

Chapter 406: Fixing the Pain in Local Government’s Neck, Restructuring California Massage Therapy Regulation

Brandon Bjerke

Code Sections Affected

Business and Professions Code § 460 (amended), § 4600–4620
(repealed), § 4600-4621(new); Government Code § 51034 (amended).
AB 1147 (Bonilla); 2014 STAT. Ch. 406.

TABLE OF CONTENTS

I. INTRODUCTION	2
II. LEGAL BACKGROUND.....	2
A. <i>Local Regulatory Schemes</i>	3
B. <i>Statewide Regulation Begins</i>	3
C. <i>Filling in the Regulatory Framework</i>	4
1. <i>SB 294 (Negrete-McLeod 2010)</i>	4
2. <i>AB 619 (Halderman 2011)</i>	5
3. <i>SB 285 (Correa 2011)</i>	5
4. <i>SB 1238 (Price 2012)</i>	6
5. <i>The Impetus for Chapter 406</i>	7
III. CHAPTER 406	8
IV. ANALYSIS.....	9
A. <i>Local Land Use Control: Code Migration and the Reduction of Protections</i>	9
1. <i>Fees</i>	10
2. <i>Zoning</i>	10
3. <i>Specific Limitations</i>	11
4. <i>Potential for Unforeseen Consequences</i>	12
B. <i>Continuing to Professionalize Massage</i>	12
1. <i>Removing the Practitioner Certificate</i>	13
2. <i>Certified Therapist Requirements</i>	13
3. <i>Refining Unprofessional Conduct and Causes for Finding a Violation</i>	14
C. <i>The Administration of CAMTC</i>	16
1. <i>Traditional DCA Boards and Bureaus</i>	16
2. <i>Statutorily Created Non-Profits</i>	17
3. <i>CAMTC’s Configuration</i>	17
4. <i>Chapter 406’s Amendments to the Board of Directors</i>	18
V. CONCLUSION.....	19

I. INTRODUCTION

Massage therapy is meant to relax a person, or rehabilitate them after an injury, yet over the past five years efforts to professionalize and regulate massage therapy on the statewide level have led to uncomfortable positions for cities, counties, employers and even some massage therapists.¹ However, the core issues of massage therapy regulation raise one of the primary questions facing the state: where is the appropriate line drawn between state regulation and local government control?²

Chapter 406 enters into this debate on the heels of the decision to implement state regulation of massage therapy at the beginning of the Great Recession.³ This shift away from local control saw turbulent years when local governments could only watch as illicit activity related to massage therapy exploded around them.⁴ These governments found that there was little they could do within the statutory framework of the time and with a private non-profit regulatory body.⁵ Thus, localities began to advocate for the rebalancing of the regulatory system and the return of control to cities and counties, while allowing for the benefits of statewide massage certification without the burden of unwanted massage businesses in local communities.⁶

II. LEGAL BACKGROUND

Massage therapy has followed the well-traveled path of most regulated industries, beginning with scattered local regulations as it begins its growth,⁷ proceeding to a call for statewide control as the industry becomes more widespread,⁸ and finally settling into a more developed statutory scheme through various changes over the years.⁹

1. See *infra* Part II. (Legal Background).

2. See *infra* Part IV.A (Analysis of Local Control in Chapter 406).

3. See *infra* Part II.B (Statewide Regulation begins in 2008).

4. *Overconcentration of Massage Establishments Big Issue for the League*, LEAGUE OF CAL. CITIES (May 13, 2013), <http://www.cacities.org/Top/News/News-Articles/2013/May/Overconcentration-of-Massage-Establishments-Big-Is> (on file with the *McGeorge Law Review*) (listing 30 establishments in a 3-mile area of Thousand Oaks, CA).

5. Lauren Gold, *Massage Parlors Create Friction as Critics Claim They are Fronts for Prostitution, Human Trafficking*, PASADENA STAR-NEWS (Mar. 8, 2014), <http://www.pasadenastarnews.com/government-and-politics/20140308/critics-claim-massage-parlors-are-fronts-for-prostitution-human-trafficking> (on file with the *McGeorge Law Review*) (“It didn’t completely pre-empt local regulation but it so hamstrung it that a lot of the measures cities would normally use to control it have been taken away.”).

6. *Massage Regulation*, LEAGUE OF CAL. CITIES (last visited June 19, 2014), <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Massage-Regulation> [hereinafter *Massage Regulation*] (on file with the *McGeorge Law Review*).

7. See *infra* Part II.A.

8. See *infra* Part II.B.

9. See *infra* Part II.C.

A. *Local Regulatory Schemes*

Early regulation of massage therapy in California was a patchwork system of local ordinances.¹⁰ In 1976, local governments were given authority to license massage therapy businesses however they saw fit.¹¹ Cities and counties used this authority and created hundreds of different statutory schemes.¹² These local laws were influenced by the cities's and counties's concerns regarding the perceived association of massage therapy with illicit activities, namely prostitution, which cities and counties did not want in their communities.¹³ Some localities utilized their licensing authority to create strict requirements to receive a license to practice, while others focused on zoning, passing heavy prohibitions on massage therapy locations, which severely limited the areas where massage therapists could work.¹⁴ The result of these different ordinances was that a massage therapist would have to obtain multiple costly licenses to work in a small radius, even if they lived in a city which left massage unregulated.¹⁵

B. *Statewide Regulation Begins*

By 2005, the challenges faced by legitimate massage therapists and the ineffectiveness of sporadic ordinances in curbing illicit activities convinced state legislative and executive officials that a statewide system of certification and regulation would be beneficial for the public and for the massage providers.¹⁶ The Legislature acted and codified a framework of laws within the Business and Professions Code to certify and regulate massage, administered by a Massage Therapy Organization (MTO)—a non-profit entity that was to be formed by the industry.¹⁷

As a voluntary title act,¹⁸ the code section did not attempt to frame the scope of practice or responsibilities of the massage profession, but provided a way to

10. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT AND THE ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS & CONSUMER PROTECTION, BACKGROUND PAPER FOR THE CALIFORNIA MASSAGE THERAPY COUNCIL, at 1 (Mar. 10, 2014) [hereinafter BACKGROUND PAPER].

