.

Table 8, below, depicts the average number of days for case processing time during fiscal years 15-16 through 19-20. Each case lifespan is tabulated from the filing of the initial complaint through the final agency action taken.

**Table 8**  
**Average Case Processing**

<b>Fiscal Year</b>	<b>Average Case Processing</b>
15-16	184 days
16-17	79 days
17-18	118 days
18-19	171 days
19-20	222 days

Although case processing times appear to trend upward in fiscal year 19-20, the closure of multiple long-term cases initiated in prior years were tabulated into the yearly average, which inflated the average case processing time. The Division has indicated that it remains committed to the reduction of average case closure timeframes.

## **Financing Activity**

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Table 9 provides information regarding the number of fines imposed, the total dollar amount of the fine surcharge, and the total dollar amount of fines paid for fiscal years 15-16 through 19-20.

**Table 9  
Fines Imposed**

Fiscal Year	Number of Fines Imposed	Total Value of Fine Surcharge	Total Value of Fines Paid
15-16	0	0	0
16-17	0	0	0
17-18	15	\$488	\$10,000
18-19	11	\$384	\$2,501
19-20	6	\$600	\$4,000

The table indicates that no fines were imposed during fiscal years 15-16 and 16-17, and the Division is not aware of any specific reason as to why. The Division has further indicated that total fines assessed are determined on a case-by-case basis as a part of a stipulated agreement, and the total per year is not available without reviewing each stipulated agreement. Any fines received by the Division are deposited into the General Fund.

Section 24-34-108, C.R.S., establishes the Consumer Outreach and Education Cash Fund (Cash Fund) to develop, implement, and maintain the consumer outreach and education program within DORA. Further, the statute authorizes the Executive Director of DORA to collect a surcharge for fines imposed for violations of various statutes, including the Act, to be credited to the Cash Fund. The fine surcharge listed in the table above is an additional 15 percent of the total of the fines imposed.

### **Collateral Consequences - Criminal Convictions**

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

Table 10 provides specific information relating to the total number of sanctions imposed for fiscal years 15-16 through 19-20 for collateral consequences.

**Table 10  
Collateral Consequences**

Nature of Consequence	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Conditional Licenses	0	0	0	0	0
Denials	2	9	3	4	2
Suspensions	0	0	0	0	0
Revocations	0	0	0	0	0
Interim Cessation of Practice	0	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>9</b>	<b>3</b>	<b>4</b>	<b>2</b>

During the years reviewed, there were a total of 20 sanctions imposed, all of which related to denial of the application for licensure due to criminal convictions.

The Division has indicated that the majority of denials in the table above relate specifically to a conviction, plea of guilty or *nolo contendere* or receiving a deferred sentence for a felony or a crime related to the practice of massage therapy, as defined in section 12-235-111(1)(j), C.R.S.

### COVID-19 Response

The COVID-19 pandemic placed extraordinary pressures on the citizens of Colorado, the Colorado economy and Colorado state government. As a result, COPRRR asked the Division to summarize any measures the agency may have implemented in response to the COVID-19 pandemic, the results of those efforts and any lessons learned. This section of the report is intended to provide a high-level summary of those responses.

The Division took several key steps in responding to the COVID-19 pandemic, including:

- Working with the Governor’s Office to issue Executive Order D 2020 038 - Medical Workforce Surge, which included, but was not limited to modifying/suspending numerous aspects of the healthcare professions’ practice acts, including allowing for greater flexibility in delegation and expanded scopes of practice;
- Expanding the use of telehealth;
- Quickly transitioning to near 100 percent work-from-home for Division employees;
- Expanding the scopes of practice for several healthcare professions so that they could administer the COVID-19 vaccine; and
- Closely coordinated with other state agencies, such as the Department of Public Health and Environment (CDPHE), in issuing guidance and helping stakeholders navigate the demarcation between the Division and other state agencies.

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The COVID-19 pandemic revealed a few regulatory gaps as well, including:

- The relative paucity of regulatory guidance on the use of telehealth;
- The unclear lines between the Division, the Department of Regulatory Agencies and CDPHE, particularly in health-care settings; and
- The need for the Division to be able to act more quickly in the face of another, future event like the COVID-19 pandemic.

