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**A STUDY OF SELECTED STATES' POLICIES AND PRACTICES  
FOR REGULATING MASSAGE THERAPY SCHOOLS  
AND TRAINING PROGRAMS**

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## TABLE OF CONTENTS

<b>Chapter 1: An Introduction to This Study.....</b>	<b>1</b>
<b>Chapter 2: A History of the Regulation of Massage Therapy Training in Hawai'i .....</b>	<b>16</b>
<b>Chapter 3: Findings Related to States' Regulation of Massage Therapy Training.....</b>	<b>33</b>
<b>3.1 Agencies Administering Massage Therapy Training.....</b>	<b>34</b>
<b>3.2 Standards for Schools.....</b>	<b>36</b>
<b>3.3 Educational Hours Required for Licensing.....</b>	<b>38</b>
<b>Chapter 4: Findings Related to States' Regulation of Proprietary Vocational Schools.....</b>	<b>40</b>
<b>Chapter 5: Findings Related to Agencies That Regulate Proprietary Vocational Schools.....</b>	<b>51</b>
<b>5.1 Federal Agencies Regulating Proprietary Vocational Schools.....</b>	<b>52</b>
<b>5.1.1 The United States' Department of Education.....</b>	<b>52</b>
<b>5.1.2 The United States' Veterans' Administration.....</b>	<b>53</b>
<b>5.2 States' Agencies Regulating Proprietary Vocational Schools.....</b>	<b>55</b>
<b>5.2.1 States' Departments of Education.....</b>	<b>55</b>
<b>5.2.2 States' Agencies Regulating Higher Education.....</b>	<b>56</b>
<b>5.2.3 Hawai'i's Agencies Regulating Proprietary             Vocational Schools.....</b>	<b>59</b>
<b>5.3 States' Agencies Regulating Massage Therapy and Massage Therapy         Training.....</b>	<b>64</b>
<b>5.4 Private Agencies Regulating Massage Therapy and Massage         Therapy Training.....</b>	<b>65</b>
<b>Chapter 6: A Summary of Findings.....</b>	<b>69</b>
<b>Chapter 7: Considerations And Conclusions.....</b>	<b>99</b>
<b>Appendix A: A List of the States' Laws Regarding Massage Therapy and Massage Therapy Training That Were Reviewed for This Study.....</b>	<b>114</b>

## **TABLE OF CONTENTS, continued**

<b>Appendix B: A List of the States' Administrative Rules, Codes, and Regulations Regarding Massage Therapy and Massage Therapy Training That Were Reviewed for This Study.....</b>	<b>118</b>
<b>Appendix C: A List of the States' Proprietary Vocational School Laws That Were Reviewed for This Study.....</b>	<b>122</b>
<b>Appendix D: A List of the States' Proprietary Vocational School Administrative Codes, Rules and Regulations That Were Reviewed for This Study.....</b>	<b>124</b>
<b>References.....</b>	<b>126</b>

## LIST OF TABLES

<b><u>Table</u></b>	<b><u>Page</u></b>
<b>1. State Regulation of Massage Therapy Training.....</b>	<b>78</b>

# **CHAPTER 1**

## **AN INTRODUCTION TO THIS STUDY**

The territorial and state governments of Hawai'i and the governments of other states have found that the legislative regulation of massage therapy and of massage therapy schools and training programs is important for reasons that include the following:

- First, some of the individuals completing such training will be delivering massage therapy under the direction of a medical doctor in such diverse settings as rehabilitative clinics and hospital neonatal units.
- Second, the consumer has an interest in being sure that the deliverer of services is qualified to do so. Typically, that interest has been protected by states' governments.
- Third, since massage therapy schools are sometimes the recipients of public money, the public is entitled to a voice in regulating its use.
- Fourth, some massage therapy businesses and training programs are fronts for prostitution.
- Fifth, if proprietary schools are unregulated, legitimate massage therapy schools and training programs may face unfair competition.
- Sixth, as consumers, massage therapy students are vulnerable to unfair practices.
- Seventh, regulation can help assure fair access to the field of work.
- Eighth, there is a potential for contagion at unsanitary clinics.

- And ninth, there is a need to assure the quality of massage therapy delivered on workman's compensation and on automobile insurance claims.

Legislative reviews of the regulation of massage therapy and of massage therapy schools and training programs in Hawai'i by the Hawai'i State Legislative Auditor (1992, p.5; 1997, p.7) have included recommendations that such regulation be continued.

The American Massage Therapy Association (2002d) reports that thirty states regulate massage therapy and massage therapy schools and training programs. The other twenty states do not regulate massage therapy at the state level. In some of those states, some city, municipal, and county governments do regulate massage therapy. Even though those twenty states do not regulate massage therapy, they do regulate massage therapy schools and training programs as proprietary vocational education schools.

The Hawai'i State Legislative Auditor (2002, p.1) reports that the School Improvement/Community Leadership Branch of the Learner, Teacher, and School Support Division (SICLB) of the Department of Education (DOE) is charged with the regulation of proprietary vocational schools in Hawai'i, including massage therapy schools. Hawai'i law is written so that other proprietary massage therapy training programs, not organized as proprietary vocational schools can be and are regulated as Workshops through the Board of Massage Therapy (BOM) at the Department of Commerce and Consumer Affairs (DCCA). The Hawai'i State Legislative Auditor further reports that a loophole in the legislation allows any proprietary vocational school registered with the DCCA to operate in Hawai'i. Some proprietary vocational schools,

including massage therapy schools, have simply registered with the DCCA as business entities operating in Hawai`i and are not licensed by the DOE.

In Hawai`i, the BOM will accept anatomy, physiology, and kinesiology courses completed at the University of Hawai`i or its community colleges. The University of Hawai`i does offer informal massage classes through its Leisure Programs. Those *informal classes are not delivered as vocational education and they are not accepted by the BOM.*

Kapi`olani Community College (2002, p.42) through its Noncredit Course Program, began a massage therapy licensing program in the Spring 2002 term. That program has been approved by the BOM and it could lead to licensure as a massage therapist. That program places the proprietary vocational education schools and programs in direct competition with Hawai`i's public colleges and universities for veterans' educational benefits, vocational education monies, vocational rehabilitation funds, and worker retraining funds.

