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Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform

## Massage Therapists



October 15, 2007

# STATE OF COLORADO

## DEPARTMENT OF REGULATORY AGENCIES

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Bill Ritter, Jr.  
Governor

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Executive Director

October 15, 2007

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunrise reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the sunrise application for regulation of massage therapists and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

D. Rico Munn  
Executive Director

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## *The Sunrise Process*

### *Background*

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation. Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

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Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences. Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:<sup>1</sup>

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

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<sup>1</sup> § 24-34-104.1(4)(b), C.R.S.

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## *Methodology*

DORA has completed its evaluation of the proposal for regulation of massage therapists. During the sunrise review process, DORA performed a literature search; contacted and interviewed representatives of the Associated Bodywork and Massage Professionals and the Colorado Chapter of the American Massage Therapy Association (collectively, “the Applicants”), other professional associations and law enforcement agencies; reviewed licensure laws in local Colorado jurisdictions and other states, and conducted interviews of administrators of some of those programs. In order to determine the number and types of complaints filed against massage therapists in Colorado, DORA contacted representatives of the Colorado Office of Barber and Cosmetology Licensure, the Colorado Office of Physical Therapy Licensure, the Colorado Board of Chiropractic Examiners and the Colorado Attorney General’s Office, Consumer Protection Section. Finally, DORA conducted an on-line survey of approximately 4,025 Colorado-based massage therapists.

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## *Proposal for Regulation*

The Associated Bodywork and Massage Professionals (ABMP) and the Colorado Chapter of the American Massage Therapy Association (collectively, “the Applicants”) have submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensure of massage therapists as the appropriate level of regulation to protect the public.

To assist in the analysis of their application, the Applicants submitted a “Model Massage Therapy State Licensing Act,” (Model Act) which was prepared by the ABMP and which may be found in Appendix A on page 36. Importantly, the Applicants are not legally bound to pursuing legislation that reflects the Model Act. Rather, the Model Act merely serves as a starting point for analysis of the Applicants’ proposal for regulation.

The Model Act defines massage and massage therapy as:

a system of structured palpation or movement of the soft tissue of the body. The system may include, but is not limited to, techniques such as effleurage or stroking and gliding, petrissage or kneading, tapotement or percussion, friction, vibration, compression, and passive or active stretching within the normal anatomical range of movement. These techniques may be applied with or without the aid of lubricants, salt or herbal preparations, hydro-massage, thermal massage, or a massage device that mimics or enhances the actions possible by human hands. The purpose of the practice of massage, as licensed under this [Model] Act, is to enhance the general health and well-being of the recipient. “Massage” does not include the diagnosis of a specific pathology, the prescription of legend drugs or controlled substances, spinal manipulation, or those acts of physical therapy that are outside the scope of massage therapy practice as defined in this [Model Act].<sup>2</sup>

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<sup>2</sup> § 102(h) of the Model Act.



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However, the Model Act would exempt from its licensing requirements those people who are:<sup>3</sup>

- Licensed or otherwise regulated in this state when those individuals are acting within the scope of such license;
- Students enrolled in a massage school;
- Giving massage to members of their extended families;
- Restricting their practice to manipulation of soft tissue of the hands, feet or ears and do not hold themselves out to be massage therapists;
- Restricting their practice to human energy fields or systems (e.g., Polarity Therapy, Reiki, Ayurveda, Touch for Health and Jin Shin Do);
- Restricting their practice to the use of touch, words and directed movement intended to deepen awareness of existing patterns of movement in the body (e.g., Feldenkrais Method, Trager Approach and Rosen Method);
- Licensed in another jurisdiction and are in this state solely for the purpose of educational instruction and whose services are provided for no more than 16 calendar days in a year; and
- Licensed in another jurisdiction and are practicing in this state for no more than 45 days in a calendar year because they are part of an emergency response team, traveling with and providing massage therapy exclusively to members of an athletic team, dance troupe or other performing artists; or part of an organized team of massage therapists providing services without compensation at a public event (e.g., Olympic Games, Special Olympics, a marathon/triathlon, etc.).

The Model Act would create a seven-member, Governor-appointed Board of Massage Therapy (Board) consisting of five professional members, no more than one of whom may own or be affiliated with a massage school, and two public members.<sup>4</sup> The Board would possess all rulemaking, licensing and disciplinary authority.<sup>5</sup>

The Model Act provides for licensure along three paths: by “grandfathering,” by examination and by endorsement. Regardless of the path followed, all candidates would be required to:<sup>6</sup>

- Be at least 18 years old;
- Possess a high school diploma or its equivalent;
- Be legally able to work in the United States;
- Demonstrate the candidate’s good moral character; and
- Consent to a criminal history background check.

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<sup>3</sup> § 108 of the Model Act.

<sup>4</sup> §§ 103(a) and (b) of the Model Act.

<sup>5</sup> § 104(b) of the Model Act.

<sup>6</sup> §§ 105(b), 105(c) and 106(a) of the Model Act.

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To qualify for licensure under the Model Act's grandfather provision, a candidate would have to demonstrate that he or she has:<sup>7</sup>

- Completed at least 100 hours of formal training, and has practiced massage therapy for at least 10 hours per week for the preceding 10 years;
- Completed at least 200 hours of formal training, and has provided at least 500 hours of massage to the public for compensation during the preceding three years; or
- Been a member, for the preceding year, of a professional massage and bodywork therapy association.

To qualify for licensure under the Model Act's examination provision, a candidate would have to demonstrate that he or she has completed 500 hours of Board-approved education and passed a psychometrically valid, Board-approved examination.<sup>8</sup>

To qualify for licensure by endorsement under the Model Act, a candidate would have to: 1) be licensed by another jurisdiction, the licensing requirements of which are substantially similar to those required for licensure by examination under the Model Act; or 2) have completed at least 500 hours of training in another jurisdiction that the Board deems to be sufficient.<sup>9</sup>

The Board would also be authorized to issue 90-day, provisional permits to those candidates who satisfy all of the requirements for licensure by examination, but who have not yet taken the examination.<sup>10</sup>

All licenses, other than provisional licenses, would be valid for two years.<sup>11</sup> Furthermore, a licensee, including one holding a provisional license, would be required to display the license certificate in an appropriate and public manner.<sup>12</sup>

Prior to renewing a license, a licensee would have to demonstrate compliance with Board-established continuing education requirements, which the Model Act stipulates may not exceed 16 hours every two years.<sup>13</sup>

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<sup>7</sup> § 106(a) of the Model Act.

<sup>8</sup> §§ 105(b)(7) and (8) of the Model Act.

<sup>9</sup> § 105(c) of the Model Act.

<sup>10</sup> § 105(d) of the Model Act.

<sup>11</sup> § 107(b) of the Model Act.

<sup>12</sup> § 107(a) of the Model Act.

<sup>13</sup> § 107(c) of the Model Act.

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Only those massage therapists duly licensed by the Board would be able to legally use the terms:<sup>14</sup>

- Licensed Massage
- Licensed Massage Therapy
- Licensed Massage Therapist
- Licensed Massage Practitioner
- M.T.
- L.M.T.

The Model Act would also create standards for professional conduct to which all licensees would be required to adhere. These standards would require a licensee to, among other things:<sup>15</sup>

- Accurately represent his or her qualifications, credentials and affiliations;
- Inquire as to the health history and current health status of a client prior to providing massage services;
- Follow recommendations for the plan of care when receiving a client referral from a physician or other primary care provider;
- Obtain and document the informed consent of clients;
- Maintain the confidentiality of all client information;
- Provide draping and treatment to ensure the safety, comfort and privacy of the client;
- Respect the client's right to refuse, modify or terminate treatment; and
- Refrain from initiating or engaging in sexual activity with a client.

The Board could refuse to issue or renew, or revoke, suspend, place on probation, reprimand or fine (not to exceed \$1,000 per violation), any applicant or licensee, as the case may be, found to have, among other things:<sup>16</sup>

- Been convicted of a felony or misdemeanor, an essential element of which involves dishonesty or fraud, or that is directly related to the practice of massage therapy;
- Advertised in a false, deceptive or misleading manner;
- Aided or assisted any person in practicing massage therapy contrary to the provisions of the Model Act;
- Engaged, attempted to engage or offered to engage in sexual activity with a client;
- Engaged in dishonorable, unethical or unprofessional conduct in the practice of massage therapy;

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<sup>14</sup> § 110 of the Model Act.

<sup>15</sup> § 109 of the Model Act.

<sup>16</sup> § 111(b) of the Model Act.

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- Engaged in practice beyond the scope of the licensee's competency;
  - Habitually or excessively used alcohol or drugs resulting in the inability to practice massage therapy with reasonable judgment, skill and safety;
  - Provided misleading, deceptive or untrue information to the Board; or
  - Prescribed medicine or legend drugs or practiced any licensed profession without legal authority.

The unlicensed practice of massage therapy would be punishable under the Model Act by a fine of no more than \$1,000 per offense, 12 months imprisonment, or both.<sup>17</sup>

### *Profile of the Profession*

Although there are over 80 different types, or modalities, of massage therapy,<sup>18</sup> it is possible to distill massage therapy into a simplified, generic definition. Massage therapy consists of the movement of the soft tissue of the body, which may be accomplished by stroking, gliding, kneading, using percussion, using friction, using vibration, compressing or using passive or active stretching on the client's body within the normal anatomical range of movement. Aids, such as lubricants, salt or herbal preparations, or devices that mimic or enhance the actions possible by human hands may be used.

Massage therapists work in a variety of settings. In June 2007, DORA surveyed approximately 4,025 Colorado-based massage therapists.<sup>19</sup> This survey revealed that the indicated percentage of massage therapists provide services in the following settings:

- Clinic – medical, physical therapy, chiropractic, hospital, hospice, etc. (22.2 percent)
- Massage Parlor (1.5 percent)
- My Home (15.6 percent)
- My Own Professional Office (28.0 percent)
- Clients' Homes/Offices (6.4 percent)
- Spa (12.6 percent)
- Wellness Center (4.1 percent)
- Health Club (2.4 percent)
- Senior Center (0.2 percent)
- Other (7.1 percent)

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<sup>17</sup> § 111(a) of the Model Act.

<sup>18</sup> "Massage Therapists," *Occupational Outlook Handbook, 2006-07 Edition*, U.S. Department of Labor, Bureau of Labor Statistics, downloaded from [www.stats.bls.gov/oco/print/ocos295.htm](http://www.stats.bls.gov/oco/print/ocos295.htm) on January 12, 2007.

<sup>19</sup> For a complete analysis of the survey results, please see Appendix B on page 54.

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The Applicants estimate that there were 6,097 massage therapists practicing in Colorado in January 2006. Based on DORA's survey, approximately 66 percent of survey respondents held some type of national certification.