While the full impact of many of the changes implemented by the Division are not yet fully understood, some key learning points include:

- Telehealth is here to stay;
- Coordinating efforts with other state agencies was essential to the Division's successful and timely response to the COVID-19 pandemic;
- Utilization of existing statutory authority aided in the Division's successful and timely response to the COVID-19 pandemic;
- Regulatory speed is key to successfully responding to a pandemic; and
- Emergency, remote work has proven efficient and allowed for continuity of services.



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## Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

### **Recommendation 1 - Continue the Massage Therapy Practice Act for nine years, until 2031.**

Massage therapists provide treatment to their clients utilizing touch to manipulate soft tissues and muscles of the body. Massage therapy treatments may provide many health benefits including pain relief, accelerated healing, improved circulation, stress reduction, and increased relaxation.

Since massage therapy is therapeutic in nature, clients often receive massage therapy following an injury or the exacerbation of a medical condition to relieve pain and improve overall health. Massage therapy techniques may cause harm if not utilized properly, including the potential for further damage to existing injuries.

Additionally, massage therapists hold a position of trust with their clients, since massage therapy is often performed in treatment rooms where the client and massage therapist are the only individuals present. The isolation and vulnerability of clients in this scenario can lead to harm. For example, from fiscal years 15-16 to 19-20, the Director of the Division of Professions and Occupations (Director and Division, respectively) received 152 complaints regarding allegations of sexual misconduct, which is among the highest of the reported complaint categories. Nineteen of those related to sexual acts while in a therapeutic relationship and were ultimately substantiated with 10 occurring in fiscal year 19-20 alone, which is more than double the number reported during fiscal years 15-16 through 18-19 combined.

During the course of this sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) evaluated issues related to massage business licenses, elicitation activities, human trafficking, and the differences in enforcement on a jurisdictional level. Ultimately, COPRRR did not make any statutory recommendations relating to these issues as they are more directly related to law enforcement than to the regulatory requirements of the Massage Therapy Practice Act (Act), which is the subject of this sunset review.

It should also be noted that Colorado does have a Human Trafficking Council, although the Director does not currently hold a seat on that Council.

The Director strives to protect consumers from harm through educational and licensure requirements to ensure that massage therapists receive proper training and maintain competency in their field. The Director also reviews complaints and may discipline

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licensees for violations of the Act including potential revocation for severe violations.

The first sunset criterion asks if regulation is necessary to protect the public health, safety, and welfare. Through the application of the regulatory framework established in the Act, the Director provides effective oversight in order to protect the public interest. As changes in massage therapy techniques are consistently evolving, the General Assembly should continue the Act for nine years, until 2031.

### **Recommendation 2 - Repeal statutory references to national organizations and national examinations.**

Section 12-235-108(1)(a), Colorado Revised Statutes (C.R.S), states that every applicant for licensure must pass one of the following examinations:

- The massage and bodywork licensing examination offered by the Federation of State Massage Therapy Boards (MBLEx and FSMTB, respectively);
- A national examination offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); or
- An examination approved by the Director.

As of February 2015, examinations offered by NCBTMB are no longer offered for licensure eligibility. However, the Director still accepts previously completed examinations from NCBTMB as a prerequisite to licensure since some applicants utilized these examinations at the time of their initial licensure or in other states.

Although the MBLEx offered by FSMTB can still be utilized as a testing mechanism for licensure in Colorado, leaving organization names in statute can be problematic. Organizations may change their names, merge with other organizations, or cease operations entirely. More problematic, however, is the fact that by naming organizations in statute, the General Assembly cedes the state's ability to deviate from the standards established by those organizations. Additionally, these organizations are not subject to the state's rulemaking or transparency requirements.

Additionally, since the Act already provides the Director with the authority to approve examinations, the Director may continue to approve the same examinations in the same manner but may retain flexibility regarding any potential examinations that may be developed in the future.

The second sunset criterion asks if regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest.

Naming specific organizations in statute limits the Director's authority and flexibility, which is contrary to the goal to protect the public interest. For this reason, the General Assembly should repeal statutory references to both NCBTMB and FSMTB and their

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respective examinations and continue to authorize the Director to approve examinations.

**Recommendation 3 - Amend section 12-235-111(1)(d), C.R.S., to include in the grounds for discipline, the submission of examination results that were obtained based on fraud, misrepresentation, deceit, or cheating.**

Section 12-235-111(1)(d), C.R.S., currently states that the Director may discipline a licensee who has,

Falsified information in any application or attempted to obtain or obtained a license by fraud, deception, or misrepresentation.