Those public funds find their way to massage therapy schools and other proprietary vocational schools through programs that finance the retraining of displaced workers, through vocational rehabilitation programs, through veterans' training programs, and through other training programs. The total dollar amounts of public education monies used by massage therapy students may not be considerably large. However, massage therapy students can represent all students in vocational education schools and programs. Regulatory practices for massage therapy schools and programs reflect regulatory practices for the other vocational education schools and programs which *do administer larger and significant amounts of public monies.* It is prudent that

the state have in place adequate regulatory practices to assure that proprietary vocational schools and programs are delivering quality education for the public and private funds they are receiving. It is in the State's interest to identify and implement policies and practices that assure the appropriate regulation of proprietary massage schools and programs.

*Herman Aizawa (1997), former Superintendent of the Department of Education* has itself stated that the SICLB, formerly the Community Information Section, has not done an adequate job in regulating massage therapy schools. The most recent legislative audit (Hawai'i State Legislative Auditor, 2002, p.7) found that the SICLB has not done well in regulating any proprietary vocational schools and that the DOE continues to mismanage the proprietary vocational school licensing program. That audit also reports that the DCCA would like to be relieved of the oversight of massage therapy training programs and does not want the responsibility of administering the proprietary vocational school licensing program. Audits by the Hawai'i State Legislative Auditor have concluded repeatedly that it would be best to find alternatives to the current system of regulating proprietary vocational schools including massage therapy schools and training programs. But, to date, those recommendations from the Hawai'i State Legislative Auditor have not led to any reassignment of the duties of regulating proprietary vocational schools.

One recent audit report (Hawai'i State Legislative Auditor, 1997, p.23) recommended and precipitated legislative clarification of the purpose of the legislation regulating proprietary vocational schools. In 1998, Section 302A-425 of the Hawai'i Revised Statutes was revised to emphasize that such regulation is for consumer



protection. That same audit report led the Legislature to call for another Legislative Audit which was reported in April 2002.

Hawai'i is involved in an ongoing consideration of the status of proprietary vocational education. A review of the practices of other states in regulating massage therapy schools and training programs as proprietary vocational schools could show if *Hawai'i's current practices are innovative, reactionary, or reflective of a nationwide status quo*. Reflection on the regulatory activities of other states might help Hawai'i chart future directions for the regulation of proprietary massage therapy schools. Such reflection might help Hawai'i chart the future direction of the regulation of all proprietary vocational schools.

Legislation regulating the training of massage therapists in Hawai'i began its evolution in Territorial government. The Hawai'i State Legislative Auditor (1981, p.8) reports that the earliest legislation, related to sanitation, was enacted in 1933 and that (1997, p.3) legislation enacted in 1939 established the regulation of proprietary massage schools in order to protect legitimate schools from unfair competition. That earliest legislation called for the Department of Education (DOE) to regulate proprietary vocational schools. Regulation has developed since as interplay between various State agencies. State interests in health, safety, law enforcement, consumer protection, and education converge at the massage therapy schools and training programs. Determining just which State agencies could best see to the State's interests, and how, has been and is an ongoing process.

The federal government also has interests in regulating proprietary schools and programs which receive federal monies. Some proprietary vocational schools, including

massage therapy schools in Hawai'i, seek approved status from the Veterans' Administration (VA). Such status allows qualified students, both veterans and active duty military personnel, to use their veterans' educational benefits for tuition and other costs at the approved schools. Those federal government interests in Hawai'i are regulated for the State through the State Approving Agency. That Agency is attached to the State Post Secondary Education Commission at the University of Hawai'i for administrative purposes.

The attachment of the State Approving Agency for the VA to the University of Hawai'i is problematic. The Hawai'i State Legislative Auditor (2002, p.19.) has concluded that there is a conflict of interest in having the university regulate proprietary schools that teach courses that are similar to courses offered through the university's community college system. Section 305H-2 of the Hawai'i Revised Statutes does empower the State Post-Secondary Education Commission to cooperate with the Federal government in order to qualify the State to receive funds made available through VA educational assistance programs. But Section 305H-2 of the Hawai'i Revised Statutes also says "No such funds appropriated by the legislature may be used to aid a person attending an institution not owned or exclusively controlled by the State or a department of the State or to pay for any staff work distributing federal or private funds to students attending such schools". When the State Approving Agency was a new agency, William C. Oshiro (1967, p.2), then Manager of the Veterans' Administration Regional Office in Honolulu, told Governor John A Burns that provisions are made by the VA for the reimbursement to the State for salary and travel expenses incurred by the State Approving Agency. Nonetheless, the Hawai'i State Legislative Auditor (personal

communication, April 23, 2002) reads Section 305H-2 to preclude the State Post Secondary Education Commission of the University of Hawai`i, as a state agency, from assisting proprietary schools in obtaining funding.

Section 452-2 of the Hawai`i Revised Statutes has established the Board of Massage Therapy (BOM) within the Department of Commerce and Consumer Affairs for administrative purposes. Section 452-6 of the Hawai`i Revised Statutes empowers the BOM to adopt rules regulating massage therapy in the state, so the BOM is another agency responsible for regulating massage therapy schools and training programs. The BOM establishes training requirements, which are stated as requisites for admission to the examination and licensing of massage therapists. Paragraph 16-84-23(i) of the Hawai`i Administrative Rules, promulgated by the BOM, provide that massage therapy training shall be taught by a school that is licensed by the state Department of Education (DOE), the University of Hawai`i, other institutions approved by the BOM, or through workshops approved by the BOM

On some issues, the BOM defers to other State agencies for regulatory standards. For example, Section 452-18 of the Hawai`i Revised Statutes requires the BOM to defer to the Board of Health on sanitation standards for classrooms and clinics. Also, Paragraph 8-101-3(4) of the Hawai`i Administrative Rules, promulgated by the DOE, requires a clearance from the Board of Health as part of the process in applying for a proprietary vocational school license from the SICLB.

Proprietary massage therapy training programs have the option of becoming licensed vocational schools by meeting certain DOE requirements and applying to the SICLB for licensure, but, because of the legal loophole they are not required by law to be

licensed. Paragraph 8-101-3 of the Hawai'i Administrative Rules requires that the SICLB review applications for licensure as proprietary vocational schools for: the adequacy of the facilities and funding, the qualifications of the principal, the instructors and the professional staff, clearances from the health and fire departments, course content, educational standards, fees and contracts, catalogues and advertisement, the diplomas and certificates to be awarded, and the establishment of a surety bond of fifty thousand dollars or an amount determined by the DOE to be sufficient to refund unused portions of tuition monies in the event that the school should close its doors.