With no statewide regulation in Colorado, there is no requirement that those individuals desiring to offer massage therapy complete any kind of training program. However, the Colorado Department of Higher Education, Division of Private and Occupational Schools (DPOS) approves those individuals and institutions that offer such training programs.

As of March 20, 2007, DPOS had approved 51 such training programs. DPOS standards for approval simply examine whether the course of study will prepare the student for practice. As a result, DPOS has not established a minimum number of hours of training that these programs must offer.

Not surprisingly, the number of hours of training provided by the approved programs varies widely, from a low of 480 hours (at a cost of \$2,100) to a high of 2,819 hours (at a cost of \$16,450), for an average of 833.6 hours.

Similarly, the costs of the DPOS-approved programs vary widely, from a low of \$1,199 (600-hour program) to a high of \$20,700 (1,040-hour program), for an average cost of \$7,766.

Despite the great variation in the number of hours of training offered and the costs of these various programs, 17 are accredited by national associations. DPOS has approved seven programs accredited by the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT); four programs accredited by the Commission on Massage Therapy Accreditation (COMTA); three programs accredited by the Accrediting Council for Independent Colleges and Schools; two programs accredited by the Accrediting Bureau of Health Education Schools (ABHES); two programs accredited by the Accrediting Council for Continuing Education and Training (ACCET); and two programs accredited by the National Accrediting Commission of Cosmetology Arts and Sciences. Included in these figures are two programs that are dually accredited by ACCET and COMTA and one program that is dually accredited by ACCSCT and ABHES.

Again, since there is no state regulation of massage therapists, graduates from these programs could immediately enter practice. Indeed, graduates from most of these programs satisfy the training requirements of the various local jurisdictions in Colorado that regulate massage therapists, most of which require 500 hours of training.

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However, several types of national certifications are, or soon will be, available to massage therapists. Included in these are the National Certification for Therapeutic Massage (NCTM) and the National Certification for Therapeutic Massage and Bodywork (NCTMB), both of which are offered through the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

Both credentials require candidates to have completed 500 hours of in-class, supervised instruction in the areas of massage and bodywork assessment, theory and application (200 hours); the body's symptoms, anatomy, physiology and kinesiology (125 hours); pathology (40 hours); business and ethics (10 hours) and electives (125 hours).<sup>20</sup>

Once the required training is complete, interested candidates must take and pass the National Certification Examination for Therapeutic Massage (NCETM) or the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB), each of which costs \$225, plus a \$150-processing fee, for a total fee of \$375.<sup>21</sup>

The NCETM consists of 160 items<sup>22</sup> in the following areas in the percentages indicated.<sup>23</sup>

- Detailed knowledge of anatomy, physiology and kinesiology (26 percent);
- Therapeutic massage application (24 percent);
- Therapeutic massage assessment (16 percent);
- General knowledge of the body systems (14 percent);
- Pathology (14 percent); and
- Professional standards, ethics, business and legal practices (6 percent).

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<sup>20</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, p. 6.

<sup>21</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, p. 8.

<sup>22</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, p. 11.

<sup>23</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, pp. 20 - 21.

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The NCETMB consists of 160 items<sup>24</sup> in the following areas in the percentages indicated:<sup>25</sup>

- Detailed knowledge of anatomy, physiology and kinesiology (26 percent);
- Therapeutic massage and bodywork application (22 percent);
- Therapeutic massage and bodywork assessment (18 percent);
- General knowledge of the body systems (16 percent);
- Pathology (12 percent); and
- Professional standards, ethics, business and legal practices (6 percent).

The NCBTMB has contracted with Thomson Prometric for the administration of both examinations. Thomson Prometric has four test sites in Colorado: Colorado Springs, Grand Junction, Greenwood Village and Longmont.

The pass rate on the NCETM for all first-time test takers in 2006 was 69.2 percent, and it was 85.1 percent for first-time test takers in Colorado.<sup>26</sup>

The pass rate on the NCETMB for all first-time test takers in 2006 was 68.5 percent, and it was 81.8 percent for first-time test takers in Colorado.<sup>27</sup>

Both NCTM and NCTMB credential holders must recertify every four years. Upon application for re-certification, credential holders must demonstrate completion of at least 48 credits of continuing education.<sup>28</sup> The fee for recertification is \$125.<sup>29</sup>

According to representatives of NCBTMB, as of June 2007, there were 1,210 Colorado residents holding either the NCTM or NCTMB credential. Unfortunately, these representatives were unable to provide a further breakdown by certification-type.

In addition to these national, generalist certifications and credentials, there are many more specialty certifications available. With over 80 different modalities, this sunrise review did not examine the individual requirements for these specialty certifications. However, 15.2 percent of the respondents to DORA's survey reported holding credentials other than those issued by the NCBTMB.

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<sup>24</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, p. 11.

<sup>25</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, pp. 17 - 18.

<sup>26</sup> NCBTMB Pass Rate Report, April 8, 2007.

<sup>27</sup> NCBTMB Pass Rate Report, April 8, 2007.

<sup>28</sup> *National Certification Examination Candidate Handbook*, National Certification Board for Therapeutic Massage and Bodywork, December 2006, p. 15.

<sup>29</sup> *Requirements for Recertification*, National Certification Board for Therapeutic Massage and Bodywork, January 2003, p. 24.

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## Summary of Current Regulation

### *The Colorado Regulatory Environment*

Massage is addressed under at least two different provisions in Colorado law: the Massage Parlor Code and the Barber and Cosmetologist Act.

The Massage Parlor Code, which can be found at section 12-48.5-101, *et seq.*, Colorado Revised Statutes (C.R.S.), allows local governments to license massage parlors.

The Massage Parlor Code defines massage as:

A method of treating the body for remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.<sup>30</sup>

The Massage Parlor Code defines a massage parlor as:

an establishment providing massage, but it does not include training rooms of public and private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, and licensed health care facilities. *A facility which is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor.* (emphasis added)<sup>31</sup>

This definition goes on to define a massage therapist as:

a person who has graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred hours of training in massage therapy.<sup>32</sup>

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<sup>30</sup> § 12-48.5-103(5), C.R.S.

<sup>31</sup> § 12-48.5-103(6), C.R.S.

<sup>32</sup> § 12-48.5-103(6), C.R.S.



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Taking these statutory provisions together, a person providing a massage works in a massage parlor unless that person has graduated from a school approved by the Colorado Division of Private and Occupational Schools (DPOS), or from an otherwise accredited educational program that provided at least 500 hours of training. In other words, massage therapists are exempted from the Massage Parlor Code.

The Barber and Cosmetologist Act, which can be found at section 12-8-101, *et seq.*, C.R.S., provides for the licensure of barbers, cosmetologists and estheticians. The practice of massage is addressed in the definitions of all three of these occupations.

The practice of barbering includes:

when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments . . . giving facial or scalp massage or treatment with oils, creams, or lotions or other chemical preparations, either by hand or with mechanical appliances . . .<sup>33</sup>

Although barbering includes massage, it is limited to the face and scalp and even then, only when it is performed for cosmetic purposes, not therapy.

The practice of cosmetology includes:

practices, when . . . performed by and included in or known as the profession of beauty culturists, beauty operators, beauticians, estheticians, cosmetologists, or hairdressers or of any other person . . . [including] massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body with the use of antiseptics, tonics, lotions, or creams . . .<sup>34</sup>

Again, although cosmetology includes massage, it is clearly limited to massage of the upper body and, arguably, only for the purposes of beautification, not therapy.

Finally, the practice of an esthetician includes:

Massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body by means of the hands, devices, apparatus, or appliances with the use of cosmetic preparations, antiseptics, tonics, lotions or creams . . .<sup>35</sup>

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<sup>33</sup> § 12-8-103(2), C.R.S.

<sup>34</sup> § 12-8-103(9), C.R.S.

<sup>35</sup> § 12-8-103(9.4), C.R.S.

Although the practice of an esthetician includes massage, like the practices of barbers and cosmetologists, this massage is clearly limited to the upper part of the body and the focus of the massage is for beautification, not therapy.

In addition to these statewide laws that address massage, at least 10 local jurisdictions in Colorado regulate massage therapists. Eight do so directly and two do so indirectly.

Table 1 illustrates the requirements in each local jurisdiction.

**Table 1  
Local Jurisdictions Regulating Massage Therapists**

Jurisdiction	Training Hours	Examination	Criminal History Check	How Regulated	Fee	Number of Regulated Massage Therapists
Aurora	500	1) NCETMB or 2) member of AMTA or ABMP	Fingerprint – CBI	License	\$150 new \$20 renewal	174
Colorado Springs	1,000	Yes – Local	Fingerprint – CBI	License	\$135 new \$100 renewal	880
Denver	500	No	Fingerprint - CBI	Registration	\$35	875
Durango	500	No	No	Business License	\$38.50	Not Available <sup>36</sup>
Englewood	500	No	Name	License	\$100	50
Lakewood	500	No	No	Sales Tax License	\$15	50
Manitou Springs	400	No	No	License	\$100 new \$50 renewal	21
Pueblo	500	No	No	License	\$100	79
Westminster	500	No	Fingerprint – CBI/FBI	License	\$5	181
Wheatridge	500	No	Fingerprint – CBI/FBI	License	\$40	38

NCETMB = National Certification Examination for Therapeutic Massage and Body Work

AMTA = American Massage Therapy Association

ABMP = Associated Bodywork and Massage Professionals

Durango and Lakewood regulate massage therapists indirectly by requiring massage therapists to present the relevant credentials when applying for a business license (Durango) or a sales tax license (Lakewood).

<sup>36</sup> Durango's computer system does not distinguish between various types of business licenses, so the number of business licenses issued to massage therapists is not discernable.

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With the notable exception of Colorado Springs, the vast majority of jurisdictions require 500 hours of training to qualify for licensure as a massage therapist. At 1,000 hours, Colorado Springs requires the most training, and at 400 hours, Manitou Springs requires the least training. The 500-hour requirement is consistent with the proposal for regulation at a statewide level submitted by the Associated Bodywork and Massage Professionals and the Colorado Chapter of the American Massage Therapy Association (collectively, the "Applicants").

Only two jurisdictions – Aurora and Colorado Springs – require candidates to demonstrate their competency. Aurora requires candidates to take and pass the NCETMB or to be a member of one of the Applicants.

Colorado Springs, again demonstrating its uniqueness, requires passage of its own examination. Colorado Springs is also the only Colorado jurisdiction with a Board of Massage Examiners.

Six of the 10 Colorado jurisdictions that regulate massage therapists require some kind of criminal history background check.