The statutory language in this section directly addresses consequences regarding application and licensure processes but does not specifically address consequences related to fraudulent behavior related to examinations.

During the sunset review, an example was provided by the Division in which two individuals were indicted in 2019 for assisting applicants in cheating on massage therapy examinations in calendar years 2015 through 2018. Other schemes to defraud the examination are being litigated by FSMTB, and regular notices of examination scores that have been invalidated are received from FSMTB.

The third and seventh sunset criteria ask,

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices...; and

Whether complaint, investigation, and disciplinary procedures adequately protect the public...

By amending the statutory language in section 12-235-11(1)(d), C.R.S., the Director could have clear authority to discipline an applicant or licensee if cheating, or falsifying examination results occurs, which would protect the public interest.

Therefore, the General Assembly should amend section 12-235-111(1)(d), C.R.S., to include statutory language indicating that it is a violation of the Act to resort to fraud, misrepresentation, deception, or cheating in taking, or furnishing the results of the examination required by the Act, or if an applicant or licensee had their score on the examination invalidated by the testing provider.

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**Recommendation 4 - Amend section 12-235-111, C.R.S., to include in the grounds for discipline, failure to respond to the allegations of a complaint within the length of time specified in the Division's letter.**

The Division has indicated that many licensees fail to respond to inquiries regarding complaint allegations. Currently, there is no statutory basis that requires the licensee to provide a timely response to the allegations, which may slow down disciplinary proceedings since a response is often required before the Director can take any action. These delays may place the public at risk when complaints are related to serious allegations, and the licensee may be able to continue to practice while the Director awaits a response.

Two types of letters are typically sent out by the Division to inform a licensee that a complaint was filed: either a 30-day letter or, in critical circumstances in which the allegation involves public safety, a 10-day letter may be sent. Each letter clearly identifies the time frame (either 30 days or 10 days) within which a licensee is required to respond, as well as additional information regarding the allegations (See *Appendix A* for a sample of the 30-day letter). The Division has also indicated that responses are accepted via mail, fax, or electronic transmission. This information is also included in the instructions contained within the Division's letter.

Through the course of this sunset review, some stakeholders expressed concern that the addition of a potential requirement to respond to a complaint letter in a designated timeframe may be an undue burden on practitioners. However, the practitioner can respond in a number of ways including electronic transmission which is nearly instantaneous, and the practitioner is aware of the time frame specified in the Division's letter to prepare a response or contact their attorney. Additionally, the practitioner should receive communication regarding the Division's letter promptly since practitioners are already required to notify the Director of any change in their contact information within 30 days of the change.<sup>27</sup>

The seventh and tenth sunset criteria ask,

Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession; and

Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

By adding failure to respond as a violation of the Act, a response not received within the timeframe specified would allow the Director to take actions to prevent potential consumer harm through the initiation of formal disciplinary proceedings when required.

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<sup>27</sup> 3 CCR § 722-1-1.11, Massage Therapy Licensure Rules and Regulations.

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Therefore, the General Assembly should amend section 12-235-111, C.R.S., to include in the grounds for discipline, failure to respond to the allegations of a complaint within the length of time specified in the Division's letter.

**Administrative Recommendation 1 - The Division should strengthen its collaboration with local, state, and federal entities to assist with the identification of trends related to human trafficking.**

Human trafficking is a serious issue, and combatting it requires a coordinated response among federal, state and local governments.

Throughout this sunset report, the Division provided aggregate data in a variety of metric areas that are routinely tracked for reporting purposes, including active licenses by license type, complaint information, found violations, final agency actions, and collateral consequences related to criminal convictions. When reviewed over the course of multiple fiscal years, this data can be utilized to identify regulatory trends, patterns, and anomalies.

However, the data generated by the Division to administer the Act could also be reviewed to identify instances of potential criminal activity, such as trends in non-compliance. For example, if the graduates of a particular school suddenly started passing the licensing examination at unusually high or low rates, something might be amiss. Increased open collaboration with other bodies, such as entities that regulate the schools or law enforcement, could allow for an exchange of critical information needed to identify and investigate potential criminal activity related to human trafficking.