11. CAL. GOV'T CODE § 51030 (2012) (enacted by 1976 Stat. Ch. 1352).

12. Brian McMahon, *Massage Therapists Hope for a Happy Ending*, S.F. BAY GUARDIAN (Mar. 24, 2014), <http://www.sfbg.com/politics/2014/03/27/massage-therapists-hope-happy-ending> (on file with the *McGeorge Law Review*) (“[T]here were 550 different kinds of regulations from city to city.”).

13. BACKGROUND PAPER, *supra* note 10 at 1.

14. *Massage Regulation*, *supra* note 6.

15. McMahon, *supra* note 12.

16. BACKGROUND PAPER, *supra* note 10 at 1 (“The Joint Committee [on Boards, Commissions and Consumer Protection] found that . . . ‘[i]n essence, the current system seeks to regulate illegal activity in the guise of professional licensing’ . . . the current system failed to serve either the public or the profession and that it would be appropriate to regulate massage therapy at the state level in order to create a more uniform standard.”).

17. 2008 Cal. Legis. Serv. ch. 384, § 2 (enacting CAL. BUS. & PROF. CODE § 4600.5).

18. A voluntary title act is a statutory scheme where individuals who would like to differentiate themselves from others providing similar services may undergo a process to become certified by an entity. After

obtain an official certificate and title that others in the field could not use.¹⁹ The legislation provided for the structure of the MTO governing board,²⁰ the requirements for certification in three categories (Massage Practitioner, Massage Therapist, and Conditional Certificate Holder),²¹ the process for discipline and revocation of certificates,²² and defined the use of certificate titles by non-holders to be an unfair business practice.²³ Most importantly for massage providers, the legislation banned local ordinances that prohibited a certificated individual from practicing massage, drastically reducing local control.²⁴

C. Filling in the Regulatory Framework

After the creation of the massage therapy chapter in the Business and Professions Code, the discovery of numerous ambiguities with the initial statutory language, and unforeseen scenarios required additional legislation to better effectuate the Legislature's intent to certify and regulate massage therapy.²⁵ From a handful of proposals, four pieces of legislation successfully amended the law.²⁶

1. SB 294 (Negrete-McLeod 2010)

SB 294 was the earliest modification of the initial statewide statute and addressed two small parts of the massage therapy chapter.²⁷ Primarily, the bill merged the sunset dates of all boards, bureaus, and other entities under the jurisdiction of the Department of Consumer Affairs into a manageable four-year schedule.²⁸ This accelerated the sunset date of the MTO by a year.²⁹ Also included in this larger act was a statement articulating that charter cities were not exempt

certification the individual may use a particular title, or post-nominal letters to signify their certification (i.e. massage therapist). Others who are not certified may still offer the same services but may not legally use the title. This is unlike licensing acts that create mandatory schemes and prohibit those who do not obtain the license from offering the service. See *See* BACKGROUND PAPER *supra* note 10, at 2..

19. 2008 Cal. Legis. Serv. ch. 384, § 2 (enacting CAL. BUS. & PROF. CODE § 4606).

20. *Id.*

21. *Id.* (enacting CAL. BUS. & PROF. CODE § 4601) (Massage Practitioners must complete 250 hours of education; Massage Therapists must complete 500 hours of education or pass an examination; Conditional Certificate Holders have been permitted by local or out of state authorities or completed coursework and must complete 1,000–1,750 practice hours before being certified).

22. *Id.* (enacting CAL. BUS. & PROF. CODE § 4602).

23. *Id.* (enacting CAL. BUS. & PROF. CODE § 4606).

24. *Id.* (enacting CAL. BUS. & PROF. CODE § 4612(a)).

25. CAL. MASSAGE THERAPY COUNCIL, SUNSET REVIEW REPORT 2013, 56 (Nov. 1, 2013) [hereinafter SUNSET REVIEW REPORT].

26. The four being 2010 Stat. ch. 695, 2011 Stat. ch. 162, 2011 Stat. ch. 149, 2012 Stat. ch. 655.

27. Complete Bill History of SB 294, http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0251-0300/sb_294_bill_20100930_history.html (on file with the *McGeorge Law Review*) (signed by Governor Sept. 30, 2010).

28. SUNSET REVIEW REPORT, *supra* note 25 at 13.

29. CAL. BUS. & PROF. CODE § 4620 (amended by 2010 Stat. Ch. 695).

from the prohibition of local certification, helping to end the debate surrounding a major argument against statewide certification and regulation after the enactment of SB 731.³⁰ The explicit language of the code section made it clear that the entire Massage Therapy Act applied to both general law and charter local governments.³¹

2. *AB 619 (Halderman 2011)*

After over a year of operating under statewide certification and regulation, the California Chapter of the American Massage Therapy Association sponsored a significant cleanup of the law.³² The bill first articulated the statutory name of the non-profit organization, which was operating as the California Massage Therapy Council (CAMTC).³³ Second, the bill streamlined the CAMTC's process to revoke the certificates of conditional certificate holders and operators.³⁴ Third, and most importantly, the bill clarified that cities and counties could impose conditional use permits, zoning, and business license fees on certificate holders despite the prohibition on preventing a certificate holder from practicing their profession.³⁵

3. *SB 285 (Correa 2011)*

SB 285, while not directly changing the Business and Professions Code relating to massage, strengthened CAMTC's relationship with local law enforcement and CAMTC's ability to utilize their own disciplinary statutes.³⁶ Until this legislation, it was unclear whether local law enforcement could give CAMTC police reports because the Council was a private nonprofit.³⁷ This was problematic as local police across the state were finding that groups involved in human trafficking were fraudulently obtaining CAMTC certificates to disguise their victims as legitimate massage therapists.³⁸ Since law enforcement agencies

30. SUNSET REVIEW REPORT, *supra* note 25 at 13.

31. CAL. BUS. & PROF. CODE § 4618 (2011) (amended by 2010 Stat. Ch. 695).

32. SUNSET REVIEW REPORT, *supra* note 25 at 12.

33. 2011 Cal. Legis. Serv. ch. 162, § 2 (amended CAL. BUS. & PROF. CODE § 4600.5).

34. 2011 Cal. Legis. Serv. ch. 162, § 13 (amended CAL. BUS. & PROF. CODE § 4612(c) (allowing for automatic revocation when a conditional certificate holder failed to fulfill their burden within the allowed time, and the violation by a person providing massage to be grounds for the revocation of an owner or operator certificate).