The general lack of examination requirements, coupled with the majority trend to conduct criminal history background checks tends to support the idea that many local jurisdictions regulate massage therapists as a means to curtailing prostitution. In this sense, the training requirements imposed by all 10 of these jurisdictions simply act as a barrier under the assumption that only those who are serious about providing massage, as opposed to engaging in prostitution, will go to the effort of obtaining the necessary training.

Finally, as Table 1 clearly illustrates, the fees charged by these local jurisdictions vary widely, from a low of \$5 in Westminster to a high of \$150 in Aurora.

The survey conducted by the Department of Regulatory Agencies (DORA) in June 2007 indicates that 7.4 percent of respondents are licensed in multiple jurisdictions, with the average being 2.6 jurisdictions. This means that these individuals must pay multiple fees each year in order to continue to practice.

### *Regulation in Other States*

At least 38 states currently regulate massage therapists, although two (Indiana and Massachusetts) have regulatory programs that have not been implemented as of this writing.

Table 2 illustrates the level of regulation, as well as training, examination and criminal history background check requirements for all 50 states.

**Table 2  
Regulation in the 50 States**

State	Training Hours	Examination	Criminal History Background Check	How Regulated
Alabama	650	NCETMB	Self-disclosure	License
Alaska	-	-	-	-
Arizona	500	NESL or graduate from Arizona school	Fingerprint	License
Arkansas	500	1) NCETMB or 2) state practical & jurisprudence examinations	Self-disclosure	License
California	-	-	-	-
Colorado	-	-	-	-
Connecticut	500	NCETMB	Self-disclosure	License
Delaware	500	NCETM	Self-disclosure	License
	300	Not Required	Self-disclosure	Certification
Florida	500	NESL	Self-disclosure	License
Georgia	500	NCETM	Fingerprint	License
Hawaii	570	State Examination	Self-disclosure	License
Idaho	-	-	-	-
Illinois	500	NESL	Fingerprint	License
Indiana	500	An examination will be required but it has not yet been determined which examination will be accepted. <sup>37</sup>	Fingerprint	Certification
Iowa	500	NCETMB	Self-disclosure	License
Kansas	-	-	-	-
Kentucky	600	NCETMB	Self-disclosure	License
Louisiana	500	NCETMB and Oral Examination	Self-disclosure	License
Maine	500 or Examination	NCETMB accepted as alternative to training	Self-disclosure	License
Maryland	500	NCETMB, 60 college credits and Jurisprudence Examination	Self-disclosure	Certification
	500	NCETMB and Jurisprudence Examination	Self-disclosure	Registration
Massachusetts <sup>38</sup>	500	None	Self-disclosure	License
Michigan	-	-	-	-
Minnesota	-	-	-	-
Mississippi	700	NCETM	Self-disclosure	Registration
Missouri	500	NCETMB	Fingerprint	License
Montana	-	-	-	-
Nebraska	1,000	NCETMB	Self-disclosure	License
Nevada	500	NCETMB	Fingerprint	License
New Hampshire	750	NCETMB and Practical Examination	Fingerprint	License
New Jersey	500	Accepted as alternative to training	Fingerprint	Certification

<sup>37</sup> The Indiana legislature passed legislation in 2007 to regulate massage therapists. Full implementation is scheduled for January 1, 2008.

<sup>38</sup> Massachusetts has not yet implemented its newly enacted licensing law.

State	Training Hours	Examination	Criminal History Background Check	How Regulated
New Mexico	650	NCETMB and Jurisprudence Examination	Self-disclosure	License
New York	1,000	State Examination	Self-disclosure	License
North Carolina	500	NCETMB	Self-disclosure	License
North Dakota	750	NCETMB and Practical Examination	Self-disclosure	License
Ohio	600	State Examination	Self-disclosure	License
Oklahoma	-	-	-	-
Oregon	500	NCETMB and Practical Examination	Self-disclosure	License
Pennsylvania	-	-	-	-
Rhode Island	500	NCETMB	Fingerprint	License
South Carolina	500	NCETMB	Self-disclosure	License
South Dakota	500	NCETMB	Self-disclosure	License
Tennessee	500	NESL	Fingerprint	License
Texas	300	State Written and Practical Examinations	Self-disclosure	Registration
Utah	600	NCETMB and State Examination	Fingerprint	License
Vermont	-	-	-	-
Virginia	500	NCETMB	Self-disclosure	Certification
Washington	500	NESL and Practical Examination	Self-disclosure	License
West Virginia	500	NCETMB	Self-disclosure	License
Wisconsin	600	NESL	Self-disclosure	Certification
Wyoming	-	-	-	-

Source: ABMP

NCETMB = National Certification Examination for Therapeutic Massage & Bodywork

NCETM = National Certification Examination for Therapeutic Massage

NESL = National Examination for State Licensure

Although 26 of the states that regulate massage therapists require between 500 and 599 hours of training, two require only 300 hours and two require as many as 1,000 hours. Finally, six states require between 600 and 699 hours of training, and three states require between 700 and 799 hours of training. The norm, therefore, seems to be 500 hours of training, which is consistent with the Applicants' proposal.

Notably, two states, Delaware and Maryland, have two-tiered regulatory programs. In Delaware, a candidate can pursue either licensure or certification. In Maryland, a candidate can pursue either certification or registration.

Only one state that regulates, Massachusetts, does not require any type of examination at all, although Delaware does not require an examination for those candidates pursuing certification.

Of the 37 states that require an examination, 13 include some kind of state examination component. The NCETMB is by far the most frequently required examination, being required by 22 states. The NCETM is required by three states.

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Finally, the NESL, which is also owned by the NCBTMB, is required by five states. The NESL is the same examination as the NCETMB. However, the NCBTMB waives its certification qualifications for these candidates and instead simply requires examinees to satisfy the licensing requirements of the state in which licensure is sought. In other words, a candidate who passes the NESL may obtain a state license, but is not eligible for the National Certified Massage Therapist and Bodyworker credential.

Finally, every state that regulates massage therapists also requires some kind of criminal history background check. Although 27 states simply require license applicants to self-disclose any criminal convictions, 11 states require candidates to submit to fingerprint-based criminal history background checks.

Notably, of the 12 states that do not regulate massage therapists, 8 are in the western United States and 2 (Kansas and Wyoming) are contiguous neighbors of Colorado.

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## *Analysis and Recommendations*

### *Public Harm*

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.<sup>39</sup>

In other words, is the public being harmed absent regulation? This criterion implies that regulation is justified only if the public is being harmed by the unregulated practice of massage therapists. To answer this question, it is imperative to define harm in the context of massage therapy.

Since massage therapy involves the physical touching of a client by a massage therapist, physical injury is a legitimate measure. Similarly, a massage therapist could potentially go beyond traditional massage and manipulate joints or prescribe therapeutic exercise, which, without proper training, could result in physical injury to the client.

Additionally, since most massage takes place in a setting where the client may be wholly or partially unclothed and alone in the room with the massage therapist, the potential for sexually inappropriate touching, or other criminal activity, is self-evident. Therefore, sexual misconduct, too, seems to be a legitimate measure of harm with respect to massage therapists.

To determine whether the unregulated practice of massage therapists has harmed Coloradans, the Department of Regulatory Agencies (DORA) requested the Associated Bodywork and Massage Professionals and the Colorado Chapter of the American Massage Therapy Association (collectively, the “Applicants”) to provide specific examples of harm that have occurred in Colorado.

In response to DORA’s request, the Applicants provided a four-page document outlining the types of cases presented to and paid by insurance carriers that write liability insurance for massage therapists and a limited number of “testimonials” that contain more detail than the brief descriptions of insurance claims. A copy of the document that the insurance carrier provided to the Applicants in support of these claims was provided to DORA. However, DORA was not able to independently verify the accuracy of the testimonials.

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<sup>39</sup> § 24-34-104.1(4)(b)(I), C.R.S.

Between November 1994 and April 2006, the insurance carrier that the Applicants contacted paid at least 18 claims that were filed against insured massage therapists residing in Colorado. Unfortunately, the carrier was willing to provide only minimal detail regarding these claims. Nevertheless, Table 3 provides information on the dates and general nature of the claims.

**Table 3  
Filed Claims Resulting in Payment**

Date	Nature of Injury
1994 - November	Damage to the ulnar nerve
1998 - January	Stroke following massage, unrecognized symptoms
1998 - July	Right clavicle displacement
1999 - September	Injured upper back and shoulder area, tendon
2000 - October	Injured neck, muscle tear
2001 - March	Dislocated sternum
2001 - June	Injured right arm
2001 - October	Vestibular nerve damage
2002 - October	Injured/cracked ribs
2003 - March	Lower back injury, nerve injury
2003 - December	Torn rotator cuff
2004 - September	Rib fracture
2004 - October	Rib fracture
2004 - October	Spinal adjustment; major injury
2005 - September	Back injury, muscular
2005 - October	Vestibular nerve damage
2005 - October	Second degree burns from stone massage
2006 - April	Back injury, muscular

Without more detail regarding these claims, such as the dollar amount paid on each claim, it is not possible to determine the severity of these claims. However, these claims confirm that, on average, at least 1.5 Coloradans are harmed each year by massage therapists and the severity of that harm is sufficient to justify a paid insurance claim.

Unfortunately, since it is not known how many thousands or millions of massages are performed in Colorado each year, it is not possible to put this figure in proper perspective.



In addition to the paid claims outlined in Table 3, the Applicants provided information relating to claims that were filed with the insurance carrier but that did not result in a paid claim. Table 4 provides information regarding these Colorado claims.

**Table 4  
Filed Claims Resulting in No Payment**

Date	Nature of Injury
1995 – February	Torn muscles in lower back
1997 – May	Client passed out due to too much pressure
1999 – September	Upper back/shoulder muscle tear
1999 – December	Dislocated shoulder
2000 – February	Aggravated back pain; leg pain
2000 – May	Sternum injury
2000 – December	Right hand, torn tendon, during treatment for carpal tunnel
2001 – March	Right shoulder injury, torn
2001 – October	Lower back
2002 – May	Back injury from deep massage
2003 – April	Bruising on client’s back
2003 – December	Back, muscle injury
2004 – April	Ribs cracked

The nature of the injuries reported in Table 4 does not appear to be substantially different from the nature of the injuries reported in Table 3. The data reported in both tables are consistent with the types of harm one would expect to see in a practice that involves physical touching and soft-tissue manipulation.

This evidence of physical injury must be tempered, however, due to the limited nature of the information provided.

In addition to the insurance claims reported in Tables 3 and 4, the Applicants provided limited information on four court cases in which a massage therapist offered expert testimony. The Applicants’ submissions are summarized below, followed by DORA’s analysis in italicized text.

**Case #1 – 1992**

A woman sued a Colorado mountain resort for a massage therapist’s malpractice. The case settled out of court and the woman was awarded money to help pay for several surgeries to repair a neck fracture caused by a massage therapist who was originally from another state.