The seventh and tenth criteria ask,

Whether complaint, investigation, and disciplinary procedures adequately protect the public; and

Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Increasing the frequency and quality of collaboration with other entities is critical so that evidence of human trafficking can be swiftly identified when it occurs. Therefore, the Division should strengthen its collaboration with local, state, and federal entities to assist with the identification of trends related to human trafficking.

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**Administrative Recommendation 2 - The Director should work with the current examination administrator to explore the possibility of expanding examination offerings to languages other than English.**

The MBLEx is an examination approved by the Director and is currently the most utilized examination for the purposes of massage therapy licensure in Colorado. The examination is developed and administered by FSMTB, of which the Colorado Office of Massage Therapy Licensure (Program) is a member.

Although Spanish testing options are available in some areas such as Puerto Rico, the MBLEx is not available in any language other than English for Colorado massage therapy applicants. As a member of FSMTB, the Division can request that FSMTB evaluate whether other language options may be developed for its examination mechanism.

Stakeholders have indicated throughout the course of the sunset review that many massage therapy licensees throughout the state may not speak English as their native language.

The eighth sunset criterion asks,

Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action.

The ability to take an examination in one's native language can provide additional efficacy which may, in turn, help an individual to relay learned information more effectively. This change could potentially eliminate barriers to entry and increase competition in the industry, which is in the public interest. Therefore, the Director should work with the examination administrator regarding the possibility of expanding the examination offerings to other languages.

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## Appendix A - Sample 30-Day Complaint Letter

### PERSONAL AND CONFIDENTIAL

Date

Address:

Email address:

RE: Case Number:

Dear \_\_\_\_\_,

The Division of Professions and Occupations (“Director”) has received the attached complaint regarding your conduct in relation to the license listed above, more specifically, a possible violation of the Massage Therapists Practice Act. The Director is required by law to investigate this complaint. The first step in this process is to obtain your response to the allegations raised in the complaint. At this point, no assumption has been made about the truth or validity of any information provided to the Director.

Please provide a written response to the enclosed materials as they pertain to the allegations made in the complaint and provide any pertinent supporting documentation **within 30 days of the date of this letter**. An earlier response may expedite the Director’s review of this matter. To facilitate an efficient and timely review, please type your response. If this is not possible, please legibly print your response. Be sure to include the case number listed above on all correspondence.

We encourage you to provide your response electronically. Please submit the response to [dora\\_massagetherapists@state.co.us](mailto:dora_massagetherapists@state.co.us). The subject line should include your name and case number. If corresponding via mail or fax, your response should be returned to the complaint specialist at the address indicated below.

It is the policy of the Director to copy your attorney on all correspondence in order to assure that your attorney is aware of developments in your case. If you are represented by an attorney in this matter, please provide your attorney’s contact information to the Director in writing. If the Director already has your attorney’s contact information, your attorney’s name should be identified below as a carbon copy or “cc,” indicating that a copy of this letter was sent to that attorney. If at any time it appears that the Director does not have the correct information regarding your legal representation, please update the Director and provide your attorney with a copy of all correspondence from the Director.

We strongly encourage you to begin preparing your response to the complaint as soon as possible, as extensions to the thirty-day response time will not be granted except in very limited circumstances. Additionally, if you choose to be represented by an attorney, please contact him or her immediately. A delay in doing so will not be grounds for an extension.

Following receipt of your response, the Director will review the complaint and your response thereto. The Director will then determine what further action, if any, is warranted. Please note you will be advised in writing of the Director’s disposition of this complaint.

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Healthcare Professions Profile Program (HPPP) requirements: Pursuant to section 24-34-110, C.R.S, your Healthcare Professions Profile must be updated within 30 days of any reportable event. To ensure compliance, you must regularly review and update your profile. Failure to comply with HPPP requirements may result in an administrative fine of up to \$5000, a hold on license renewal and possible disciplinary action. To access your profile, go to [www.colorado.gov/dora/hppp](http://www.colorado.gov/dora/hppp) and click the "Create/Update a Profile" link. For any questions, please contact [dora\\_dpo\\_hppp@state.co.us](mailto:dora_dpo_hppp@state.co.us).

Thank you for your cooperation and prompt attention to this matter.

Sincerely,

FOR THE OFFICE OF MASSAGE THERAPY LICENSURE

PD NAME  
Program Director

Enclosures: complaint, complaint question and answer document.