35. 2011 Cal. Legis. Serv. ch. 162, § 2 (amended CAL. BUS. & PROF. CODE § 4612(b)(4)). Also included in the bill were numerous other technical changes, provided CAMTC could only be sued in the county of its principal office, included a severability clause for the sections of the chapter. CAL. BUS. & PROF. CODE § 4603.1 (2011).

36. SUNSET REVIEW REPORT *supra* note 25 at 61.

37. *Id.*

38. Press Release, Orange Cnty D.A., California Passes Anti-Human Trafficking Legislation Targeting Sale Of Fraudulent Massage Diplomas As Front For Forced Prostitution, 2 (Aug. 2, 2011).

were not sharing case information with CAMTC, there was no central system to track massage-related crimes, making it more difficult for other law enforcement agencies within the state to investigate and identify human trafficking.³⁹ SB 285 explicitly designated that providing a fraudulent massage certificate or a required document to obtain a massage certificate was a misdemeanor,⁴⁰ and that law enforcement could provide records of all individuals prosecuted for crimes while providing massage therapy to CAMTC, who would then share the compiled information to help law enforcement shut down illegal operators.⁴¹

4. SB 1238 (Price 2012)⁴²

CAMTC instigated the most recent changes to massage therapy regulation by sponsoring AB 1238 with Senator Price.⁴³ The CAMTC board sought and received changes to the certification requirements, provided alternative calculations to meet education requirements,⁴⁴ and closed a loophole that allowed individuals to receive a certificate through examination with no proof of actual education.⁴⁵

The bill also addressed issues with discipline and revocation, allowing CAMTC to suspend a certificate immediately upon clear and convincing evidence of an act punishable as a sexual crime,⁴⁶ and placed liability for the actions of all employees on the certified massage owner.⁴⁷ CAMTC was also granted authority to request and receive criminal background information on applicants and certificate holders from local law enforcement agencies.⁴⁸

While the previous acts, AB 619 and SB 285, included provisions that clarified the law or gave authority to regulate massage back to local governments, this bill exacted more protections for certificate holders by

39. SUNSET REVIEW REPORT, *supra* note 25 at 56.

40. CAL. PENAL CODE § 628 (West 2014) (enacted by 2011 Cal. Stat. ch. 149).

41. *Id.* at § 628.5 (enacted by 2011 Stat. Ch. 149); *Gov. Signs Bill Cracking Down on Prostitution in Massage Parlors*, LA TIMES (Aug. 1, 2011), <http://latimesblogs.latimes.com/california-politics/2011/08/governor-signs-bill-cracking-down-on-prostitution-in-massage-parlors.html> (on file with the *McGeorge Law Review*) (“Gathering this information in a single location makes it easier for law enforcement to recognize and prosecute fraudulent massage schools.”).

42. Among the more prominent changes discussed in the text, the bill made technical changes requiring the display of a certificate, surrender of revoked certificates, possession of identification while performing massage, disclosure of name and certificate number by request of consumer or law enforcement, right to a hearing and notice of hearing for suspension, notification of suspension or reinstatements. CAL. BUS. & PROF. CODE § 4602(d)(1), 4602(d)(3), 4603.7 4603.8 (amended by 2012 Cal. Stat. ch. 665).

43. SUNSET REVIEW REPORT, *supra* note 25 at 12.

44. CAL. BUS. & PROF. CODE § 4601(b)(1)(B), 4601(c)(2)(A) (amended by 2012 Stat. ch. 665).

45. Compare CAL. BUS. & PROF. CODE § 4601(c)(2)(B) (amended by 2012 Cal. Stat. ch. 665) with CAL. BUS. & PROF. CODE § 4601(c)(2)(B) (amended by 2011 Cal. Stat. ch. 162) (adding a minimal 250 hour in-school education requirement to the examination pathway that was an alternative to a 500 hour education pathway.)

46. CAL. BUS. & PROF. CODE § 4602(d) (amended by 2012 Cal. Stat. ch. 665).

47. CAL. BUS. & PROF. CODE § 4612(c) (amended by 2012 Cal. Stat. ch. 665).

48. CAL. BUS. & PROF. CODE § 4602.5 (amended by 2012 Cal. Stat. ch. 665).

prohibiting cities from requiring higher fees or additional information than it would another profession when processing business licenses for massage businesses.⁴⁹ However, local governments did regain authority to prevent illicit massage establishments from reopening in the same location by changing who operated the establishment.⁵⁰

5. *The Impetus for Chapter 406*

While the initial statewide regulation took away certain powers from local governments, there were many unforeseen consequences.⁵¹ Between the start of statewide legislation and the beginning of the 2013–2014 legislative session, hundreds of massage establishments opened across the state, benefiting from the strong preemption clauses, codified by the initial statewide statute, and guaranteeing massage therapists and practitioners the right to work without additional local requirements.⁵² The protections against additional and varied local requirements, intended to support uniformity and portability of massage therapy,⁵³ had instead been used by illicit actors to inundate small communities with numerous establishments that could not operate profitably serving only a legitimate consumer base.⁵⁴ While the statewide regulation codified a protections for massage therapists, not all local massage therapy regulations were prohibited.⁵⁵ However, many localities that had existing regulations before statewide regulation went into effect lost many of their enforcement tools in dealing with massage establishments.⁵⁶

As a result, many cities lobbied the Legislature to reduce the strong protections given to massage therapists and return to cities and counties their vital land use control, unfettered by state regulation.⁵⁷

49. CAL. BUS. & PROF. CODE § 4612(b)(3), 4612(b)(7)(A) (amended by 2012 Cal. Stat. ch. 665).

50. CAL. BUS. & PROF. CODE § 4613(c) (amended by 2012 Stat. Ch. 665).

51. *Overconcentration of Massage Establishments*, *supra* note 4.

52. *Id.*

53. Scott Gold, *Cities are Trying to get the Upper Hand on Illicit Massage Parlors*, L.A. TIMES (June 17, 2014), <http://www.latimes.com/local/la-me-massage-parlors-20140618-story.html> (on file with the *McGeorge Law Review*).

54. *Hearing on AB 1147 Before the S. Bus., Prof. & Econ. Dev. Comm.*, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (City of Lomita Councilmember Mark Waronek told the Committee, “I can say with certainty there is not demand for 27 massage establishments” in his 1.9 square mile city of twenty thousand residents). Lata Pandya, *South Pasadena Mayor: Why Local Control of Massage Parlors is Important*, KCET (June 23, 2014) <http://www.kcet.org/news/agenda/law-enforcement/south-pasadena-mayor-talks-about-why-ab-1147-is-important.html> (on file with the *McGeorge Law Review*).

55. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612).

56. Pandya, *supra* note 54.

57. *Overconcentration of Massage Establishments*, *supra* note 4.

III. CHAPTER 406

Chapter 406 replaces the entire statutory foundation for the CAMTC.⁵⁸ The bill provides specific certification requirements for massage therapists, while also phasing out the less demanding massage practitioner certification program.⁵⁹ Additionally, Chapter 406 clarifies the relationship between certificate holders and local government.⁶⁰

This bill modifies the makeup of the CAMTC board by reserving specific seats for public members, including law enforcement officials,⁶¹ and decreasing its size from nineteen to thirteen members.⁶² Additionally, Chapter 406 prohibits the CAMTC from issuing any new massage practitioner certificates beginning January 1, 2015.⁶³ The bill provides for current practitioner certificate holders to be eligible for renewal,⁶⁴ and current conditional practitioner certificate holders to obtain a practitioner certificate if they complete additional education.⁶⁵ Chapter 406 also increases the requirements for a massage therapist certificate by removing an education-only pathway to the career by requiring all applicants to pass an examination.⁶⁶

Chapter 406 details unacceptable conduct for certificate holders, including many prostitution related offenses.⁶⁷ The bill also lowers the burden of proof necessary for CAMTC to suspend or revoke a certificate from a clear and convincing standard to a preponderance of the evidence standard.⁶⁸

Chapter 406 expands a local government's ability to require certificate holders to comply with additional ordinances and permits.⁶⁹ Specifically, Chapter 406 removes pertinent code sections within Chapter 10.5 of the Business and Professions Code that had protected therapists and practitioners from local government regulation,⁷⁰ and reformulates those protections in a reduced manner

58. CAL. BUS. & PROF. CODE § 4600, 4620(a), 4621 (enacted by Chapter 406) (reauthorizing CAMTC through January 1, 2017 and requiring a report by CAMTC be prepared and submitted to the Legislature in June 2016 about the activities of the council).

59. See CAL. BUS. & PROF. CODE § 4604 (enacted by Chapter 406) (stating the various requirements to receive a massage therapist certificate); CAL. BUS. & PROF. CODE § 4604.1 (enacted by Chapter 406) (stating the fewer requirements and the limited applicability of the practitioner certificate).

60. CAL. BUS. & PROF. CODE § 4600.5 (enacted by Chapter 406), See CAL. GOV'T CODE § 51034 (amended by Chapter 406). (recasting the powers of local governments in regard to massage business).

61. CAL. BUS. & PROF. CODE § 4602(g)(2) (enacted by Chapter 406). (The previous board structure will remain in effect until Sept. 15, 2015)

62. CAL. BUS. & PROF. CODE § 4602(g) (enacted by Chapter 406).

63. CAL. BUS. & PROF. CODE § 4604.1(a) (enacted by Chapter 406).

64. CAL. BUS. & PROF. CODE § 4604.2(b) (enacted by Chapter 406).

65. CAL. BUS. & PROF. CODE § 4604.2(c) (enacted by Chapter 406).

66. CAL. BUS. & PROF. CODE § 4604 (enacted by Chapter 406).

67. CAL. BUS. & PROF. CODE § 4609(a)(1)(A)-(C), (enacted by Chapter 406).

68. CAL. BUS. & PROF. CODE § 4610(f)(1) (enacted by Chapter 406).

69. CAL. BUS. & PROF. CODE § 4612 (enacted by Chapter 406).

70. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612).

in two separate existing code sections.⁷¹ However, prohibitions against certain ordinances constrain this expanded ability.⁷²

IV. ANALYSIS

Chapter 406 effectively reaches many primary goals of the stakeholders in massage therapy including; cities and counties, the professionals, the employers, CAMTC, and the Legislature.⁷³ The rebalancing of protections for massage therapists and land use control by local government is achieved by addressing each in their appropriate code sections.⁷⁴ However, certain drafting ambiguities under Business & Professions Code Section 460 may lead to a gap in protection for massage therapists.⁷⁵ Chapter 406 also continues the long effort to disassociate massage with illicit sexual activities by professionalizing the healing art with increased certification requirements and high practice standards.⁷⁶ However, with this intensified language and a lowering of the standard of proof, the Chapter risks being too demanding.⁷⁷ Finally, the Chapter also attempts to manage conflicting concerns regarding responsive management by CAMTC and its independent non-profit nature through the modification of its board.⁷⁸

A. *Local Land Use Control: Code Migration and the Reduction of Protections*

Chapter 406 returns land use control over massage establishments to local governments by eliminating the strong language of Business & Professions Code Section 4612 within the Massage Therapy Act and reconstituting some of the most vital protections for therapists that do not unnecessarily interfere with local control.⁷⁹ Chapter 406 accomplished this by adding massage therapists to the

71. CAL. BUS. & PROF. CODE § 460 (amended by Chapter 406), CAL. GOV. CODE § 51034 (amended by Chapter 406).

72. CAL. BUS. & PROF. CODE § 4612(b) (enacted by Chapter 406).

73. *Top Priorities For Sunset Extension Of Massage Establishments*, LEAGUE OF CAL. CITIES (Jan. 16, 2014), <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Massage-Regulation/TOP-PRIORITIES-massage.aspx> (on file with the *McGeorge Law Review*); Press Release, Assemblymember Bonilla, The Massage Therapy Reform Act of 2014 Approved by Senate Policy Comm. (June 23, 2014) (on file with the *McGeorge Law Review*); BACKGROUND PAPER *supra* note 10 (in particular the recommendations of the committee staff); *Hearing on AB 1147 Before the S. Bus., Prof. & Econ. Dev. Comm.*, 2014 Leg., 2013–2014 Sess. (Cal. 2014)(comments by Massage Envy’s CJ Funk and American Massage Therapy Association California Chapter President Lisa Santoro).

74. CAL. BUS. & PROF. CODE § 4600-21(enacted by Chapter 406), CAL. GOV. CODE § 51034 (amended by Chapter 406).

75. CAL. BUS. & PROF. CODE § 460 (amended by Chapter 406).

76. *Infra* Part IV.B.

77. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 19 (June 23, 2014).