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*Since this case was not adjudicated, it is not reasonable to conclude that the massage therapist was responsible for the woman's injuries. Lawsuits settle, as did this one, for many reasons, including a high profile defendant's desire to avoid the negative publicity associated with such suits.*

**Case #2 – 2001**

Criminal proceedings were halted when the defendant massage therapist pleaded guilty to sexual contact.

*While sexual misconduct is abhorrent, it is not unique to massage therapy. Indeed, sexual misconduct occurs in many professions and occupations that are regulated, making it unreasonable to conclude that regulation would have prevented this incident. However, with a criminal conviction, this massage therapist could be prevented from continuing to practice if a regulatory program were in place.*

**Case #3 – 2001**

A massage therapist in Glenwood Springs was tried and acquitted of sexual assault on a client. The massage therapist returned to Tennessee where he was subsequently tried and convicted on similar charges.

*This case represents potential harm in that the massage therapist was acquitted of causing harm in Colorado, but convicted of causing harm in another jurisdiction. Regardless, absent regulation, this massage therapist could return to Colorado and practice again.*

**Case #4 – 2005**

The owner of a massage facility videotaped the entire facility. A client sued for violation of privacy. The client "won her case and settled for financial compensation." The owner continues to videotape the entire facility.

*It is not clear from this submission what constitutes a "violation of privacy." Additionally, it is not clear whether the client won the lawsuit or settled. Therefore, it is not reasonable to consider this case as evidence of harm.*

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In addition, the Applicants submitted the following eight cases that the Applicants concede constitute hearsay. Regardless, in order to provide a thorough examination of harm and potential harm, these cases are reported here verbatim. DORA's analysis follows each report in italicized text.

**Case #5**

A female client was sent to me for help after she had been to a different massage therapist. The client had told the person doing therapy not to work on a certain extremity, since it had been injured previously and should not be part of that therapy session. That person evidently did not listen and said that she could treat anything. The therapist did not recognize and respect a medical diagnosis. It took me several sessions to relax her fear and eventually help the client by working with her and her medical doctors. The first therapist did harm to the client.

*It is not clear from this submission what harm occurred or that the harm that did occur was a result of the first massage therapist's actions, rather than a complication of the underlying injury. As a result, it is not reasonable to consider this case as evidence of harm.*

**Case #6**

A client was persuaded to visit a qualified therapist for structural work who needed tight muscles unlocked or released. The intake form allowed the client to tell about a series of visits to a person who had no certified massage training. Because the person administering therapy did not understand the process of assessing the client's muscles and pain threshold, the client was given a very aggressive type of work that caused bruising and extreme pain for several days. The client reported to me that she was not helped in her specific situation, but actually put in regression with her health care by the first therapist mentioned in this case.

*Although bruising and "extreme pain" appear to qualify as evidence of harm, this case also raises additional questions. Some deep tissue massage can be uncomfortable, even painful. Regardless, if true, and if the original therapist knew of the client's physical pre-existing physical condition, then perhaps the massage should have been tailored appropriately. Without more information, it is not reasonable to consider this case as evidence of harm.*

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### **Case #7**

The therapist failed to ask the client about any pre-existing conditions or injuries before doing extremely deep injury massage on the quadratus lumborum. The client went home in pain and was severely limited in mobility. The following day, another therapist worked on the client, specifically on the psoas, to try to offset the imbalance created by the previous work. The client was left in extreme pain and bedridden, unable to get up and walk around. He spent the next four days on painkillers and anti-inflammatories, unable to work. When he did return to work, he was still limited in mobility and did not fully recover for about another week.

*It is not clear from this submission whether the client's pain was the result of the original injury, the first massage or the second massage. As a result, it is not reasonable to consider this case as evidence of harm.*

### **Case #8**

A massage therapist massaged a female client too deeply, leaving bruises and soreness. The client complained.

*This submission does not present enough information to conclude whether the client was actually harmed. Additionally, it does not provide information as to the results of the client's complaint or to whom she complained.*

### **Case #9**

A massage therapist caused blisters on a client's back when he administered hot packs incorrectly.

*If true, and if the use of hot packs is considered to be within the scope of massage therapy (as opposed to physical therapy or athletic training), this case represents evidence of harm.*

### **Case #10**

A male massage therapist, when he learned a female client was in crises (mother died recently, going through a divorce, etc.) would then seduce the client and have sex with her. Two clients complained. The therapist was a member of the AMTA [American Massage Therapy Association]. He was confronted, dropped his AMTA membership, and moved to the western slope. A third complaint came after he moved – from a female massage therapist who went to a class he taught.

*If true, this could be considered harm. Although sexual misconduct is not unique to the practice of massage therapy, absent regulation, this practitioner could continue to practice massage therapy in Colorado.*

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### **Case #11**

A male massage therapist was working the hamstring attachments on a female client and his fingers went into her crotch area when he “slipped.” She sued him and lost.

*If true, this could be considered harm. Although sexual misconduct is not unique to the practice of massage therapy, absent regulation, this practitioner could continue to practice massage therapy in Colorado. This submission is questionable, however, since the client lost the lawsuit, which raises questions as to the validity of the accusation.*

### **Case #12**

A male massage therapist kissed a female client on the mouth and massaged her nipples during a massage. She sued him and won.

*If true, this could be considered harm. Although sexual misconduct is not unique to the practice of massage therapy, absent regulation, this practitioner could continue to practice massage therapy in Colorado.*

Finally, the Applicants offered that there is a potential for harm that is unique to massage therapy in that consumers could become confused and fear putting themselves in a potentially embarrassing environment, thereby inhibiting their access to a valuable, affordable health service.

While this is potentially true, it is vague and tenuous. There are many potentially embarrassing situations in which people could find themselves, but this, on its own, is generally insufficient to justify state regulation.

In addition to the information provided by the Applicants, DORA also sought out evidence of harm. Toward this end, DORA contacted the Office of Barber and Cosmetology Licensure and the Office of Physical Therapy Licensure to determine whether any complaints involving massage therapy had been lodged with either of those agencies. One such complaint had been filed with the Office of Barber and Cosmetology Licensure, but that case amounted to nothing more than practicing without a license. No harm was alleged.

The Office of Physical Therapy Licensure has received five complaints involving massage therapists since 2004. However, all of these cases involved either insurance fraud or misleading advertising – none alleged physical harm.

Although six separate complaints were filed with these various regulatory programs in the span of three years, none of them involved physical harm to a consumer.

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DORA also contacted the Colorado Board of Chiropractic Examiners and the Consumer Protection Section of the Attorney General's Office (AGO) to determine whether any complaints involving massage therapists had been filed with either agency. One complaint was filed with the Board of Chiropractic Examiners since 2004. That case involved a message therapist sexually assaulting patients and holding himself out as a chiropractor without being licensed as such. Since the individual was not a licensed chiropractor, the Board of Chiropractic Examiners issued an order to the individual to cease and desist from holding himself out as such.

The AGO reported receiving nine complaints in the last several years. Unfortunately, the AGO was not able to provide more detailed information.

DORA also searched media reports, looking for instances where massage therapists had harmed consumers. Following the summary of one such media report is DORA's analysis in italicized text.

**Case #13 - Grand Junction (October 2005)**

A male massage therapist working out of his home touched the pelvic areas and breasts of six Grand Junction women without their consent while treating them. As part of a plea agreement, in spring 2007, the massage therapist pled guilty to one felony count of sexual assault and one misdemeanor count of unlawful sexual contact, and he was sentenced to 90 days in jail and 10 years to life probation.<sup>40</sup>

*Although sexual misconduct is not unique to massage therapy, absent regulation, this practitioner can continue to practice massage therapy in Colorado, thereby potentially harming more consumers.*

As part of this sunrise review, DORA conducted a survey of approximately 4,025 Colorado-based massage therapists. A complete analysis of the survey can be found in Appendix B on page 54. One of the survey questions asked whether the survey taker had any first-hand knowledge of harm caused to a consumer by a massage therapist. Only 11.8 percent of the survey respondents indicated that they had such knowledge. While most of the comments consisted of little more than general allegations of harm, a few contained specific allegations of sexual misconduct or specific injuries that were sustained by consumers.

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<sup>40</sup> Dan Boniface, "Former massage therapist sentenced for sexual assault," *9News.com*, May 1, 2007.

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In addition to these proactive measures, DORA maintains a website whereby members of the public can submit comments regarding current or upcoming sunrise or sunset reviews. As of this writing, six individuals had submitted comments. While four of these opposed regulation for various reasons, none of the comments contained any allegations or evidence of harm to a consumer.

Finally, one consumer, at the urging of the Applicants, contacted DORA directly to share her story. DORA's analysis follows in italicized text.

**Case #14 - Grand Junction (November 2006)**

The physician of a woman who was recovering from West Nile Virus sent the woman to see a male massage therapist who worked in the office of a chiropractor. As a result of the West Nile Virus, the woman suffered from depression and low energy. Over the course of two months, the male massage therapist boasted to the woman about the number of women he had slept with and about how he had detected breast cancer in several women. During the massage sessions, the massage therapist inappropriately touched the woman (just below her genitalia) and would pinch her nipples and tell her to take her time getting dressed. The massage therapist masturbated in front of the woman. Since the patient was depressed during most of these sessions, she is not sure how many times this occurred, but she estimates it was about five times. It wasn't until after her physician placed her on anti-depressants and the fog of her depression lifted that she realized the magnitude of what had happened. The woman reported these incidents to her physician in January and again in March 2007, but the physician apparently did not believe the woman. The woman reported her experience to the police in March 2007, but nothing had come of it as of the end of April 2007. The woman filed a complaint against the chiropractor in whose office the massage therapist worked with the Board of Chiropractic Examiners, but the case was dismissed due to lack of evidence that the chiropractor had violated the Chiropractic Practice Act. The woman believes that at least four other women had similar experiences with the massage therapist. The woman further believes that the male massage therapist has a criminal record, but does not know the specifics of those convictions.

*This can be considered evidence of harm. Although sexual misconduct is not unique to the practice of massage therapy, absent regulation, this practitioner can continue to practice in Colorado, thereby causing further harm to consumers.*

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Additionally, the Applicants posit that the unregulated practice of massage therapists harms society by perpetuating a connection between massage and prostitution. This theory is based on the premise that many individuals engage in prostitution under the guise of massage. Indeed, this is part of the reason that Colorado enacted the Massage Parlor Code – to allow those local jurisdictions that so choose, to distinguish legitimate massage therapists from those who simply offer “massage.”