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## Appendix B - Customer Service Survey

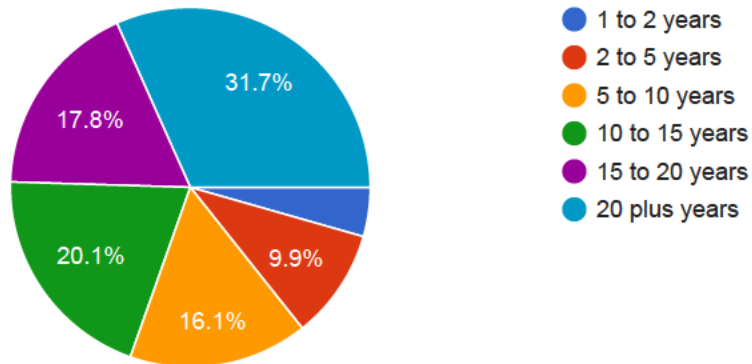
In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all massage therapists who are licensed by the Director of the Division of Professions and Occupations. The survey was sent to 11,942 massage therapists; 55 emails were returned as undeliverable. The survey received 1,769 responses, which is a 15 percent response rate. Survey results may be found on the pages that follow.

# Customer Service Survey for the Office of Massage Therapy Licensure

1,796 responses

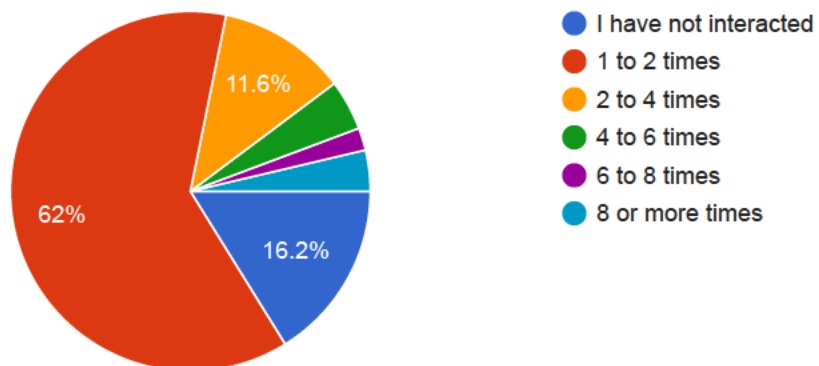
If you are a member of the profession or occupation that is regulated by Office of Massage Therapy Licensure, please indicate your years of experience.

1,789 responses



In the past year, how many times have you interacted with the Office of Massage Therapy Licensure. Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).

1,788 responses



## What was your primary purpose in interacting with the office?

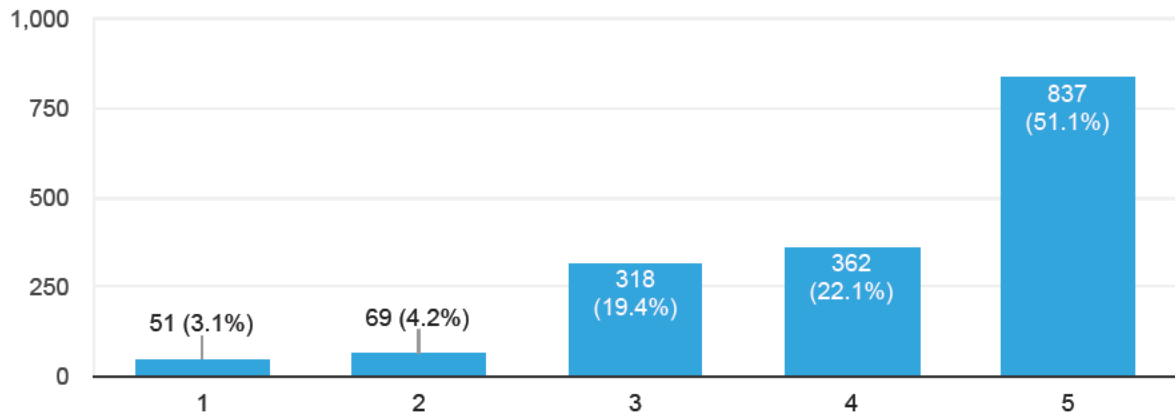
1,599 responses

- **licensing or registration - 80.9%**
- **update my information - 7.3%**
- **comment on or learn about existing or proposed rules or legislation - 3.1%**
- **obtain help with an issue - 2.7%**
- **to learn about requirements for the occupation or profession - 2.3%**
- **continuing education - 1.3%**
- **other - 2.4%**