78. *Infra* Part IV.C.4

79. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612); CAL. BUS. & PROF. CODE § 460 (amended by Chapter 406); CAL. GOV’T CODE § 51034 (amended by Chapter 406).

blanket provision that protects licensees of the Department of Consumer Affairs (DCA),⁸⁰ and rearticulating the half-century-old grant to local government to regulate massage to avoid abuses seen prior to statewide regulation.⁸¹ However, with the return of local government land use control relating to massage, massage therapists are losing some of their key protections.⁸² While the practice protections did incidentally help the growth of illicit activities associated with massage, it also provided aid to legitimate providers that practiced regionally.⁸³

1. Fees

Chapter 406's reformulation of the protections for massage therapists does not include language mandating that "no higher than the lowest fee that is applied to other individuals."⁸⁴ That language prevented cities from charging higher fees to massage therapists, as they had done so in the past when seeking to effectuate a *de facto* ban.⁸⁵ Many cities argued that without the ability to charge massage therapists higher fees, the cities would not be able to cover the costs of permitting and inspection.⁸⁶ While it is certainly the case that the lowest fee (for some small home-based craft business with minimal sales) may not be commensurate with the necessary city costs for regulating a massage business, the loss of this language will allow cities to use the pricing of business licenses to pass judgment on massage therapy in their jurisdiction.⁸⁷

2. Zoning

Additionally, under Chapter 406, the law no longer requires localities to regulate massage establishments uniformly with other professional services.⁸⁸ This omission cuts deeply into the protections massage therapists held, but it resolves one of the chief complaints of cities.⁸⁹ The cities argued that their zoning

80. CAL. BUS. & PROF. CODE § 460 (amended by Chapter 406).

81. CAL. GOV. CODE § 51034 (amended by Chapter 406).

82. Kathryn Feather, *CAMTC Sunset Hearings Reveal Concerns*, MESSAGE TODAY (May 2014) <http://www.massagetoday.com/mpacms/mt/article.php?id=14908> (on file with the *McGeorge Law Review*).

83. McMahon, *supra* note 12.

84. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612(b)(3)).

85. McMahon, *supra* note 12; SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 29–30 (June 23, 2014) ("Cities have charged fees as high as \$18,000 for conditional use permits.").

86. *Top Priorities*, *supra* note 73.

87. *Id.*; Dixie Wall, *California Certification Recognition Awaits*, MESSAGE TODAY (April 6, 2011), <http://www.massagetoday.com/mpacms/mt/article.php?id=14408> (on file with the *McGeorge Law Review*) (comparing the CAMTC \$150 fee to the average \$482 cost of city fees); BACKGROUND PAPER, *supra* note 10, at 41 ("the perception of massage as a vice resulted in many cities requiring expensive conditional use permits").

88. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612(b)(4)) (requiring the fees applied to massage be "uniformly applied to other . . . professional services").

89. *Top Priorities*, *supra* note 73. The clause essentially allowed massage therapists to metaphorical lock

designations should be just as diverse as the professions under the DCA.⁹⁰ The loss of this clause means zoning regulations, requirements, restrictions, and moratoria can all be focused upon massage therapy without cities having to sacrifice their accountants, nurses, and real estate agents.⁹¹

3. *Specific Limitations*

Many of the explicit protections contained in the previous section were migrated to Chapter 406, including barring localities from requiring unlocked doors in sole provider situations, requiring windows into rooms where massage is provided, and requiring additional education, testing, or background checks beyond what is required as part of CAMTC certification.⁹²

Without some of the stronger protections of the old law, the industry requested certain additional protections from some select local actions.⁹³ One of the strongest industry concerns was that localities were defining massage therapy as adult entertainment for zoning purposes, which allowed cities to authorize massage establishments next to strip clubs and other sexually related businesses only.⁹⁴ Therapists successfully convinced the Legislature that this is only counterproductive to the goal of differentiating legitimate massage from illicit prostitution and actually draws the wrong type of clientele to massage business, the inclusion of a prohibition against such a designation in Chapter 406 was a critical protection won by the industry in this ceding of control.⁹⁵

Chapter 406 also took other requirements considered particularly onerous to massage therapists from the cities and counties' toolbox including the ability to impose draping requirements of massage clients, imposing requirements on the dress of massage therapists, requiring the posting of any notices that describe sexual acts or related issues, and prohibiting the use of specific recognized massage techniques.⁹⁶

arms with the other professions within a city and benefit from other professions ability to avoid regulation. *Massage Regulation*, LEAGUE OF CAL. CITIES (June 19, 2014) <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Massage-Regulation> (on file with the *McGeorge Law Review*).

90. *Massage Regulation*, *supra* note 6.

91. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, 18 (June 23, 2014).

92. CAL. GOV'T CODE § 51034(c)(3,5, 7) (enacted by Chapter 406).

93. GOV'T § 51034 (enacted by Chapter 406) (removing certain actions from the original grant of regulatory authority to cities and counties from the 1970's).

94. McMahan, *supra* note 12.

95. BACKGROUND PAPER, *supra* note 10 at 41.

96. GOV'T § 51034 (enacted by Chapter 406).

4. Potential for Unforeseen Consequences

A serious problem does lurk within the language of the reconstituted protections for massage therapists.⁹⁷ Chapter 406 relies on the umbrella provision of Business & Professions Code Section 460 to extend practice protections from local government action, however the previous language reflected the traditional terms DCA boards and bureaus use, such as *licensee* and *scope of practice*.⁹⁸ While the Legislature successfully inserted massage therapists into the benefited groups with the language, “or certified by an entity established pursuant to this code,” a caveat to one of the protections may undermine the efficacy of protection for massage therapists.⁹⁹

The amended provision goes on to state that one of the protections is for acts within “the professionally recognized scope of practice of that licensee.”¹⁰⁰ While the use of the term licensee without adding the “or certified” language is imprecise when read with the earlier clause, the more pressing issue is that specific protection only applies to acts within a scope of practice, something not statutorily defined for massage therapists.¹⁰¹ While Chapter 406 does require CAMTC to provide a report that in part will propose a scope of practice,¹⁰² the absence of a codified scope substantially weakens the protections of Section 460 by allowing massage therapists to engage in business—but not necessarily retaining every function they did in the past.¹⁰³ While, the Government Code bans the prohibition of certain recognized massage techniques, it does not delineate the full extent of legitimate functions, leaving some legitimate techniques exposed to potential prohibitions.¹⁰⁴

B. Continuing to Professionalize Massage

Illicit sexual activity continues to plague the practice of massage.¹⁰⁵ Each new step to regulate massage serves to distinguish the actual providers of the healing art¹⁰⁶ from those who only use it as a guise for prostitution.¹⁰⁷

97. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1147, at 14 (Aug. 22, 2014) (stating the intended protection Business and Professions Code section 460 will extend to certificate holders.)