Section 302A-425 of the Hawai'i Revised Statutes gives the DOE the legislative authority to license all private trade, vocational, and technical schools in Hawai'i. The Hawai'i State Legislative Auditor (2002, p.3) reports that the general duties of the licensing program have been assigned to the School Improvement/Community Leadership Branch (SICLB) at the DOE. An earlier Hawai'i State Legislative Auditor's study (1997, p.7) on the licensing of massage schools in 1997 found that the DOE had failed to properly manage the proprietary vocational school licensing program. Herman Aizawa (1997), the Superintendent of the DOE at that time, stated that the DOE receives no additional personnel or funding support to administer the licensing of proprietary vocational schools and that carrying out licensing responsibilities with available resources was difficult. A later Hawai'i State Legislative Auditor's study (2002, p.10) on the licensing of private trade, vocational, and technical schools found that the DOE has failed to allocate the necessary resources to properly administer the proprietary vocational school licensing program. That study also found that the DOE is ignoring its statutory requirement to properly license and regulate proprietary vocational schools.

Responding to those findings, the DOE Superintendent, Patricia Hamamoto (2002) acknowledged the DOE's inability to properly administer a regulatory program that is not compatible with the DOE's primary mission of educating K-12 and adult/community students.

In deliberations over SB1238 during the spring of 1999, the Hawai'i Legislature considered the question of which State agencies could best regulate massage therapy schools and Workshops. Of the three agencies suggested for consideration during those deliberations, two, the BOM and the SICLB, are already involved. The third agency suggested for consideration, the Office of Vocational Education has been renamed since then. It is now named the Office for Career and Technical Education and is administratively located at the University of Hawai'i. This agency did express some interest in regulating massage therapy schools and training programs but Kenneth Mortimer (1997), then President of the University, stated that the agency would have to be reorganized, redefined, and refunded before taking on those new responsibilities.

The deliberations on the regulation of proprietary vocational schools in 1999 did not resolve the issues and no action was taken by the legislature on this matter. Those deliberations may have been destined to be inconclusive. The Office for Career and Technical Education should not have been part of the discussion. That agency is primarily responsible for the administration of the Carl Perkins Act for the State. The former title for this agency, the Office for Vocational Education, made it seem like the obvious agency to regulate proprietary vocational schools, but, that is not the mission of this agency.

The Hawai'i State Legislative Auditor's report released in April 2002 notes that due to inadequacy at the SICLB, and due to the legal loophole at the DCCA, only fifty one of the estimated more than two hundred proprietary vocational schools in Hawai'i are licensed. That report includes a recommendation that the Legislature consider moving the regulation of proprietary vocational schools from the SICLB to the DCCA. The *Director of the DCCA (Matayoshi, 2002) disagreed with that recommendation in the belief that the DCCA lacks sufficient expertise to regulate those schools.*

After several studies, much consideration, and many recommendations, no solution has been found to the problems of regulating proprietary vocational schools in Hawai'i. Any ongoing or future consideration of this matter could be informed by a review of other state's policies and practices. The purpose of this study is to review the practices of Hawai'i and other states in regulating massage therapy schools and training programs to gain insight into ways Hawai'i might better regulate proprietary vocational schools in general.

The purpose of this study is to improve the regulation of private massage therapy schools and training programs and other proprietary vocational schools in Hawai'i. To achieve that purpose, it is necessary to review the regulation of massage therapy training as well as the regulation of proprietary vocational schools. To better understand the problems and possibilities in Hawai'i, this study reviewed the regulation of massage therapy training and proprietary vocational schools both in Hawai'i and in other states which regulate massage therapy. It was anticipated that a review of the practices of other states might provide insight or guidance for Hawai'i.

Professional massage therapy organizations promulgate and publish summaries of massage therapy legislation in effect in the various states. These summaries were the starting point for this study. The most inclusive of those summaries is published by the American Massage Therapy Association (AMTA) at its online website. That AMTA Massage Practice Laws Information Guide (American Massage Therapy Association, 2002d) summarizes the massage therapy-related laws and rules of thirty states and the District of Columbia.

A review of the massage therapy laws, rules, and regulations of the thirty states that regulate massage therapy identified which massage therapy training programs were recognized by those states as acceptable. Although a few public post-secondary institutions offer massage therapy training programs, proprietary vocational schools are delivering most of this instruction across the nation. To achieve its purposes, this study focused on the regulation of those massage therapy schools and training programs that are proprietary vocational institution. It was necessary to review the States' regulation of both proprietary vocational schools and of massage therapy.

The intentions of this study were: to offer information that provides options for meeting the State of Hawai'i's needs and interests relative to massage therapy training programs, and to contribute to the broader discussion about the regulation of all proprietary vocational schools in Hawai'i. To achieve those purposes, this study developed the history of the regulation of massage therapy schools presented in Chapter Three. Reviews of the Legislative history that brought about today's circumstances, and a review of the relevant Sunset Reports from the Hawai'i State Legislative Auditor were integral to that history.

This study reviewed the relevant revised statutes and administrative codes of the thirty states that regulate massage therapy. The dates of each state's first legislation regulating massage therapy were of interest to this study but some were difficult to establish. There were some references to earlier statutes within what otherwise seemed to be the first massage legislation for several states. The dates of the first massage therapy legislation for any such states that are reported in this study were gathered from the agencies regulating massage therapy in those states. The regulating agencies responsible for the administration of the relevant statutes and codes were noted for each state. Information concerning those regulatory agencies and their practices was gathered from statutes and codes and from the agencies themselves.

The educational requirements stated in the relevant laws and administrative codes refer to federal, state, and private agencies that are involved in the regulation of proprietary vocational schools. Some of those private agencies and some state agencies are concerned only with the regulation of massage therapy training. Other state agencies *and the federal agencies are mostly concerned with proprietary vocational schools in general.*

It was discovered that, although varying considerably from state to state, massage therapy laws and rules do have similar content. An outline of the content of several states' laws and rules provided the framework for gathering information from other state's laws and administrative codes. Those research points were related to identifying the agencies designated to regulate massage therapy and massage therapy training and to identifying the standards for massage therapy schools and training programs



The proprietary vocational school laws of eight states were reviewed. Related administrative codes from eleven states were reviewed. This study found proprietary school laws and administrative codes even more consistent from state to state than massage therapy laws and administrative codes. A preeminent research point was the method of certification for proprietary vocational schools and training programs. Laws and rules were reviewed for all references to certifying agencies whether state, federal, or private.

Differences between the language of the statutes and the language of the administrative codes vary from state to state. For some states, the statute provides the language of the administrative code. In some states, administrative code elaborates on the law. And, in some states, administrative code changes the law. Data from rules and codes regulating proprietary vocational schools is reported below only in those places where the administrative rule differs significantly from the law.