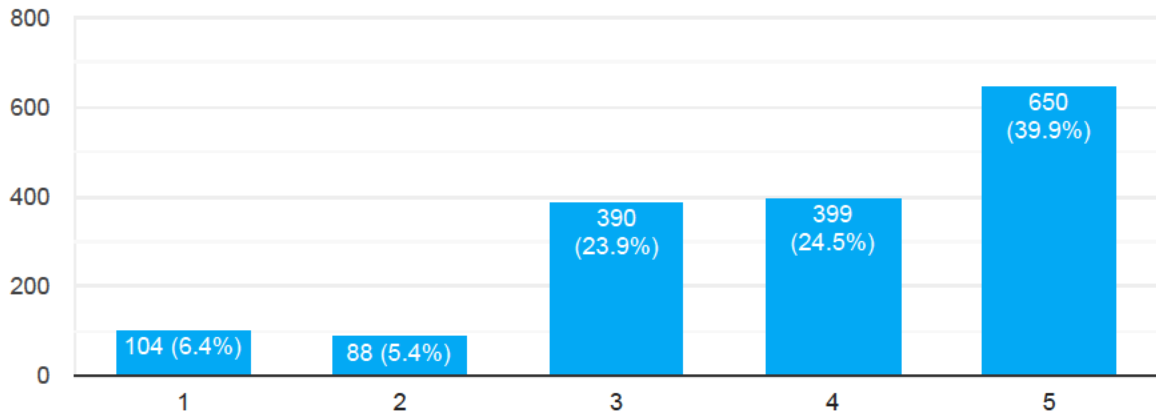
Overall please rate the service provided by the Office of Massage Therapy Licensure on a scale of 1 to 5 with 1 being unacceptable and 5 being very acceptable.

1,637 responses



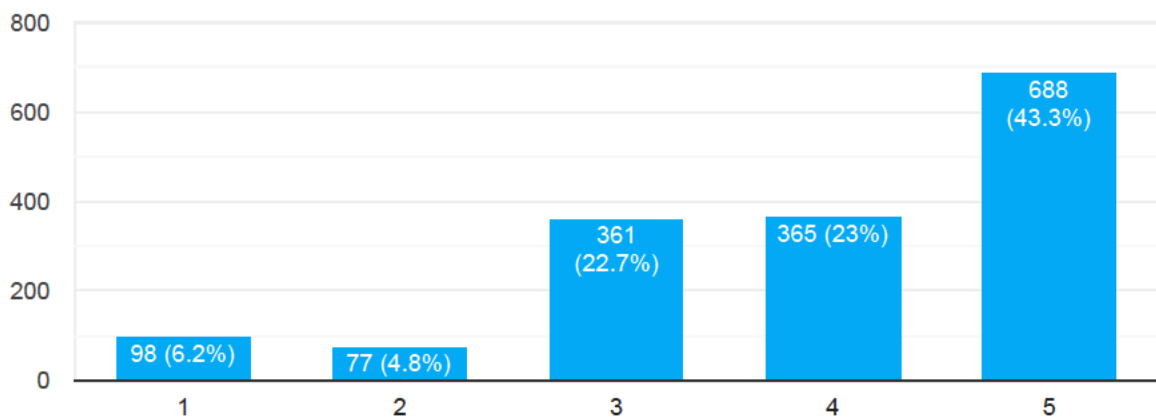
Please rate the usefulness of the Office of Massage Therapy Licensure's website in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