Several high profile arrests in the last several years demonstrate the continued connection between massage and prostitution. In July 2005, a woman was arrested in Colorado Springs for running prostitution out of a massage parlor.<sup>41</sup> In November 2006, three people were arrested in Highlands Ranch for running prostitution out of a massage parlor.<sup>42</sup> In January 2007, two people were arrested for running prostitution out of a massage parlor.<sup>43</sup> In July 2007, three people were arrested for running prostitution out of a massage parlor.<sup>44</sup>

Whether prostitution can legitimately be considered harm caused by massage therapists, however, is unclear. It is not the practice of massage therapy that creates the societal harm caused by prostitution. Rather, the harm is caused by those who seek to exploit the term “massage.” As such, the argument that the unregulated practice of massage therapy creates the societal harm caused by prostitution is tenuous.

At least seven of the case studies presented here demonstrate that massage therapists can harm the public through sexual misconduct.

Additionally, at least one of the case studies and the 31 insurance claims presented in Tables 3 and 4 indicate that massage therapists can also harm the public by inflicting physical injury, though the evidence of this is less convincing than the evidence pertaining to sexual misconduct.

Finally, the connection between massage and prostitution, as evidenced by various media reports, continues, though it is reasonable to conclude that this has less to do with the actual practice of massage therapy than it does with the exploitation of the term “massage.”

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<sup>41</sup> Deedee Correll, “Sex, crafts and ice cream in bust,” *The Gazette*, July 2, 2005.

<sup>42</sup> Sara Burnett, “Asian sex ring busted,” *The Rocky Mountain News*, November 22, 2006.

<sup>43</sup> Felix Doligosa, Jr., “Cops make prostitution bust,” *The Rocky Mountain News*, January 12, 2007.

<sup>44</sup> Manny Gonzales, “Vice bust in Aurora, 3 arrests,” *The Denver Post*, July 11, 2007; Dan Boniface and Nicole Vap, “Investigators bust alleged prostitution ring at massage parlor,” *9News.com*, July 10, 2007.



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Therefore, based on the 14 case studies and the other evidence gathered by DORA, it is reasonable to conclude that massage therapists can cause harm through sexual misconduct and, to lesser degrees, physical injury and the perpetration of prostitution.

### *Need for Regulation*

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.<sup>45</sup>

Although the previous section concluded that the public can be harmed by massage therapists, through sexual misconduct, and, to lesser degrees, physical injury and the perpetration of prostitution, the second sunrise criterion requires an analysis of whether that harm is caused by the incompetent practice of massage therapists. The second sunrise criterion implies that if competency is not the problem, then regulation is not justified.

Sexual misconduct is an inherently criminal act; competency is not the issue. No amount of education or training, and no examination – traditional assurances and measures of competency – are going to prevent sexual misconduct.

Physical injury, on the other hand, can result from incompetent practice. However, the cost of malpractice insurance for massage therapists is telling of just how real the risk of physical injury is. One insurance carrier sells \$3 million worth of coverage for only \$160 per year.<sup>46</sup> This can be contrasted with the group errors and omissions insurance policy that the Colorado Real Estate Commission obtains for Colorado-licensed real estate brokers. That plan costs \$239 per year for only \$300,000 in coverage.<sup>47</sup> Unlicensed massage therapists can obtain 10 times the insurance coverage as a licensed real estate broker for \$80 less. It is, therefore, reasonable to conclude that the insurance industry does not consider the practice of massage therapy to be high risk with respect to physical injury.

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<sup>45</sup> § 24-34-104.1(4)(b)(II), C.R.S.

<sup>46</sup> Hands-On Trades Protection Plan, downloaded on June 8, 2007, from [www.handsoninsurance.com/application.html](http://www.handsoninsurance.com/application.html)

<sup>47</sup> “Colorado Real Estate Errors and Omissions Program,” downloaded on July 12, 2007, from [www.risceo.com/colorado/CO07\\_IndivProratedEnrollmentPacket.pdf](http://www.risceo.com/colorado/CO07_IndivProratedEnrollmentPacket.pdf)

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Finally, regulation would help in eliminating prostitution, proponents argue, by requiring a certain level of education and the passage of an examination. Those interested in engaging in prostitution under the guise of massage would not be willing to go to these lengths and to incur this expense in time and money to obtain the requisite education necessary to pass the examination. Therefore, prostitutes would no longer hold themselves out as massage therapists.

While this argument has merit, it does not resolve the underlying question of whether an assurance of competency will lead to a reduction in prostitution. Education and an examination requirement may erect a barrier to entry for massage therapists, but in substance, ensuring that massage therapists are competent will not reduce prostitution in the state.

Additionally, professional or occupational regulation is an intuitively poor way to address criminal activity. Prostitution is a criminal activity. One who is willing to engage in criminal activity and risk the criminal sanctions that go along with such an endeavor, would likely show little or no reluctance to violate any professional or occupational regulatory provisions, where the sanctions for violating are substantially lower than those for being convicted of a criminal act.

In three of the four high profile arrests discussed in the previous section (the cases in Aurora, Colorado Springs and Denver), the arrests occurred in jurisdictions that regulate massage therapists. Whether the individuals involved in these prostitution rings were licensed as massage therapists or failed to satisfy the licensing requirements of such is irrelevant. These jurisdictions license massage therapists and continue to arrest individuals who are associated with massage and these jurisdictions continue to charge them with prostitution. Therefore, it is reasonable to conclude, that regulating massage therapists at the state level will not eliminate prostitution.

Finally, as part of this sunrise review, a representative of DORA contacted two Denver area law enforcement agencies. While both advocated for statewide regulation, both conceded that regulation would not bring about the demise of prostitution. Regulation could, however, remove the taint of prostitution from legitimate massage therapists.

Regardless, ensuring that massage therapists are competent will likely not lead to a reduction in or elimination of prostitution in the state.

Since sexual misconduct and prostitution occur regardless of competency, the public cannot reasonably expect to see a decrease in either as the result of the imposition of education and examination requirements for massage therapists.

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Although education and an examination requirement could lead to a reduction in physical injury caused by massage therapists, the evidence of this type of harm is minimal.

### *Alternatives to Regulation*

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.<sup>48</sup>

Since there is little evidence that the public is harmed by the unregulated practice of massage therapy and that regulating massage therapists would eliminate prostitution, the licensure program proposed by the Applicants is unjustified.

However, the third sunrise criterion requires an analysis of less stringent, more cost-effective options. Considering the lack of harm and issues raised in the course of this review, three options are self-evident: 1) title protection; 2) registration and 3) certification.

A common refrain heard throughout this sunrise review centered on the idea that legitimate massage therapists need a mechanism by which to differentiate themselves from those who merely provide massage. Many of the proponents of regulation take great pride in their training, membership in various professional associations, and the fact that they have taken nationally recognized competency examinations.

A statutory scheme that permitted only those who have obtained a certain level of education, passed a nationally recognized competency examination (such as the National Certification Examination in Massage Therapy, the National Certification Examination in Massage Therapy and Bodywork, or both), or both, to use the title “massage therapist” or some derivation thereof, but that allowed those without such qualifications to continue to practice but not use the protected title(s), would seem to satisfy some proponents of regulation yet not unjustifiably erect unnecessary barriers to those with lesser qualifications.

Importantly, a title protection scheme would entail little or no expenditure of state funds.

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<sup>48</sup> § 24-34-104.1(4)(b)(III), C.R.S.

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A title protection scheme, however, would do nothing to address the primary type of harm that has been identified – sexual misconduct. Allowing only those practitioners who have satisfied the requirements enumerated in the previous paragraphs would do nothing to prevent sexual misconduct.

As a result, a recommendation in favor of a title protection scheme is unjustified, but it is presented here as an alternative that is more consistent with the level of harm identified than the Applicants' proposed licensing program.

A more stringent option than title protection, yet less stringent than certification or licensure, is registration. Under a registration program, practitioners would simply notify the state that they are practicing massage in the state and only those who are registered could lawfully practice. Certain, non-competency based requirements, such as criminal history background checks, could be imposed to address the Applicants' concerns regarding sexual misconduct and prostitution.

Unlike a title protection scheme, a registration program would require the state to establish a regulatory program and that would require the expenditure of state funds. Such a program would require staff and the information technology to create and maintain a registry.

A registration program could help to address the primary type of harm identified in this sunrise review – sexual misconduct – but only if, as a precondition to registration, all massage therapists would have to submit to a criminal history background check. While this would do little to prevent sexual misconduct in the first instance, it could help to prevent those who are convicted of sex-related crimes from obtaining registration as massage therapists.

This option must further be tempered by the fact that, although this sunrise review discovered that the primary type of harm caused by massage therapists is sexual misconduct, there is no evidence as to how prevalent sexual misconduct is among massage therapists. Absent such a finding, a recommendation that would require all massage therapists in the state to incur the costs, in terms of both time and money, of obtaining criminal history background checks is unjustified. Therefore, this alternative, too, should be rejected.

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Between registration and licensure lies certification. This type of program looks more like a licensing program in terms of erecting barriers to practitioners than the other alternatives, but requires less in terms of state expenditures. Under a certification program, only those who are certified would be allowed to practice. State certification is typically premised on the practitioner obtaining a nationally recognized certification. In this case, the state could simply adopt the National Certification in Massage Therapy, the National Certification in Massage Therapy and Bodywork, or both. However, it should be noted that only about 66 percent of the respondents to DORA's survey hold a national certification of some kind, so a certification scheme would likely lead to a decrease in the availability of massage therapy services, at least in the short term.

Certification programs typically entail scopes of practice, which entail greater enforcement costs, and, thus, greater state expenditures. There is, generally, little advantage to creating a certification program over a licensure program.

Additionally, certification programs, like licensure programs, are generally justified when the harm caused by the particular profession or occupation can be attributed to competency, or the lack thereof. Such is not the case with massage therapists, where sexual misconduct is the primary cause of harm. Therefore, certification, too, should be rejected.

Therefore, there are alternatives to the licensing program proposed by the Applicants. Whether any of these alternatives are appropriate, however, depends entirely upon the level and type of harm identified and the reasons as to why and how it is caused.

### *Conclusion*

The debate surrounding whether to regulate massage therapists, and at what level, is heated, and the massage therapists themselves are divided on this issue. Although 78 percent of the respondents to DORA's survey support regulation, 22 percent (nearly a quarter) oppose regulation.

Proponents of regulation argue that the unregulated practice of massage therapy endangers the public health, safety and welfare; perpetuates the blurring of the line between legitimate massage and prostitution; and, due to the patchwork of local regulation, is difficult on legitimate massage therapists.

Although the evidence revealed during the course of this sunrise review shows that massage therapists can cause harm, that harm will not be avoided through regulation, regardless of the form such regulation might take.

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The cost at which massage therapists can obtain malpractice insurance strongly supports the conclusion that the risk of physical injury caused by massage therapists is minimal. Competency is not an issue.