In this report, some data are reported as general statements encompassing the practices of several states. Other data, reported from individual states, may help the reader envision the larger picture in which the unusual concepts from individual states can expand the awareness of concepts and possibilities. No one state or group of states has found the obviously perfect policies and practices for regulating proprietary massage therapy schools. And, there is no uniformity of practice among the states. The data constitute a confusion of names of regulatory agencies. For simplicity, any general reference to Boards in the data is a reference to the agencies of the state being discussed unless otherwise indicated.

Annotation of each reference to state laws and administrative codes in this report would be cumbersome and problematic and would make this report unreadable. Consequently, the annotation of the laws and administrative codes is omitted. The Appendices list the laws, rules, and administrative codes that are herein reviewed. Almost all data are from obvious sections of the laws, rules, and administrative codes. Data from unexpected sections of the laws and rules are annotated.

The forms of words, names, and the forms and usages of terminology vary from state-to-state. They vary from agency-to-agency within some states. For example, some Florida agencies and rules refer to the State Board for Nonpublic Education. That agency refers to itself as the Florida Stateboard for Nonpublic Education.

Bureaucratic practices and terms can add some measure of confusion and difficulty to researching governmental agencies. Some Hawai`i agencies refer to the State Office of Postsecondary Education. Other Hawai`i agencies refer to the State Office for Post-secondary Education. But, bureaucratically speaking, there is no such office. There is only the State Post Secondary Education Commission. The State Approving Agency for the United States' Veterans' Administration is attached to the State Post Secondary Education Commission for administrative purposes. This is not to say that the State Post Secondary Education Commission is the State Approving Agency. Though easily overlooked, that bureaucratic distinction is important. This report uses those forms of words, those names, and those forms and usages of terminology that are used by the agencies under discussion.

The names of some agencies have changed in the period of time covered by this study. Most notably, the name of the Section at the Hawai`i Department of Education

that is responsible for licensing and regulating proprietary vocational schools has changed at least three times. In the late 1960's, it was the Accreditation and Private School Licensing Branch. Through the 1990's, it was the Community Education Section. It is now the School Improvement/Community Leadership Branch of the Department of Education's Learner, Teacher, and School Support Division. For consistency and for ease of reading it is referred to throughout this study by its current name except when context requires otherwise.

## **CHAPTER 2**

# **A HISTORY OF THE REGULATION OF MASSAGE THERAPY TRAINING IN HAWAII**

The State regulation of massage therapy training in Hawai'i evolved from Territorial regulations. Various State interests in this regulation have been expressed in statutes, rules, and regulations. Because those interests of the State were varied, several State agencies have been involved in the oversight of massage therapy training. The interplay of those agencies led to the submission of Senate Bill 1238 A Bill for An Act Relating to Professions and Occupations (SB 1238) before the 1999 Session of the State Legislature. That Bill concerned the regulation of proprietary vocational schools including the massage therapy training programs that are proprietary vocational schools. That Bill did not directly impact on the massage therapy Workshops that are regulated by the BOM. This study of the history of the State regulation of vocational education for massage therapy in Hawai'i considers which agencies have been overseeing which State interests, and will relate that history to the fate of SB 1238.

Territorial and State interests in massage therapy education that were overseen by State agencies have included: the protection of legitimate massage schools from unfair competition, the protection of the public from infectious disease, the suppression of prostitution, the provision of fair access to the profession, the protection of the public from injurious malpractice, the protection of the massage student-as-consumer, and the maintenance of minimum educational standards.

Section 302A-101 of the Hawai'i Revised Statutes, the Education Law, defines vocational school as *any method for giving instructions in any form in a vocation for*

consideration, reward, or promise. The definition goes on to provide some exceptions including that both classes of fewer than five students and schools registered with the Department of Commerce and Consumer Affairs (DCCA) are exempted from the definition. Both of these exemptions allow for the massage therapy Workshops that are regulated by the BOM.

Section 302A-425 of the Hawai'i Revised Statutes requires that proprietary vocational schools secure a license from the Department of Education (DOE) prior to beginning operations. However, schools registered with the DCCA are exempted from the definition of private vocational school. Since proprietary vocational schools register with the DCCA as entities doing business in Hawai'i, they can legally avoid licensing by the DOE. Massage therapy schools, and other proprietary vocational schools that so choose, can apply to be licensed by the School Improvement/Community Leadership Branch (SICLB) of the DOE. But, Superintendent Hamamoto (2002) of the DOE claims that the proprietary vocational school licensing program is misplaced at the DOE whose primary mission is to administer the K-12 public schools. The DOE does not want this administrative responsibility and has asked to be relieved of all private trade, vocational, and technical schools. The DOE does not receive additional funding for administering proprietary vocational schools. Former DOE Superintendent Aizawa (1997) claimed that the Community Education Section of the DOE, predecessor to the SICLB, was unable to properly administer proprietary vocational schools because of that lack of funding.

The DOE promulgates the Hawai'i Administrative Rules that establish general *licensing requirements relating to fair competition between proprietary schools*. Paragraph 8-101-3 of those rules also establishes specific requirements for facilities,

equipment, curriculum, school staff, advertising, and inspections. And, Paragraphs 8-101-10 to 8-101-14 of those rules relate to protections for the massage therapy student and the massage therapy client and provide for: the processing of complaints, license revocations, hearings, appeals, and penalties. The SICLB administers those rules and regulates those aspects of massage therapy training that relate to the State's interests in proprietary vocational schools in general.

The SICLB, then, has responsibility for the compliance of licensed proprietary vocational schools with State education laws and rules. The Hawai'i State Legislative Auditor (2002, p.10) reports that one education specialist and one secretary are assigned on a part time basis to the duties of regulating the proprietary vocational school licensing program through the SICLB. The Department of Commerce and Consumer Affairs (DCCA) is responsible for regulating massage therapy schools and Workshops as businesses that market to the consuming public. Section 452-6 of the Hawai'i Revised Statutes, the Massage Therapy Law, empowers the Board of Massage Therapy (BOM) at the DCCA to regulate those aspects of massage therapy schools and Workshops that relate to the massage therapy laws of Hawai'i. Act 73 of the Session Laws of Hawai'i, enacted in 1933, was Hawai'i's earliest massage regulation. Its purpose was to protect the public from the spread of contagious diseases and it related to the laundering and sanitation of uniforms and linen supplies. The Hawai'i State Legislative Auditor (2002, p.1) reports that, in 1939, the Territorial Legislature found that regulation would protect legitimate proprietary vocational schools from unfair competition and gave the authority to license all private trade, vocational, and technical schools to the DOE.