1,631 responses



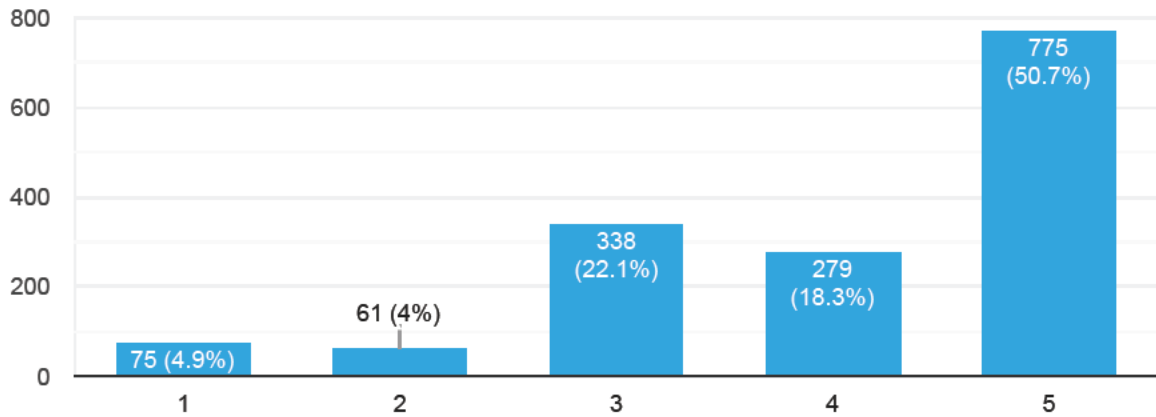
Please rate the usefulness of the Office of Massage Therapy Licensure's communications in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

1,589 responses



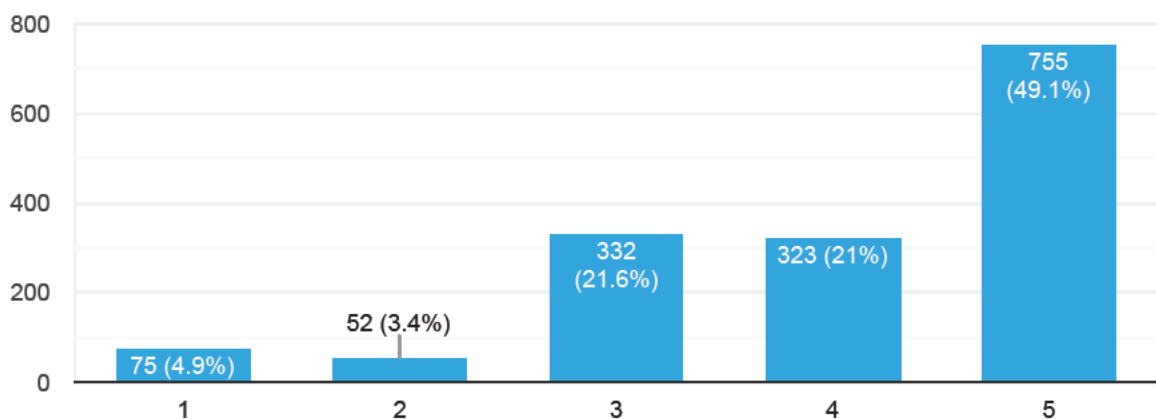
Regardless of the outcome of your most recent issue, do you feel the Office of Massage Therapy Licensure listened to your concerns? Please use a scale of 1 to 5, with 1 being none of my concerns were heard and 5 being all of my concerns were heard.

1,528 responses

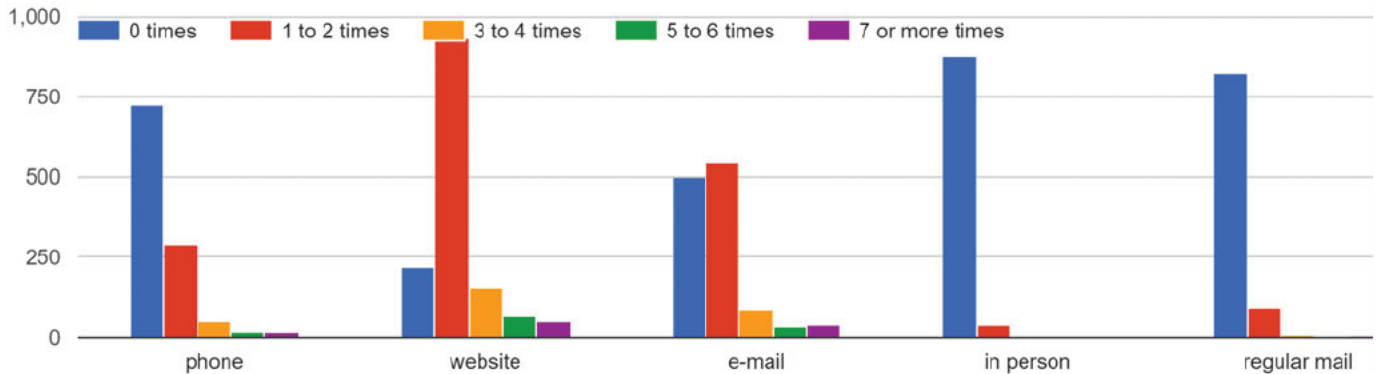


Please rate the timeliness of the Office of Massage Therapy Licensure in responding to your issues on a scale of 1 to 5 with 1 being very untimely and 5 being very timely.