Additionally, it is not reasonable to conclude that regulating massage therapists will eliminate, or even lead to an appreciable decrease in, prostitution. Many local jurisdictions license massage therapists and continue to arrest individuals who are affiliated with massage on charges of prostitution. Regulation, in any of its forms, is an inherently ineffective tool to deter criminal activity.

Similarly, regulation cannot be expected to eliminate sexual misconduct – another inherently criminal act – perpetrated by massage therapists.

Finally, the survey conducted by DORA revealed that only 7.4 percent of massage therapists in Colorado are licensed in more than one local jurisdiction. This renders all but moot, proponents' arguments contending that massage therapists must obtain multiple licenses to practice. The vast majority of massage therapists do not hold multiple licenses.

The sunrise criteria, and Colorado legislative and regulatory history, are clear: regulation, whether it is title protection, registration, certification or licensure, is justified only in those circumstances where the public is being harmed by the lack of regulation and where some form of regulation will eliminate or reduce the incidence of that harm. With respect to massage therapists, the harm caused is not a result of incompetence; it is the result of inherently criminal activity. Therefore, there is presently no basis for regulation at any level.

*Recommendation – Do not regulate massage therapists.*

### Model Massage Therapy State Licensing Act

This proposal, for the mythical state of Atlantis, is designed as an initial state-level massage therapy licensing law. It presumes to be enacted, out of a desire both for public protection and for regulatory uniformity, after selected municipalities in Atlantis adopted differing local massage therapy licensing regulations. Specific illustrative dates are utilized simply to provide a feel for the timing in establishing a state-level massage licensing function, including sufficient time for current practitioners to qualify for a license utilizing grandfathering provisions in the law. While it is drafted using the name of Atlantis and includes numerous specific dates, the intent is for it to be useful in diverse states. Limiting the number of blanks enhances clarity of intent. It is understood that each state has its own preferred terminology, statutory formatting, underlying laws, and departmental organization structure into which a massage licensing function will need to fit. Our aim is to identify substantive topics deserving attention and to provide a useful starting point for state legislatures. ABMP will be pleased to work with interested legislators to build on this starting document.

Assumptions: The Atlantis Legislature passes the following Act in May 2010 and the Governor signs it into law on June 1, 2010. The Governor appoints initial members of the Atlantis Board of Massage Therapy in October 2010. The Board holds its initial meeting in November 2010, by late January 2011 has engaged an Executive Director, by June 2011 has adopted rules and announced details about procedures for making application for licensure, during summer 2011 hires and trains additional staff, and begins accepting license applications September 1, 2011.

February 28, 2006 B

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**AN ACT**

To amend the Official Code of Atlantis Annotated, relating to regulation of professions and businesses, so as to regulate the practice of massage therapy; to provide a short title; to provide legislative findings and intent; to provide for certain definitions; to create the Atlantis Board of Massage Therapy; to provide for membership on the board; to provide for meetings of the board; to provide for powers of the board; to provide for licensure of massage therapists; to provide for provisional permits; to provide for applications under oath; to provide for licensing examinations; to provide for requirements relating to a license, title use, and advertising; to provide for violations; to prohibit the unauthorized practice of massage therapy; to provide for disciplinary actions; to provide for administrative procedures; to provide for exemptions and exceptions; to provide for continuing education requirements; to provide for cumulative remedies; to provide for other jurisdictions; to provide for taxation; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE LEGISLATURE OF ATLANTIS:

**PART 1.**

The Official Code of Atlantis Annotated, relating to regulation of professions and businesses, is amended as follows:

**§ 100. Short title.**

This Act shall be known and may be cited as the 'Atlantis Massage Therapy Practice Act.'

**§ 101. Declaration of purpose. Public protection.**

- (a) The legislature acknowledges that the practice of massage therapy affects the public health, safety, and welfare. Massage therapists, to practice safely, must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue being treated and the total function of the body. Massage, properly administered, is therapeutic, while improperly applied massage can be potentially harmful to the public. Regulations are necessary to protect the public from unqualified practitioners. It is in the interest of the public to set minimum standards of qualifications, education, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons licensed to practice massage therapy through establishment of effective discipline for those practitioners who violate the law.
- (b) Practice of massage therapy by a person who is not licensed to practice in this state is declared to be a public nuisance, harmful to the public health, safety, and

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welfare. Any citizen of this state, the board, or the appropriate prosecuting attorney where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides or works.

**§ 102. Definitions.**

As used in this Act, the term:

- (a) 'Advertise' means, but is not limited to, the issuing or causing to be distributed of any card, sign, direct mail piece or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or announcement on radio, or announcement or display on television, computer network, or electronic or telephonic medium.
- (b) 'Applicant' means any person seeking a license under this Act.
- (c) 'Approved massage school' means a massage therapy educational program which meets the standards for training and curriculum as set forth by the Atlantis Department of Private Postsecondary and Vocational Education as provided in Code Section \_\_\_\_\_.
- (d) 'Board' means the Atlantis Board of Massage Therapy established by this Act.
- (e) 'Compensation' means the payment, loan, advance, donation, contribution, deposit or gift of money or anything of value.
- (f) 'License' means a valid and current certificate issued by the board permitting the practice of massage by a qualified person.
- (g) 'Massage therapist' means a person licensed under this Act who administers massage or massage therapy for compensation.
- (h) 'Massage' or 'massage therapy' means a system of structured palpation or movement of the soft tissue of the body. The system may include, but is not limited to, techniques such as effleurage or stroking and gliding, petrissage or kneading, tapotement or percussion, friction, vibration, compression, and passive or active stretching within the normal anatomical range of movement. These techniques may be applied with or without the aid of lubricants, salt or herbal preparations, hydro-massage, thermal massage, or a massage device that mimics or enhances the actions possible by human hands. The purpose of the practice of massage, as licensed under this Act, is to enhance the general health and well-being of the recipient. "Massage" does not include the diagnosis of a specific pathology, the prescription of legend drugs or controlled substances, spinal manipulation, or those acts of physical therapy that are outside the scope of massage therapy practice as defined in this Section.
- (i) 'Massage Therapy Fund' or "fund" means a fund set up by the board to accept and disburse fees paid by massage therapists for the purposes of administering the provisions of this Act.
- (j) 'Person' means a natural person only.

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(k) 'Professional massage and bodywork therapy association' means a state or nationally chartered professional membership organization offering services to massage therapists that has been in existence for at least 36 months prior to the effective date of this Act, that currently has at least 500 members in good standing, and whose membership requirements include the following:

- (1) The organization requires that its members meet minimum eligibility criteria, which include massage or bodywork education completion standards. Required education must embrace the subject areas of anatomy, physiology, hygiene, sanitation, ethics, and application of techniques; and
- (2) The organization has an established code of ethics, requires members to agree to that code, and has procedures for the membership suspension and revocation of persons violating the code of ethics.

(l) 'Provisional permit' means a valid and current permit issued by the board permitting the temporary practice of massage therapy, for a period not to exceed 90 days, by a person meeting qualifications described in this Act;

(m) 'Provisionally permitted massage therapist' means a person issued a provisional permit under this Act.

**§ 103. Atlantis Board of Massage Therapy.**

(a) The Atlantis Board of Massage Therapy is created. The board shall consist of seven members who are residents of the state. The board shall be under the jurisdiction of the Department of \_\_\_\_\_, and shall operate in accordance with and pursuant to the provisions of this Act, as applicable.

- (1) There shall be five professional members of the board who shall:
  - (A) Be citizens of the United States and residents of this state for at least three years prior to the date of appointment;
  - (B) Have been engaged in massage therapy practice for compensation for at least three years immediately preceding their appointment; and
  - (C) Be eligible for licensure under this Act. Effective January 1, 2013, and thereafter, all professional members of the board shall be licensed under this Act.
- (2) No more than one professional member of the board may be an owner of or be affiliated with any massage school.
- (3) There shall be two consumer members of the board who shall:
  - (A) Be citizens of the United States and residents of this state; and
  - (B) Shall be persons to whom neither this state nor any other state or jurisdiction or organization has ever issued a certificate, registration, license, or permit to engage in the practice of massage therapy nor be an owner of or affiliated with any massage school.

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- (4) No more than one consumer member of the board may be, though none is required to be, a licensed physician or other health care professional licensed by the state.
- (b) The Governor shall appoint all members of the board for initial terms of office beginning November 1, 2010. The Governor shall appoint three initial members of the board, including one consumer member, to serve for terms of two years and four initial members of the board, including the other public member, to serve for terms of three years. After the initial terms specified in this sub-section, members of the board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the board for more than two full consecutive terms. Any vacancy due to death, resignation, removal, or otherwise shall be filled for the remainder of the unexpired term in the same manner as regular appointments.
- (c) An appointee to the board shall qualify by taking an oath of office within 15 days from the date of his or her appointment. On presentation of the oath, the Secretary of State shall issue a commission to each appointee as evidence of his or her authority to act as a member of the board.
- (d) The Governor, after notice and opportunity for hearing, may remove any member of the board for incompetence, neglect of duty, unprofessional conduct, conviction of a felony, failure to meet the qualifications of this Act, or committing any act prohibited by this Act. A member subject to disciplinary proceedings as a massage therapist shall be disqualified from participating in the official business of the board until the charges have been resolved.
- (e) Each member of the board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. \_\_\_\_\_.