In 1945, for the public health, Act 116 of the Session Laws of Hawai`i assigned the regulation of massage to the Department of Health. That responsibility was and still *is executed as a code of sanitation that applies to all massage establishments including* schools, Workshops, and clinics. Paragraph 11-11-4 of the Hawai`i Administrative Rules, the Code of Sanitation, requires that hot water be readily available for washing hands and that linen supplies be washed in hot, soapy water with chlorine bleach. In 1981, the Hawai`i State Legislative Auditor reported that there had been no complaints to the Department of Health based on sanitation at a massage establishment for thirty years.

In Paragraph 8-101-6 (g) of the Hawai`i Administrative Rules, the DOE requires that all licensed proprietary vocational school staff have current valid tuberculosis clearance certificates from the State Department of Health and, thus, is also functioning to control contagion. In Paragraph 16-84-23 (j) (1) (A) of the Hawai`i Administrative Rules, the BOM further serves the State's interest in preventing the spread of diseases by requiring that massage school curricula include training in sanitation and hygiene.

*The massage industry lends itself for use as a front for prostitution.* In 1946, massage industry leaders in Hawai`i acknowledged that the public had an unsavory opinion of the wartime get-rich-quick massage parlors. Curtis T. Sakata (Deplorable Reputation, 1946), then president of the Hawai`i Masseurs Association, called for measures to police the industry.

In 1947, Act 192 of the Session Laws of Hawai`i created the Board of Massage and empowered it to license massage practitioners and establishments and to promulgate rules regulating conduct and sanitation. Later, Section 452-24 (2) of the Hawai`i Revised Statutes empowered the BOM to refuse or revoke licenses for persons with convictions

related to moral turpitude. Still, a series of newspaper articles printed in the Honolulu Star Bulletin early in 1976 highlighted the link between the outcall massage industry and prostitution in Hawai'i. In one of those articles, then Lt. Governor Nelson Doi (as reported in Tone, 1976), who was considering running for the office of mayor in Honolulu, linked outcall massage services to prostitution. Doi further suggested that prostitution had flourished a bit more than it should have. At that time, massage statutes regulated massage clinics and schools but did not address outcall massage.

Another Honolulu Star Bulletin article (Newspapers Halt, 1976) stated that prostitutes did take advantage of the outcall massage loophole and advertised outcall massage services as a front for prostitution. The BOM responded by working on a new set of Rules to stop prostitution in massage parlors but admitted that it did not know how long it would take to draft and adopt the new rules. Four years later, in 1980, the State Legislature responded with Act 208 of the Session Laws of Hawai'i empowering the BOM to regulate outcall massage and to provide stricter penalties for violations. Also, at that time, the Legislature moved to upgrade the industry by replacing the term masseur with the term massage therapist in the massage therapy law.

The Hawai'i State Legislative Auditor (1987, p.24) reports that the Legislature continued to modify regulations over the next few years to: establish apprenticeship training requirements, improve the processing of consumer complaints, prohibit advertising by unlicensed persons, and strengthen powers to pursue unlicensed massage activities. Further, the Hawai'i State Legislative Auditor reports that, in 1986, both the Honolulu Police Department and massage industry representatives reported that those changes appeared to have reduced the use of massage as a front for prostitution.



Paragraph 16-84-27 (a) of the Hawai'i Administrative Rules, promulgated by the BOM, requires that applicants must complete the required minimum education to qualify for the State Massage Therapy Licensing Examination. Currently five hundred and seventy educational hours plus Cardiopulmonary Resuscitation training are required. The BOM determines if applicants have met those requirements by evaluating transcripts *from the various acceptable training formats.*

Paragraph 16-84-48 of the Hawai'i Administrative Rules, the massage therapy rules, provides that studies at a massage therapy school licensed by the Department of Education are accepted by the BOM as qualification for taking the massage therapy licensing examination. Licensed massage therapy schools concern themselves with building and wording transcripts to reflect the educational experiences that the BOM holds to be significant. In this way, the BOM exerts considerable influence over the curricula at those schools. Also, Paragraph 16-84-23 of the massage therapy rules provides that the BOM will accept training transcripts, certificates, and diplomas from approved massage therapy Workshops and apprenticeships. Those Workshops and apprenticeships, approved directly and solely by the BOM, help to serve the State's interest in providing fair access to the profession.

The BOM-approved Workshops are possible because Section 8-101-2 (4) of the Hawai'i Revised Statutes, the education law, excludes classes conducted for five or less students at a time from its definition of vocational school. Paragraph 16-84-23 (i) of the Hawai'i Administrative Rules, promulgated by the BOM, provide that, through the Workshop format, the BOM will accept training with any massage therapist who has been licensed in Hawai'i for at least three years if that training takes place in a licensed

massage therapy clinic within a pre-approved program. Individual massage therapists do offer these Workshops and usually charge far less for the training than the tuitions at licensed proprietary massage therapy schools. This helps to make training available to less affluent students.

Vocational rehabilitation, veterans' education benefits, and back-to-work programs that pay tuition also promote the State's interest in fair access to the profession. Usually, those programs will only fund studies at a DOE-licensed school. Veterans' education benefits can only be paid for students at schools that have been approved by the State Approving Agency for the Veterans' Administration.

Both licensed massage therapy schools and Workshops establish their own criteria for student evaluation and success. There is a wide range of educational expectations from program to program. Whether licensed proprietary vocational schools or approved Workshops, few proprietary massage therapy training programs are strenuous academic challenges because of the real competition for students and their tuition monies. Most of the programs are mildly-to-moderately challenging and have accommodations for the academically inept so that few ever leave the programs over learning difficulties.

Whether from a licensed proprietary vocational school, an approved Workshop, or from a community college or university, the applicant's transcript is submitted to the Board of Massage Therapy (BOM) which then becomes the final arbiter of the State's interest in the curricular content and the duration of massage therapy training. Even though they serve other State interests, the educational and apprenticeship requirements were originally established in the belief that they would discourage the use of massage therapy as a front for prostitution. By accepting Workshop training programs as the

equivalent of training in DOE-licensed proprietary vocational schools and as the equivalent of training at community colleges and universities, the BOM actually enables the use of massage therapy training as a front for prostitution.

Apprentices are required to study with their sponsoring licensed massage therapist *for at least six months*. As apprentices, they may practice massage therapy for up to a year without a license. By documenting, whether truly or falsely, training at approved Workshops that may or may not deliver the required training, individuals can have access to apprenticeship status. Those apprenticeships can be used as fronts for prostitution. The apprentice/prostitute can operate behind the massage therapy front for as long as eighteen months before being required to take the State Massage Therapy Licensing Examination. If not prepared to take the examination at that point, the prostitute could drop the massage therapy front and move to some other cover.