1,537 responses

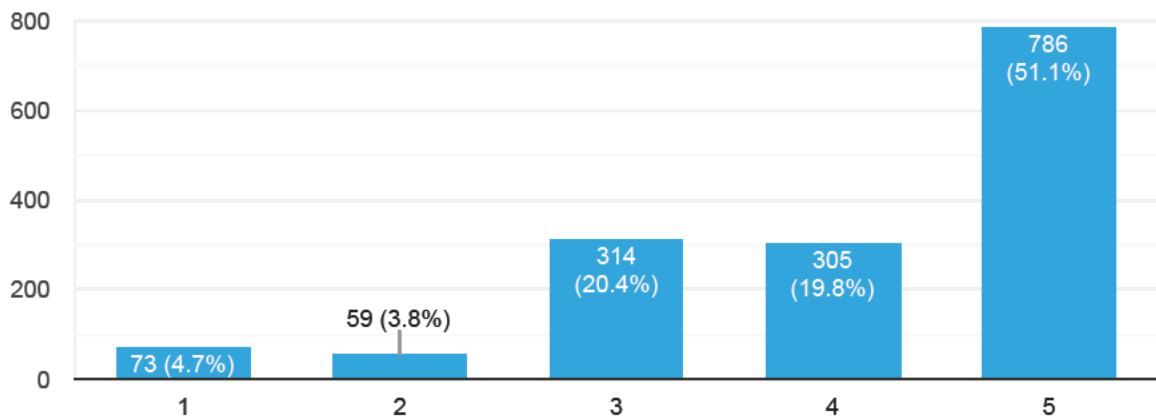


Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type interaction selected.)



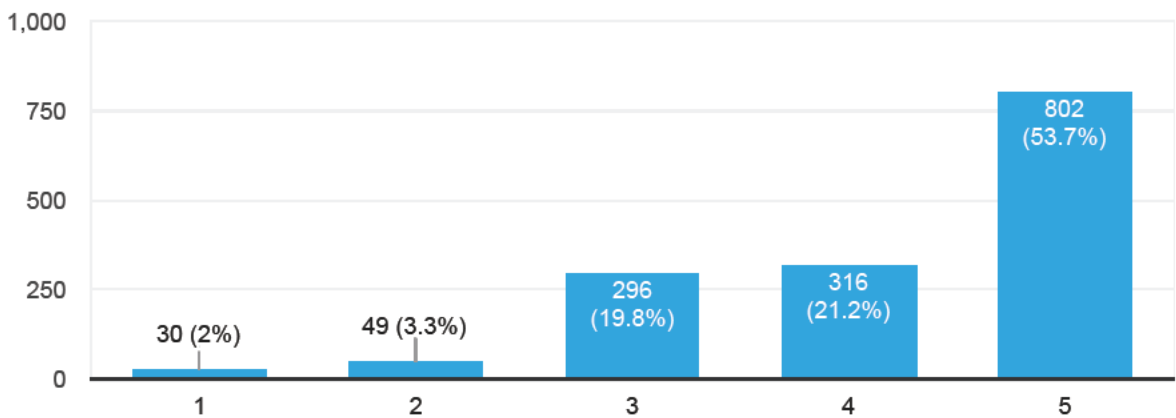
Please rate the helpfulness of the Office of Massage Therapy Licensure in resolving your issue or need with 1 being not very helpful and 5 being very helpful.

1,537 responses



Please rate the professionalism of the program's staff on a scale of 1 to 5 with 1 being very unprofessional and 5 being very professional.

1,493 responses



On a scale of 1 to 5 please rate the accuracy of information provided by the office with 1 being not very accurate and 5 being very accurate.

1,531 responses