98. CAL. BUS. & PROF. CODE § 460 (enacted by Chapter 406).

99. *Id.* at § 460(b)(1) (enacted by Chapter 406).

100. *Id.* at § 460(b)(1) (enacted by Chapter 406).

101. SUNSET REVIEW REPORT, *supra* note 25 at 90.

102. BUS. & PROF. § 4620(a)(1) (enacted by Chapter 406).

103. Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4612).

104. BUS. & PROF. § 2620 (describing the scope of practice for physical therapists).

105. *Human Trafficking a Blight in Progressive Bay Area*, S.F. GATE, (May 31, 2014) <http://www.sfgate.com/opinion/editorials/article/Human-trafficking-a-blight-in-progressive-Bay-Area-5517754.php#page-3> (on file with the *McGeorge Law Review*).

106. Massage Therapy is located under Division 2 of the Business and Professions Code, entitled “Healing Arts.” BUS. & PROF. Div. 2

107. See *supra* Section II (explaining the history of massage regulation in California); CAL. BUS. & PROF.

1. Removing the Practitioner Certificate

Under Chapter 406, no more practitioner certificates will be issued; the only remaining pathway to have a protected title is to become a massage therapist.¹⁰⁸ Supporters believe this will raise the competency level of the profession to what was previously the highest level within the practice.¹⁰⁹ While current practitioner certificate holders may renew their certificates without conforming to the new therapist requirements, this will probably not undermine the increased professionalization of massage, as the practitioner certificate is subject to the more stringent disciplinary and revocation standards enacted by Chapter 406.¹¹⁰ Thus, any practitioner who violates one of these professional standards will lose their certificate and will no longer tarnish the profession.¹¹¹ There is authority from the California Supreme Court that states that a professional license is considered a vested property right and as such affords its holder to certain procedural protections before the Government may revoke the license.¹¹² By allowing the practitioner certificate holders to keep and renew their certifications, the code avoids potential litigation against the State or CAMTC that seeks to extend these principles to certificate holders, as there will be no loss of title protection.¹¹³

2. Certified Therapist Requirements

Chapter 406 amends the requirements for becoming a massage therapist by eliminating the second pathway of reduced education and competency testing.¹¹⁴ Chapter 406 also requires that all 500 hours of education occur at approved schools, an increase from 250 hours at approved schools under prior legislation.¹¹⁵ While the prior law did provide for a transition date to a requirement that all education be from approved schools, it did so with ambiguous language, applying it only to “curricula in massage and related subjects,” making it unclear what aspect of the education requirement was left available to be completed at a non-approved school.¹¹⁶ Chapter 406 avoids this with its stronger language requiring “[a]ll of the 500 hours . . .” be from approved schools.¹¹⁷ Further,

CODE § 4600.5(a) (amended by 2012 Cal. Stat. ch. 665).

108. BUS. & PROF. § 4604 (enacted by Chapter 406), BACKGROUND PAPER *supra* note 10, at 22–23.

109. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, 19 (June 23, 2014).

110. BUS. & PROF. § 4604.2(c), 4609 (enacted by Chapter 406).

111. BUS. & PROF. § 46010 (enacted by Chapter 406).

112. *Hughes v. Board of Architectural Examiners*, 17 Cal.4th 763, 789-790, 72 Cal.Rptr.2d 624, 658 (1998).

113. BUS. & PROF. § 4604.2(b) (enacted by Chapter 406).

114. 2012 Cal. Legis. Serv. ch. 655, §2 (amended CAL. BUS. & PROF. CODE § 4601).

115. BUS. & PROF. § 4604 (enacted by Chapter 406).

116. *See* 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4601).

117. BUS. & PROF. § 4604(a)(2)(b) (enacted by Chapter 406).

Chapter 406 requires all applicants to pass the massage and body work competency examination in addition to completing 500 hours of education.¹¹⁸ This requires all certificate holders to meet significant requirements and prevents applicants from avoiding an examination or critical education when obtaining their certification.¹¹⁹

3. Refining Unprofessional Conduct and Causes for Finding a Violation

Under the previous language contained in the Business and Professions Code, the definition of unprofessional conduct contained very little for certificate holders to be judged against.¹²⁰ The language was almost circular in drafting, as unprofessional conduct included little more than the “denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder” by a host of agencies.¹²¹ For CAMTC though, unprofessional conduct itself was a valid cause for denial, revocation, and suspension of a certificate.¹²²

Chapter 406 aims to correct this issue by removing the disciplinary actions of other agencies from the definition of unprofessional conduct and placing them as a separate cause for violation,¹²³ and defining specific acts that can be considered unprofessional.¹²⁴ Four of these acts speak directly to the heart of the problem the industry has with prostitution, defining unprofessional conduct as: sexual acts on the establishment's premises, sexual acts while providing massage, contact with sexual organs, and sexually suggestive advertising.¹²⁵ This will bring force to CAMTC's disciplinary process, as they no longer will have to limit certificate suspensions to acts that are punishable as a sexually related crime.¹²⁶ Standard of Proof to Discipline and Revoke

With the substitution of a single phrase in two sections of the chapter, the Legislature has emboldened CAMTC at the expense of applicants and certificate holders.¹²⁷ Previously the code held that a procedure for discipline and revocation

118. BUS. & PROF. § 4604(a)(3) (enacted by Chapter 406).

119. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 19 (June 23, 2014).

120. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4603).

121. *Id.* (“It is a violation of this chapter for a certificate holder to commit, and the council may deny an application for a certificate or discipline a certificate holder for, any of the following: (a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.”).