As the final arbiter of the State's interests in massage therapy training, the BOM is working both for and against the suppression of the use of massage therapy as a front for prostitution. Educational requirements and apprenticeships of at least six months duration may discourage prostitutes from casual entry to the licensed massage therapy industry. Still, Workshops and apprenticeships also allow prostitutes to use sham massage therapy training programs as fronts for prostitution.

Thomas Langenstein (2000), then a massage therapist member of the BOM, reported that the minutes of the educational committee of the BOM from 1988 to 2000 documented reported abuses, inconsistencies, and reports of insufficient supervision occurring in Workshops and apprenticeship training programs. If the State regulations that allow Workshops and apprenticeships are holding them to lower standards than

DOE-licensed proprietary vocational schools, then they would seem to be compromising the State's earliest interest in regulating massage therapy training programs which was to *protect legitimate schools from unfair business competition.*

Complaints concerning physical injury that has resulted from incompetent massage therapy are few. The Hawai'i State Legislative Auditor (1987, p.13) found that the practice of massage therapy posed little risk to the health, safety, or welfare of the public. A later report (Hawai'i State Legislative Auditor, 1992, p.6) said that the State's interest in protecting the public from such injuries has been focused by individuals knowledgeable about the profession who state that incompetent massage can cause harm. Some of those professionals say, and some of the literature indicates, that there is a real *danger of physical injury if massage therapy is not administered properly.* The BOM responds to those claims by requiring a certain minimum of training in massage theory and practice.

By acting in the State's interests on various issues, the BOM has evolved to oversee those aspects of massage therapy training that relate to the practice of massage therapy. The School Improvement/Community Leadership Branch (SICLB) of the Department of Education has assumed responsibility for the State's interests in massage therapy training that relate to the practices of proprietary vocational schools. Even though the SICLB and the BOM are looking after different State interests related to massage therapy training, their regulations have inevitably overlapped. Through the practice of licensing proprietary massage therapy schools, the SICLB is charged with: assuring general health and safety standards, the monitoring of proprietary vocational school advertising for deceptive practices, the maintenance of adequate school records,

and the maintenance of minimum educational standards. Proprietary vocational school criteria measured by the SICLB relate to school facilities, faculty, record keeping, and other administrative issues. Paragraph 8-101-3(a)(15) of the Hawai'i Administrative Rules, promulgated by the DOE, requires that a key prerequisite for licensure by the SICLB as a proprietary vocational school be the establishment of a cash surety bond sufficient enough to refund unused tuition monies in the event that the school should suddenly close without delivering the instruction for which students had paid.

Another State agency that is tangentially concerned with the State's interests in regulating massage therapy schools and training programs is the Hawai'i State Legislative Auditor's Office. Under the Hawai'i Regulatory Licensing Reform Act of 1977, known as the Sunset Law, the State Auditor is responsible for evaluating regulatory programs. Since 1981, the State Auditor has completed five Sunset Law evaluations related to massage therapy and/or to massage therapy training a proprietary schools. The first three related to the regulation of massage therapy in general as well as to massage therapy training. Those three reports have contributed to the evolution of massage therapy regulations over the last two decades.

The fourth evaluation (Hawai'i State Legislative Auditor, 1997) focused directly on massage therapy training programs and evaluated the regulatory roles of both the Department of Commerce and Consumer Affairs (DCCA) and the Department of Education (DOE). The Hawai'i State Legislative Auditor found that the DOE was not adequately managing its licensing program for private massage therapy schools. Responding to that report, the DOE Superintendent (Aizawa) stated that the regulation of proprietary vocational schools including massage therapy schools is inappropriately

placed with the DOE and that the predecessor of the SICLB, the Community Education Section, was not regulating those programs well as a consequence of the lack of personnel and funding.

In the 1997 report, the State Auditor introduced a new player, the State Office for Vocational Education which has since been renamed as the State Office for Career and Technical Education (SOCTE). That agency is located at the University of Hawai'i. The Board for Career and Technical Education is comprised of the Board of Regents of the University of Hawai'i. That Board and its Office were established to administer vocational and applied technology programs federally funded by the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

*SOCTE is neither funded nor organized to regulate proprietary vocational schools.* Still, the State Auditor concluded in the 1997 report that SOCTE was the most appropriate alternative State agency for overseeing the licensing and regulation of massage therapy schools. That conclusion may have been the major reason that deliberations on SB 1238 failed to chart a clear course of action for the Legislature. The old name for this agency seemed to indicate that it might well regulate proprietary vocational schools. But, in fact, that agency is not and never has been involved in regulating proprietary vocational schools.

Responding to that conclusion by the State Auditor', Kenneth Mortimer (1997), then President of the University of Hawai'i said that SOCTE was open to discussing the possibilities but would need additional funding and reorganization. Nonetheless, the State Auditor had brought SOCTE into the discussion about which State agency could best administer State interests in the regulation of massage therapy schools.

In response to the State Auditor's 1997 report, SB 1238 was introduced to the Twentieth State Legislature during the Regular Session of 1999. The purpose of that Bill was to transfer to the Department of Commerce and Consumer Affairs (DCCA) all responsibility for the licensing and regulation of schools for acupuncture, barbering, cosmetology, real estate, and massage therapy. The bill provided that proprietary massage therapy schools would be administered solely by the BOM within the DCCA. There was no proposed action on the Hawai'i State Legislative Auditor's 1997 recommendation that massage therapy schools be regulated by SOCTE.

SB 1238 stated that the purposes of licensing and regulating proprietary vocational schools is to protect consumers against practices by private trade, vocational, or technical schools that are false, deceptive, misleading, or unfair, and to help insure adequate educational quality at private trade, vocational, and technical schools. This legislation was limited to those State interests in massage therapy schools that have to do with proprietary vocational schools. In defining massage therapy school, the proposed legislation continued the exemption for classes conducted for five or less students at one time and thereby would have allowed for the continuance for the acceptance of training provided in the Workshop format.

In other words, SB1238 would have moved the proprietary massage therapy schools regulatory duties from the Community Education Section, now the SICLB, of the DOE to the BOM at the DCCA. Underlying that proposal, there may have been a mistaken concept that the two agencies duplicate regulatory functions. They do not. The BOM sees to those State interests regarding massage therapy. The SICLB, successor to the CES, sees to those State interests that have to do with proprietary vocational schools.