**§ 104. Board powers and duties.**

- (a) The board shall meet as often as necessary for the conduct of business but at least twice each year at times fixed by the board. At its annual meeting, the board shall elect from its members a chair and any other officers as deemed necessary who shall hold office for a term of one year. Additionally, the board may appoint such committees as it considers necessary to fulfill its duties. The board shall establish procedures governing the calling, holding and conducting of regular and special meetings. A majority of the board shall constitute a quorum.
- (b) The board shall have the following powers and duties:
- (1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and massage therapy practice.
  - (2) Examine and determine the qualifications and fitness of applicants to practice massage therapy in this state;

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- (3) Issue, renew, refuse to renew, deny, suspend, or revoke licenses and provisional permits to practice massage therapy in this state or otherwise discipline massage therapists; the board is directed to begin receiving and reviewing license and provisional permit applications and issuing licenses and provisional permits to qualified persons no later than January 1, 2012;
  - (4) Conduct investigations for the purpose of discovering violations of this Act or grounds for disciplining persons licensed under this Act;
  - (5) Hold hearings on all matters properly brought before the board and, in conjunction therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members as its hearing officer;
  - (6) Provide a system for grievances to be presented and resolved;
  - (7) Employ professional, clerical, or other special personnel; enter into contracts, and purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Act. No employee of the Board, or their spouse, shall be a Board member or shall have any financial interest in the practice or instruction of massage therapy.
  - (8) The board shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties; fees for the following core services shall not exceed the amounts listed as follows:

(A) Initial application for a license	\$50
(B) Issuance of an initial two year license	\$100
(C) Issuance of a two year renewal license	\$100

Initial and renewal license fees shall be established by the board annually.
  - (9) Adopt, revise, and enforce rules concerning advertising by massage therapists including, but not limited to, rules to prohibit false, misleading, or deceptive practices as well as rules to implement the additional provisions of § 110 of this Act;
  - (10) Adopt such other reasonable rules and regulations necessary to carry out the purposes of this Act and the duties and responsibilities of the board. Any rules adopted or amended shall take into account the membership entry-level educational standards of professional massage and bodywork therapy associations.
  - (11) At its discretion, enter into reciprocal relations with other states whose licensure requirements are substantially the same or are more rigorous as those provided in this Act;
  - (12) At its discretion, elect to participate in and pay dues to a federation of state massage boards whose purposes include sharing of best practices, development of staff and board member governance

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knowledge, and exchange of information on disciplinary actions taken with regard to massage therapists;

- (13) Appoint from its own membership one or more members to act as representatives of the board at any meeting where such representation is deemed desirable;
- (14) Maintain a timely record of all proceedings and make available by electronic or other means of communications to all massage therapists and other concerned parties an annual report of the board. Timely maintain a record book and computer file in which shall be entered the names and addresses of all persons to whom licenses have been granted under this Act, the license number, and dates of granting such licenses and renewals thereof, and other matters of record. Copies of records shall be furnished to any person requesting them upon payment of such copying fee as the board may require to recover its costs of compliance with the information request.
- (15) Adopt an official seal containing the name of the board for use on all certificates and official reports issued by it;
- (16) Bring proceedings to the courts for the enforcement of this Act or any rules and regulations promulgated pursuant to this Act; as cumulative to any other remedy or criminal prosecution, the board may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this Act or the lawful rules or orders of the board;
- (17) Assess civil penalties pursuant to G.S. \_\_\_\_\_; and
- (18) Conduct its business pursuant to the provisions of Code Section \_\_\_\_\_, which is incorporated herein and made a part of this Act by specific reference.

**§ 105. Requirements for licensure.**

- (a) Commencing January 1, 2013, no person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the board pursuant to this Act.
- (b) On and after January 1, 2013, any new applicant for a license must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that the applicant:
  - (1) is at least 18 years of age;
  - (2) has a high school diploma or its recognized equivalent;

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- (3) is a citizen of the United States or a permanent resident of the United States;
  - (4) is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
  - (5) acknowledges having read and pledges to adhere by standards of conduct set forth in § 109 with awareness that adherence or failure to adhere to such standards shall be considered in evaluating eligibility to receive an initial license, to renew a license, and the meting out of discipline by the board pursuant to its powers and responsibilities set forth in this Act;
  - (6) agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and
  - (7) has passed a psychometrically valid massage knowledge examination approved by the board;
  - (8) has completed successfully a board recognized educational program consisting of a minimum of 500 hours of course and clinical work.
- (c) The board shall issue a license to a person who meets all the criteria set forth in § 105 (b)(1) – (6), if that person:
- (1) is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country, which requires standards for licensure considered by the board to be substantially equivalent to the requirements for licensure under this Act; or
  - (2) has completed at least 500 hours of course and clinical massage education in a program in another state or jurisdiction that, upon review, is deemed by the board to be sufficient.
- (d) The board shall issue a provisional permit to an applicant who submits a completed application upon a form and in such manner as the board prescribes, accompanied by application fees, and evidence satisfactory to the board that the applicant meets all the criteria set forth in § 105 (b) (1)-(6) and who also satisfies the education requirements set forth in § 105 (b) (8) or alternative educational attainment described in § 105 (c) (2), but who has not yet passed an examination described in § 105 (b) (7). A provisional permit expires on the earliest of the following dates:
- (1) the applicant is issued a license by the board;
  - (2) the applicant is notified by the board that the applicant has failed an examination described in § 105 (b) (7); or

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- (3) 90 days from the date the provisional permit was issued.

Applicants who have previously taken and failed an examination described in § 105 (b) (7) do not qualify for a provisional permit. The holder of a provisional permit may not begin work until that permit is received and posted in accordance with § 107 (a). Expired provisional permits may not be reissued or renewed, and no more than one provisional permit may be issued to an individual.

- (e) The board shall have the power to issue a license to a person who does not fully satisfy the eligibility criteria set forth in this Act but who, in the board's judgment, has sufficient training and experience to be able to practice safely on members of the public.
- (f) The board may require that all applications be made under oath.

**§ 106. Grandfathering.**

- (a) Prior to January 1, 2013, all applicants must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that the applicant:
- (1) is at least 18 years of age;
  - (2) has a high school diploma or its recognized equivalent;
  - (3) is a citizen or a permanent resident of the United States;
  - (4) is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
  - (5) agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and
  - (6) has met at least one of the following requirements:
    - (A) He or she meets the criteria for post-2012 licensure or receipt of a provisional permit described in Sub-divisions § 105 (b), (c), (d) or (e);
    - (B) He or she has completed at least 100 hours of formal training in massage therapy as determined by the board and has practiced massage therapy for at least ten hours per week on average for at least ten years prior to the date of application;
    - (C) He or she has completed a minimum of 200 hours of formal training in massage therapy as determined by the board and can provide documentary evidence satisfactory to the board of having provided a total of at least 500 hours of massage to the public for compensation during the immediately prior 36 months; or



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(D) He or she has been a member, as a massage therapist, for a period of at least one year prior to his or her application for licensure, of a professional massage and bodywork therapy association.

(b) (1) On or after January 1, 2013, a massage therapist who was granted a license under provisions of this Act may, upon payment of the requisite fee and satisfaction of other requirements set forth in § 105 (b), renew that license notwithstanding failure to satisfy the minimum education provisions of § 105 (b) (8) and may continue to renew said license so long as he or she has no lapses in active licensure status.

(2) It is the express intent of the legislature that in the event the qualifications for a license are increased beyond what is provided for in this Act, those massage therapists who hold a license will be able to retain that license without having to satisfy the increased requirements.

**§ 107. License display, duration and renewal. Continuing education.**

- (a) The massage therapist shall display the license certificate or provisional permit or a photocopy thereof in an appropriate and public manner at each location at which he or she practices.
- (b) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board or its designee prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board and certifying that all current requirements of continuing education and adherence to standards of conduct as set forth in § 109 have been fulfilled. The board shall provide for penalty fees for late registration. The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only after application and payment of the prescribed reinstatement fee within the time period established by the division director, provided that the massage therapist meets such requirements as the board may establish by rule.
- (c) The board shall establish continuing education requirements not to exceed 16 hours per biennium. The board shall by rule establish criteria for the approval of continuing education programs or courses, a means for verification of completion of the required continuing education, and allowed carrying over of accumulated continuing education hours to the next renewal cycle. The programs or courses approved by the board may include correspondence or on-line distance education courses that meet the criteria for continuing education courses. No license may be renewed without the massage therapist's satisfaction of the continuing education requirements.
- (d) The massage therapist shall inform the board of any change of address within 30 days.
- (e) Each person licensed under this Act is responsible for renewing his or her license before the expiration date.

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- (f) Under procedures and conditions established by the board, a massage therapist may request that his or her license be declared inactive. The massage therapist may apply for active status at any time and upon meeting the conditions set forth by the board shall be declared active.

**§ 108. Exemptions.**

The following persons are exempted from the provisions of this Act:

- (a) Any person licensed, or otherwise recognized in this state by any other law or regulation when that person is engaged in the profession or occupation for which he or she is licensed or otherwise recognized, and who is performing services within their authorized scope of practice and who does not hold himself or herself out to be a massage therapist;
- (b) Students enrolled in an approved massage school, while completing a clinical requirement or supervised fieldwork experience for graduation performed under the supervision of a massage therapist, provided the student does not hold himself or herself out as a licensed massage therapist and does not receive compensation for massage;
- (c) Persons giving massage to members of his or her extended family;
- (d) Persons who restrict their manipulation of the soft tissues of the human body to the hands, feet or ears and do not hold themselves out to be massage therapists or to do massage or massage therapy;
- (e) Persons using methods which involve only techniques which are specifically intended to affect the human energy fields or systems, without intentional soft tissue manipulation, including, but not limited to, Polarity Therapy, Reiki, Ayurveda, Touch for Health, or Jin Shin Do, in which their services are not designated or implied to be massage or massage therapy;
- (f) Persons who use touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged in the scope of practice of a profession with established standards and ethics, provided that their services are not designated or implied to be massage or massage therapy and involve only incidental contact or manipulation of soft tissue. These practices include, but are not limited to, the Feldenkrais method of somatic education, the Trager approach to movement education, the Rosen method, and body-mind centering;
- (g) A person, who is duly licensed, registered or certified by another state or political jurisdiction, is in the state solely for the purposes of educational instruction and demonstration to an audience, if those services are performed for no more than 16 calendar days in a year, and the person satisfies board established criteria for continuing education providers; or
- (h) Any persons performing massage therapy services in the state, if those services are performed for no more than 45 days in a calendar year, and for no more than 30 days within any 60-consecutive-day period, the person is not a resident of

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Atlantis, is duly licensed, registered or certified by another state or political jurisdiction, and if one of the following conditions is satisfied:

- (1) The person is incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials;
- (2) The person travels with and provides massage therapy exclusively to members of an athletic team, dance troupe, or other performing artists while such groups or persons are temporarily in the state' or
- (3) The person is part of an organized team of massage therapists providing massage services without compensation at a public event such as the Olympic Games, Special Olympics, a marathon or triathlon, provided that these services are performed only during a period from 48 hours prior to the commencement of the event until 24 hours after the completion of the event.

**§ 109. Standards of professional conduct.**

The following standards for the practice of massage therapy are intended to protect the public health, safety and welfare, to preserve the integrity of the profession, and to allow for the proper discharge of responsibilities to those served. Licensees and provisionally permitted massage therapists shall have a commitment to provide the highest quality of care to those who seek their professional services, and shall:

- (a) Represent their qualifications, credentials and professional affiliations accurately, and provide only those services which they are qualified to perform;
- (b) Inquire as to the health history and current health status of each client before treatment to determine the indications and contraindications for the application of massage therapy;
- (c) Inform clients, other health care practitioners and the public of the scope and limitations of the practice of massage therapy, and refer clients to appropriate health care practitioners whenever indicated;
- (d) Follow recommendations for the plan of care when receiving a client referral from a physician or other primary medical care provider licensed by the state;
- (e) Obtain and document the informed consent of the client before obtaining treatment;
- (f) Maintain the confidentiality of all client information, unless disclosure is consented to by the client, required by law, or required by court order;
- (g) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client;
- (h) Respect the client's right to refuse, modify or terminate treatment regardless of prior consent given;
- (i) Refrain from initiating or engaging in any sexual activity involving a client or engaging in another relationship with a client that could impair professional judgment or result in exploitation of the client; and
- (j) Inform the board of any violation of this Act or adopted rules and regulations.