122. *Id.*

123. BUS. & PROF. § 4609(a)(8) (enacted by Chapter 406).

124. BUS. & PROF. § 4609(a)(1) (enacted by Chapter 406).

125. BUS. & PROF. § 4609(a)(1)(a)–(e) (enacted by Chapter 406).

126. BUS. & PROF. § 4609(b) (enacted by Chapter 406).

127. *Id.*

was fair and reasonable if it followed a procedure in the bylaws, or in the case of sexual offenses, was determined by CAMTC under a clear and convincing evidence standard.¹²⁸ There was never any procedure codified in CAMTC's bylaws, so technically the clear and convincing evidence standard held for all determinations by CAMTC.¹²⁹ CAMTC did however create a separate document describing procedures for denial, which mirrored closely the statutory requirements with only few additional details involving staff roles in the process, but did not include a lower standard of review.¹³⁰ The procedures for denial, discipline, and revocation include investigation of complaints, notification of intent to deny, discipline, or revoke, and the ability for the applicant or certificate holder to request a hearing.¹³¹ However, determinations are made by two CAMTC staff members and are final.¹³² This procedure while clearing the majority of referred cases does not seem to foster any reconsideration during the hearing process. Between 2012-2013 CAMTC proposed revocation or discipline on 91 certificate holders, with only four hearings resulting in no action.¹³³ Additionally the process allows revocation to be made after a criminal conviction of a certificate holder but those proceedings utilized the criminal standard of beyond a reasonable doubt.¹³⁴

Chapter 406 has substituted the reference to the bylaws and the clear and convincing standard for sexual offenses with a preponderance of the evidence standard.¹³⁵ This lowers the bar for CAMTC, and making it a much simpler process to discipline and revoke certificates with less fear of civil litigation seeking to overturn determinations based on failing to meet the burden of proof.¹³⁶ While CAMTC could previously only discipline certificate holders for violations of CAMTC bylaws, under Chapter 406 the CAMTC may also discipline certificate holders for violating CAMTC policies, procedures, and rules, provided they are adopted by the Board.¹³⁷ While this makes administration more efficient for CAMTC it is at the expense of certificate holders and those who rely on them as providers who would have kept their certificate under the clear and convincing evidence standard.¹³⁸

128. 2011 Cal. Legis. Serv. ch. 162, § 8 (amended CAL. BUS. & PROF. CODE § 4603.1(c)).

129. BACKGROUND PAPER, *supra* note 10 at 31.

130. SUNSET REVIEW REPORT *supra* note 25 at Sec. 12.4.

131. *Id.*

132. *Id.*

133. *Id.* at Sec. 5.

134. 2012 Cal. Legis. Serv. ch. 655, § 8 (amended CAL. BUS. & PROF. CODE § 4602(c)).

135. CAL. BUS. & PROF. CODE § 4610 (enacted by Chapter 406).

136. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 19 (June 23, 2014).

137. BUS. & PROF. CODE § 4610(b)(5) (enacted by Chapter 406).

138. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 19 (June 23, 2014).

C. *The Administration of CAMTC*

Chapter 406's balancing of various stakeholder concerns can be seen most clearly in the legislative history for the appointment provisions of the board of directors.¹³⁹ Many competing interests were voiced during the sunset review process about the need to reform the body that controlled CAMTC.¹⁴⁰ Many applicants and certificate holders complained that the directors and staff were being unresponsive to requests and applications,¹⁴¹ while cities and counties felt underwhelmed by CAMTC and their ability to investigate and regulate massage in their jurisdictions.¹⁴² The Legislature suggested either transitioning licensure to a DCA board or bureau, or placing more responsive individuals on the board of directors, similar to what is done with other healing arts boards.¹⁴³

1. *Traditional DCA Boards and Bureaus*

Historically, California has utilized boards and bureaus under the Department of Consumer Affairs (DCA) to govern licensure programs for various professions.¹⁴⁴ There are forty-one such entities that license and regulate diverse professionals, from dentists, nurses, and accountants, to guide dog trainers for the blind.¹⁴⁵ Among many common attributes are the composition of their boards of directors, which include appointed members by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.¹⁴⁶ This, along with direct oversight by the DCA and funding by the state budget, places these boards and bureaus in a position to remain accountable to the executive and legislative branches.¹⁴⁷

139. AB 1147, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on April 23, 2014 and June 17, 2014)

140. Feather, *supra* note 80.

141. *Id.*

142. Lauren Gold, *California Legislature Hears Arguments on Controversial Massage Therapy Law*, THE PASADENA STAR-NEWS (March 10, 2014) available at <http://www.pasadenastarnews.com/government-and-politics/20140310/california-legislature-hears-arguments-on-controversial-massage-therapy-law> (on file with the *McGeorge Law Review*); *Top Priorities*, *supra* note 73.

143. BACKGROUND PAPER, *supra* note 10 at 39, 43.

144. *About DCA*, STATE OF CAL. DEP'T OF CONSUMER AFFAIRS (JULY 15, 2014), http://www.dca.ca.gov/about_dca/morabout.shtml (on file with the *McGeorge Law Review*).

145. *DCA Boards/Bureaus*, STATE OF CAL. DEP'T OF CONSUMER AFFAIRS (July 15, 2014) http://www.dca.ca.gov/about_dca/entities.shtml (on file with the *McGeorge Law Review*).

146. CAL. BUS. & PROF. CODE § 3013 (2012) (Board of Optometry); CAL. BUS. & PROF. CODE § 3013 (2012) (Board of Accountancy).

147. *About DCA*, *supra* note 142.

2. Statutorily Created Non-Profits

In the 1990's the California Legislature created by statute two non-profit entities, one to certify tax preparer education¹⁴⁸ and the other to certify interior designers.¹⁴⁹ The California Council for Interior Design Certification was given statutory authority in 1990, but did not form until 1992 when industry organizations decided to create the council and self-regulate.¹⁵⁰ Its board of eleven members consists of seven industry-related members and four public members.¹⁵¹ The California Tax Education Council, which was created in 1996, was referred to as a "grand experiment" in privatizing regulation.¹⁵² This was the first time functions that were previously under the authority of the DCA were transferred to a private entity.¹⁵³ Its board of 16 consists entirely of industry associations and corporations.¹⁵⁴ These two nonprofits have been successful in their functions to the extent that both were deemed non-controversial when their most recent extensions came before the Legislature, getting packaged with other non-controversial boards and bureaus for extension of their sunset dates.¹⁵⁵

3. CAMTC's Configuration

California did not use the non-profit regulatory model again until 2008 when creating what would become CAMTC.¹⁵⁶ The organization gets no funding from the state budget, relying directly on certification fees for funding, and does not reside under the DCA's umbrella of authority.¹⁵⁷ The CAMTC Board, which currently consists of 19 members,¹⁵⁸ is based off of formulaic provisions which provides two seats to each qualifying industry association, a seat to every qualifying association of post-secondary schools, along with specifying a seat to be offered to each of the following: the League of California Cities, the California State Association of Counties, the Director of Consumer Affairs, and the Office of the Chancellor of the California Community Colleges.¹⁵⁹ The board of directors may add to the board any professional directors it deems necessary.¹⁶⁰

148. 1996 Cal. Legis. Serv. ch. 1137 §51 (enacting CAL. BUS. & PROF. CODE § 22250–22259).