Section 9 of SB1238 would have required that the DCCA conduct an assessment on the need for regulation of massage therapy schools and report to the 2000 Legislature. If that provision had been enacted, and if the DCCA assessment had been conducted, that assessment might have reached conclusions similar to those of the Hawai`i State Legislative Auditor in her 1997 Sunset Report. That report (Hawai`i State Legislative Auditor, 1997, p.8) concluded that there was reasonable need to continue State licensing and regulation of massage therapy schools to maintain minimum educational standards and to protect students

In the Senate, SB 1238 was assigned, first to the combined Committees of Commerce and Consumer Protection and Education and Technology, and then to the Committee on Ways and Means. The Hawai`i State Senate Combined Committees on Commerce and Consumer Protection and Education and Technology (1999a) documented in Hawai`i State Senate Standing Committee Report Number 421, dated 19 February, 1999 that: the DOE presented testimony to the combined Committees of Commerce and Consumer Affairs and Education and Technology in support of SB1238, and that the DCCA presented testimony in opposition to SB 1238. The combined Committees further reported that they had amended SB 1238 by deleting most sections and keeping a section that would have required the DCCA to assess the need for regulating barbering and massage therapy schools. In State Senate Standing Committee Report Number 664, dated 5 March, 1999, the Hawai`i State Senate Committee on Ways and Means (1999) documented that it had amended the Bill but kept the provisions that would transfer all regulation of massage therapy schools to the BOM, and that would require an assessment of the State's interest in regulating massage therapy schools



In the House of Representatives, SB 1238 was referred, first to the Committee on Consumer Protection and Commerce, and then to the Committee on Finance. Thomas Langenstein (1999a), in testimony presented to the Committee on Consumer Protection and Commerce, the acting Chairperson of the American Massage Therapy Association's Legislature and Law Committee asked that SB1238 be held in committee. In place of SB 1238, Langenstein asked that the DOE be adequately funded to regulate massage therapy schools through its Community Education Section.

Because SB 1238 would have moved the regulation of barber schools to the DCCA, Margaret Williams (1999) testified as a member of the Association of Pacific Post-secondary Private Schools and as President of the Hawai'i Institute of Hair Design. She asked the legislators to keep the regulation of private vocational schools at the DOE and to insist that the DOE commit to doing the job well.

As a member of the BOM, Thomas Langenstein (1999b) wrote to the House Committee on Consumer Protection and Commerce on behalf of the BOM. He wrote against the proposed legislation saying that the BOM does not have the expertise to regulate proprietary vocational schools. He testified that the BOM further opposed SB 1238 because it would have maintained the exemption that allows for Workshops.

Kathryn Matayoshi (1999) testified for the DCCA and asked the Committee on Consumer Protection and Commerce to defer any legislative action related to the regulation of massage therapy schools. Instead, she proposed that the DCCA would lead interim discussions between the DOE, SOCTE, and itself that would lead to better solutions agreeable to all concerned parties. She further recommended of behalf of the DCCA that SB 1238 be amended by the substitution of proposed legislation that

addressed other unrelated issues. Paul LeMahieu (1999), then Superintendent of Education, supported the recommendations of the DCCA saying that the licensure of private trade, vocational, and technical schools is a multifaceted issue that requires legislative analysis and support. The Committee on Consumer Protection and Commerce acted by amending the Bill by substitution as Matayoshi had proposed. The revised SB 1238 was passed on to the House Committee on Finance with no reference to the regulation of massage therapy schools.

In response to the Hawai'i State Legislative Auditor's 1997 recommendation, the 1998 Legislature amended Section 302A-425 of the Hawai'i Revised Statutes, the General Provisions of education law, to emphasize that the purposes of proprietary vocational school legislation and regulation include the protection of consumers. Continued concern about these matters in the Legislature led to the passage of Senate Concurrent Resolution Number 121 in the 2001 Regular Session. The resolution asked the Hawai'i State Legislative Auditor (2002, p.1) to study again the regulation of proprietary vocational schools and to recommend changes.

The resulting Hawai'i State Legislative Auditor's Report Number 02-08, issued in April 2002, is the fifth of the five Sunset Reports that relate directly or indirectly to proprietary massage therapy schools and training programs. In it, the Hawai'i State Legislative Auditor (2002, p.9) found that the School Improvement/Community Leadership Branch (SICLB) of the DOE does not regulate proprietary vocational schools adequately. Although the study found that the licensing and regulation of private trade, vocational, and technical schools is still necessary for State interests, it found numerous deficiencies and a lack of commitment in the DOE's administration of the licensing

program. But, instead of recommending that the regulation of proprietary vocational schools be reassigned to SOCTE, as she had in 1997, the Hawai'i State Legislative Auditor (2002, p.21) concluded this time that, because of its consumer protection mission, the Department of Commerce and Consumer Affairs (DCCA) is better suited to administer the proprietary vocational school licensing program.

Another state agency, the State Approving Agency for the Veterans' Administration, has been overlooked in recent discussion and consideration. Governor John Burns, in the later 1960's, established that the University of Hawai'i would serve as the State Approving Agency for the Veterans' Administration. The State Post-Secondary Education Commission was established at the University by Section 305H-1: Vocational Education Under Federal Aid of the Hawai'i Revised Statutes and the State Approving Agency was attached to that Commission for administrative purposes. The State Approving Agency is involved in regulating those proprietary vocational schools that wish to be approved providers of education to veterans who receive veterans' educational benefits from the federal government.

William C. Oshiro, then Manager of the Veterans' Administration Regional Office in Honolulu, wrote Governor Burns in 1967 concerning the University in its role as the State Approving Agency for the Veterans' Administration. He suggested that the University continue to serve in that capacity so far as community colleges, institutions of higher learning, and hospitals were concerned. He noted that the Accreditation and Private School Licensing Branch of the DOE, a predecessor to the Community Education Section and thus another predecessor to the SICLB, performed nearly all the functions of a State Approving Agency in regulating technical and vocational schools. Oshiro

recommended that the DOE be designated State Approving Agency for all schools under its jurisdiction. Oshiro further recommended that the State Approving Agency for apprenticeships and on-the-job training should be the Department of Labor and Industrial Relations. And, he noted that the Veterans' Administration provides for the reimbursement of salary and travel expenses incurred by the State Approving Agency.

Robert W. Hiatt (1967), Acting Executive Officer for the University of Hawai'i in the absence of President Hamilton, reviewed Oshiro's letter and then wrote to Governor Burns as well. In his letter, Hiatt told Governor Burns that he "could not agree more with Mr. Oshiro's analysis". Further, Hiatt asked Governor Burns to relieve the University of duties as the State Approving Agency for institutions that do not fall within the educational framework of the University system.