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**§ 110. Advertising and Title Reservation.**

(a) It is a misdemeanor for any person, organization, or corporation to:

- (1) advertise massage therapy services unless such services are provided by a person who holds a valid license or provisional permit under this Act, or by those persons described in § 108 (a).
- (2) advertise the provision of massage services involving techniques or modalities in which the provider of such services has not received training;
- (3) refer in advertising to any personal physical qualities of the practitioner; or
- (4) advertise massage therapy services combined with escort or dating services or adult entertainment.

(b) All advertising of massage services by massage therapists shall include the massage therapist's name and current valid license or provisional permit number. Advertising by multi-practitioner practices may alternatively state, "All massage therapist professionals at this facility possess a valid Atlantis massage license" or words conveying substantially identical meaning. The practice owner or principal and the massage therapists shall each be jointly responsible for ensuring adherence to the license display requirements set forth in § 107 (a).

(c) The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a massage therapist that does not comply with the requirements of this Sub-division. A publisher or producer who obtains a signed statement from the massage therapist which states that the massage therapist has read the text of the advertisement or listing, has an applicable and current massage therapist license or provisional permit for the services advertised, has included all applicable and current license or provisional permit numbers in the advertisement or listing, and is aware of civil or criminal penalties for advertising as a massage therapist without a valid license or provisional permit, shall be entitled to a rebuttable presumption of compliance with this Sub-division. A publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from refusal to list or accept advertisements pursuant to this Sub-division.

(d) It shall be unlawful for a person or business entity or its employees, agents, or representatives to practice massage therapy or to use in connection with its name or business activity the terms 'massage,' 'massage therapy,' 'massage therapist,' 'massage practitioner,' any coupling of one of those terms with the words 'licensed' or 'registered,' or the letters 'M.T.,' 'L.M.T.,' or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless such massage therapy is provided by a massage therapist licensed or provisionally permitted and practicing in accordance with this Act.

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**§ 111. Grounds for discipline.**

(a) Any person who practices massage therapy without a valid license or provisional permit in violation of this Act, upon conviction thereof, shall be punished as follows:

- (1) Each act of unlawful practice under this Code section shall constitute a distinct and separate offense.
- (2) Upon being convicted a first time under this Code section, such person shall be punished by a fine of not more than \$1,000 for each offense. Upon being convicted a second or subsequent time under this Code section, such person shall be punished by a fine of not more than \$1,000 for each offense, imprisonment for not more than 12 months, or both.

(b) The board may refuse to issue or renew, or may revoke, suspend, place on probation, reprimand, or take other disciplinary action, as the board considers appropriate, including the imposition of fines not to exceed \$1,000 for each violation, with regard to any license, provisional permit, massage therapist, or provisionally permitted massage therapist for any one or more of the following additional offenses:

- (1) being convicted of any crime under the laws of the United States or any state or territory thereof that is a felony or a misdemeanor, an essential element of which is dishonesty or fraud, or any that is directly related to the practice of massage. Conviction, as used in this paragraph, shall include a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere;
- (2) advertising in a false, deceptive, or misleading manner;
- (3) aiding, assisting, procuring, or advising any person lacking a license or provisional permit to practice massage contrary to any rules or provisions of this Act;
- (4) engaging, attempting, or offering to engage a client in sexual activity, including genital contact, within a client-therapist relationship; a client shall be presumed incapable of giving free, full, and informed consent to sexual activity with her or his massage therapist;
- (5) engaging in dishonorable, unethical, or unprofessional conduct or representation in the practice of massage of a character likely to deceive, defraud, or harm the public;
- (6) practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the massage therapist knows or has reason to know that he or she is not competent to perform;

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- (7) knowingly delegating professional responsibilities to a person unqualified by training, experience, licensure, or permitting to perform;
  - (8) having a habitual or excessive use of or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill, or safety;
  - (9) having a physical illness, including but not limited to deterioration through the aging process or loss of motor skills, that results in the inability to practice the profession with reasonable judgment, skill, or safety;
  - (10) having a pattern of practice or other behavior that demonstrates incapacity or incompetence to practice under this Act;
  - (11) making a material misstatement in furnishing information to the board or otherwise making misleading, deceptive, untrue, or fraudulent representations in violation of this Act or otherwise in the practice of the profession;
  - (12) failing to provide information within 60 days in response to a written request made by the department;
  - (13) making any misrepresentation for the purpose of obtaining a license or provisional permit; or
  - (14) prescribing medicine or legend drugs or practicing any licensed profession without legal authority.
- (c) Before imposing and assessing a civil penalty, the board shall consider the following factors:
- (1) the nature, gravity and persistence of the particular violation;
  - (2) the appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;
  - (3) whether the violation was willful or malicious; and
  - (4) any other factors which would tend to mitigate or aggravate the violations found to exist.
- (d) Any person may present charges relative to a violation of this Act, or the board may, on its own motion, direct the chair of the board to present charges. An accusation may be filed with the board chair, charging any massage therapist with any of the offenses enumerated in this Section.
- (e) The board shall provide applicants denied issuance of a license or provisional permit or massage therapists whose license or provisional permit is suspended, revoked, or not renewed, a hearing on such suspension, revocation, or non-renewal. Upon a decision of the board to refuse to issue, revoke or not to renew a license or provisional permit, the massage therapist shall be prohibited from engaging in massage until the board's decision is rescinded.

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**§ 112. Interaction with local government regulations.**

- (a) A city, county, or other political jurisdiction within the state may not enact an ordinance that regulates the practice of massage, as defined in this Act, by a person who is licensed or provisionally permitted under this Act. No provision of any ordinance enacted by a city, county, or other political jurisdiction that is in effect before the effective date of this Act, and that relates to the practice of massage, may be enforced against a person who is issued a license or provisional permit by the board under this Act.
- (b) Nothing in this Act shall be interpreted to prevent any local jurisdiction from adopting or enforcing any local ordinance that is not in conflict with any provision of this Act, and that does not conflict with Sub-division (a). Nothing in this Act shall preclude application of any local ordinance with respect to a person licensed or provisionally permitted pursuant to this Act where that ordinance is equally applied to each person operating any other lawful business within the local jurisdiction.

**§ 113. Receipt and disbursement of funds.**

- (a) All monies remitted to the Atlantis Board of Massage Therapy under this Act shall be made payable to the Atlantis Board of Massage Therapy. The board shall cause all such funds received to be deposited in a timely manner in accordance with the laws of the State of Atlantis and regulations of the Department of \_\_\_\_\_.
- (b) All salaries and expenses of the board shall be paid from funds created by the various fees charged by and remitted to the board under the provisions of this Act. In no case other than is contemplated by part (c) of this Sub-division shall any salary, expense or other obligation of the board be charged against the General Fund.
- (c) To enable the board to begin functioning prior to the beginning receipt of remittances, the Department of \_\_\_\_\_ is authorized to provide a loan to the Atlantis Board of Massage Therapy in an amount not to exceed \$200,000, said loan to be repaid completely not later than December 31, 2014.

**§ 114. Taxation.**

Notwithstanding any provision of law to the contrary, the act of a massage therapist in performing a massage shall be deemed to be the act of a health care professional and shall not be subject to the collection of any form of state or local taxation regulations not also imposed on other professional health care activities.

**PART 2.**

This Act will become effective 120 days following the Governor's signing it into law.

**PART 3.**

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All laws and parts of laws in conflict with this Act are repealed.

**PART 4.**

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.



## Appendix B – DORA Survey of Massage Therapists

Analyzing 473 responses.

### Are you an actively practicing massage therapist?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	445	94.7%	94.1%	94.1%
No	25	5.3%	5.3%	5.3%

### What national certifications do you currently hold?

Choice	Count	Percent of Sample Asked	Percent of Total Sample
NCTMB (National Certified Massage Therapist and Bodyworker)	240	50.7%	50.7%
AOBTA (American Organization for Bodywork Therapies of Asia)	3	0.6%	0.6%
Other:	72	15.2%	15.2%
None	179	37.8%	37.8%

### What national certifications do you currently hold? - Other:

Sample Answering: 70 responses

### Please indicate the local jurisdictions in which you are currently licensed to practice as a massage therapist:

Choice	Count	Percent of Sample Asked	Percent of Total Sample
Aurora	14	3.0%	3.0%
Colorado Springs	54	11.4%	11.4%
Denver	69	14.6%	14.6%
Durango	16	3.4%	3.4%
Englewood	7	1.5%	1.5%
Lakewood	10	2.1%	2.1%
Manitou Springs	1	0.2%	0.2%
Pueblo	3	0.6%	0.6%
Westminster	17	3.6%	3.6%
Wheat Ridge	4	0.8%	0.8%
Other	169	35.7%	35.7%
None	137	29.0%	29.0%

### Please indicate the local jurisdictions in which you are currently licensed to practice as a massage therapist: - Other

Sample Answering: 167 responses

### Do you currently practice at one location or at multiple locations?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
One location	241	51.5%	51.0%	51.0%
Multiple locations	202	43.2%	42.7%	42.7%
I am not actively practicing at this time	25	5.3%	5.3%	5.3%

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**Please indicate the setting in which you most frequently practice:**

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Clinic &ndash; medical, physical therapy, chiropractic, hospital, hospice, etc.	104	22.2%	22.0%	22.0%
Massage Parlor	7	1.5%	1.5%	1.5%
My Home	73	15.6%	15.4%	15.4%
My Own Professional Office	131	28.0%	27.7%	27.7%
Clients&rsquo; Homes/Offices	30	6.4%	6.3%	6.3%
Spa	59	12.6%	12.5%	12.5%
Wellness Center	19	4.1%	4.0%	4.0%
Health Club	11	2.4%	2.3%	2.3%
Cruise Ships	0	0.0%	0.0%	0.0%
Senior Center	1	0.2%	0.2%	0.2%
Other	33	7.1%	7.0%	7.0%

**Please indicate the setting in which you most frequently practice: - Other**

Sample Answering: 39 responses

**Do you have any personal, first-hand knowledge of harm caused to a client by a massage therapist? If yes, please provide details or go to [http://www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main)**

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	55	11.8%	11.6%	11.6%
No	413	88.2%	87.3%	87.3%

**Please provide details:**

Sample Answering: 58 responses

**Do you think that the State of Colorado should regulate massage therapists?**

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	358	78.2%	75.7%	75.7%
No	100	21.8%	21.1%	21.1%

**Why or why not:**

Sample Answering: 380 responses