149. 1990 Cal. Legis. Serv. ch. 396 (enacting CAL. BUS. & PROF. CODE § 5800–5805).

150. BACKGROUND PAPER, *supra* note 10 at 1–2.

151. *Id.*

152. CAL. TAX EDUCATION COUNCIL, BPED OVERSIGHT REPORT FORM 2013, at 1–2 (June 30, 2013).

153. *Id.*

154. *Id.*

155. 2013 Cal. Legis. Serv. ch. 333, §1–5 (enacting CAL. BUS. & PROF. CODE § 5806) (California Council for Interior Design); SB 1243, 2014 Leg., 2013–2014 Sess.(Cal. 2013) (as amended on June 30, 2014) (California Tax Education Council).

156. 2008 Cal. Legis. Serv. ch. 384, § 2 (enacting CAL. BUS. & PROF. CODE § 4600)

157. SUNSET REVIEW REPORT *supra* note 25 at 78.

158. *Id.* at title page.

159. 2011 Cal. Legis. Serv. ch. 162, § 2 (amended CAL. BUS. & PROF. CODE § 4600.5).

160. 2011 Cal. Legis. Serv. ch. 162, § 2 (amended CAL. BUS. & PROF. CODE § 4600.5(b)(1)(E)).

This amalgamation of industry and public members who are vocal critics does not resemble CAMTC's sister statutory non-profits nor DCA's boards and bureaus.¹⁶¹

4. Chapter 406's Amendments to the Board of Directors

Subsequent amendments to Chapter 406 show the strain to find balance between the call for accountability and the purpose of CAMTC to be an industry-centered organization.¹⁶² As initially drafted, Chapter 406 included a total of three additional public members, appointed one each by the Governor, the Speaker of the Assembly, and the Senate Rules Committee, mirroring the DCA boards and bureaus, as suggested by the legislative committee staff.¹⁶³ As amended, these seats were removed from Chapter 406 in favor of other appointments from the civil service rather than elected officials.¹⁶⁴ These seats include a seat for the California Police Chiefs Association,¹⁶⁵ a seat for a public health official representing a government department,¹⁶⁶ and an optional seat at the discretion of the entire board for an attorney representing a city.¹⁶⁷ All three of these seats, while not as directly linked to oversight bodies as an appointment of the Governor or legislative leadership, connect CAMTC to entities that wish to hold the organization accountable.¹⁶⁸

The only other new seat to be added to the board is a place for a representative from an anti-human trafficking organization.¹⁶⁹ While this addition does not address specific deficiencies present in the organization, it will help guide CAMTC to be more thoughtful of the secondary consequences of its actions.¹⁷⁰

Supporters of Chapter 406 considered the previous board of directors unresponsive because it had a majority of seats filled by industry, and only two out of the nineteen seats were filled by outside oversight groups.¹⁷¹ Under Chapter 406's changes, the new board, to be seated September 15, 2015, will have the

161. See *supra* Part IV.C.1-2

162. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, at 18, 23 (June 23, 2014).

163. *Id.*

164. AB 1147, 2014 Leg., 2013-2014 Sess. (Cal. 2014) (as amended on June 17, 2014)

165. CAL. BUS. & PROF. CODE § 4602(g)(2) (enacted by Chapter 406).

166. BUS. & PROF. § 4602(g)(9) (enacted by Chapter 406).

167. BUS. & PROF. § 4609(g)(11) (enacted by Chapter 406).

168. BUS. & PROF. § 4602(g) (enacted by Chapter 406) (League of California Cities, California Police Chiefs Association, Department of Consumer Affairs)

169. BUS. & PROF. § 4602(g)(4) (enacted by Chapter 406).

170. *Human Trafficking a Blight*, *supra* note 103.

171. SUNSET REVIEW REPORT, *supra* note 25 at title page (currently 4 trade associations 8 seats, 4 school associations each hold a seat, 5 seats are board appointed, and 2 seats are filled by public/government members).

possibility of seating oversight groups in seven of the thirteen seats.¹⁷² Unlike its two sister statutory nonprofits, this places the CAMTC board in a position of having a minority of industry control with groups critical of their work constituting the voting majority.¹⁷³ The appointment language probably represents the best compromise possible with stakeholders, including the Legislature, that want to ensure CAMTC is a responsive body to both certificate holders and the public.¹⁷⁴

V. CONCLUSION

Chapter 406 brings about a more balanced regulatory scheme while reestablishing CAMTC as a statutory non-profit.¹⁷⁵ Chapter 406 returns local control but maintains many of the previous benefits conferred by statewide regulation, which potentially finds the correct balance for massage therapy in California.¹⁷⁶ The continued heightening of professional standards within the certification framework and causes for revocations will also help the industry build better relations with concerned local governments.¹⁷⁷ However, the decentralization of protections for massage therapists into two code sections with different terminology may result in less protection than the Legislature or stakeholders were planning.¹⁷⁸ While massage therapy regulation has seen almost yearly revisions, this newly codified chapter has dealt with the chief complaints and established a more receptive board, which may enable the chapter to survive without more legislative revision until its next review in 2017.¹⁷⁹

172. BUS. & PROF. § 4602(g) (enacted by Chapter 406).

173. *See supra* Part IV.C.2 (describing statutorily created non-profits).

174. SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1147, 24 (June 23, 2014).

175. *See supra* Part III (explaining Chapter 406's reestablishment of CAMTC).

176. *See supra* Part IV.A (analyzing the Chapter 406's balance between state and local control).

177. *See supra* Part IV.B (analyzing the continued professionalization of massage).

178. *See supra* Part IV.A.4 (analyzing the potential gap in protection).

179. *See supra* Part II. (Legislative Background), *See supra* Part IV.C (The Administration of CAMTC).