### **CHAPTER 3**

## **FINDINGS RELATED TO STATES' REGULATION OF MASSAGE THERAPY TRAINING**

This study reviewed the massage therapy practice laws of the thirty States which regulate massage therapy and massage therapy schools. (Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawai'i, Iowa, Louisiana, Maryland, Maine, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.)

Further this study reviewed the massage therapy administrative codes, rules, and/or regulations of twenty six States that regulate massage therapy and massage therapy schools. (Alabama, Arkansas, Delaware, Florida, Hawai'i, Iowa, Louisiana, Maryland, Maine, Missouri, Nebraska, North Carolina, New Hampshire, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.)

Ohio has the oldest state law directly regulating massage therapy. It was enacted in 1916 and was the only such legislation for almost two decades. The Hawaiian Territorial Legislature began regulating massage therapy in 1933 by requiring that the Department of Health set sanitation standards for the massage industry. In 1943, Florida enacted legislation to regulate massage therapy. Arkansas, Nebraska, and North Dakota began the legislative regulation of massage therapy in the 1950's. New York was the only state to enact such regulation during the 1960's.

Thus, by 1970, only seven states regulated massage therapy by law. Oregon, Rhode Island, and Washington enacted massage therapy legislation during the 1970's. In the 1980's, Texas and Utah legislated the regulation of massage therapy. In the 1990's, another seventeen states enacted such legislation. Those states are: Alabama, Connecticut, Delaware, Iowa, Louisiana, Maine, Maryland, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. In 2000, Colorado amended its restrictive massage parlor law to specifically exempt massage therapists who have completed five hundred hours of training at an approved school.

### ***3.1 Agencies Administering Massage Therapy Training***

Laws regulating massage therapy and massage therapy schools designate or create agencies to administer the laws and rules. When new agencies are created, the composition of the agency and its duties are defined by the law. Seventeen states have created Boards of Massage or Boards of Massage Therapy to regulate massage therapy and massage therapy training. (Alabama, Arkansas, Delaware, Florida, Hawai'i, Louisiana, Missouri, North Carolina, North Dakota, New Hampshire, New Mexico, New York, Oregon, Tennessee, Utah, Washington, and West Virginia.) Two states, Iowa and Nebraska, have created Boards of Examiners for Massage Therapy.

The administrative placement of those Boards of Massage varies, but most states have placed them with other health-related agencies. The Tennessee Massage Licensure Board is in the Division of Health Related Boards. The Louisiana Board of Massage Therapy is in the Department of Health and Hospitals. The New Hampshire Board of

Massage is in the Department of Health and Human Services' Division of Public Health Services. Two states, Connecticut and Texas, call for the Department of Health to regulate massage therapy directly. Maryland regulates massage therapy through its Board of Chiropractors. Ohio regulates massage therapy through its State Medical Board. In Virginia, massage therapy is regulated by the Board of Nursing at the Department of Health Professionals. In New Mexico, the Board of Massage is at the Regulation and Licensing Department. The laws of three states, Maine, Rhode Island, and Wisconsin, call for the Department of Professional Regulation to oversee the practice of massage therapy. In Hawai'i, the Board of Massage Therapy (BOM) is at the Department of Commerce and Consumer Affairs (DCCA). In six states, Iowa, Maryland, Maine, Nebraska, New Hampshire, and New Jersey, where the legislative responsibility for the regulation of massage therapy is assigned to agencies other than Boards of Massage, the designated agencies have created Massage Advisory Boards. Members of those advisory boards are appointed by the regulating agencies or the directors of those agencies.

Colorado does not have a state agency regulating massage therapy. Colorado massage parlor law is designed to empower local governments to prohibit massage parlors or restrict them by licensing to suppress prostitution. Section 12-48.5-104(5) of the Colorado Revised Statutes exempts massage therapists from state massage parlor laws but allows for local regulation of massage therapists.

### ***3.2 Standards For Schools***

The laws of some states define the standards and qualifications for massage therapy schools and training programs. The laws of other states leave the establishment of massage therapy school standards to the regulating agencies. The laws of twenty two states require that massage therapy schools or training programs be approved by the same agency that regulates massage therapy. (Alabama, Arkansas, Delaware, Florida, Hawai`i, Iowa, Maine, Missouri, Nebraska, North Carolina, North Dakota, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Washington, and Wisconsin.) Two states, New Hampshire and New Mexico, refer to no other agency for the regulation of massage therapy schools than the agency regulating massage therapy. The laws of five states, Maryland, Missouri, South Carolina, Tennessee, and Virginia, accept massage therapy schools and training programs that are approved by their Higher Education Commission or a Higher Education Coordinating Board. Four states, Hawai`i, Louisiana, Oregon, and Virginia, will accept licensing as a Proprietary Vocational School by their Departments of Education as sufficient qualification for massage therapy schools. Five states, Hawai`i, New York, Ohio, Oregon, and Texas, will accept training relevant to massage therapy that is completed at community colleges. However, this study found massage therapy training programs to be in place in the community colleges of only three states, Hawai`i, New York, and Ohio. Oregon and Texas will accept anatomy, physiology, and kinesiology courses at community colleges as relevant to massage therapy.



In Hawai'i, the Board of Massage Therapy (BOM) accepts massage therapy training completed at: a proprietary vocational school licensed by the DOE, a school approved by the American Massage Therapy Association (AMTA), the Roling Institute, the University of Hawai'i system, or at Workshops that it has approved. The BOM does not exert much regulatory influence over licensed proprietary massage schools other than to set basic curriculum requirements. Proprietary massage schools that are licensed by the DOE have great latitude in determining the major portion of their curricula. Those schools are free to develop their own curricula or follow curricula established by national professional organizations or other agencies.

The American Massage Therapy Association (2002n.d., a) claims to be the oldest and the largest professional organization for massage therapists in the United States and to represent forty seven thousand massage therapists in thirty countries. It founded a Council of Schools in 1982. The mission of the American Massage Therapy Association Council of Schools (n.d.) is "to promote excellence in education in order to advance the art, science, and effectiveness of its member schools". Member schools must operate a *minimum 500 hours-in-class program and must meet the legal requirements for operation within its jurisdiction*. In applying for membership, schools must submit either a current copy of the state and/or city approval or license or a copy of the state and/or city license law that clearly demonstrates the lack of legal requirements in the school's jurisdiction. North Dakota and Rhode Island require that massage therapy schools conform to standards developed by the AMTA.

Hawai'i and four other states, Florida, Missouri, Utah, and Washington, will accept massage therapy training completed in apprenticeships. Paragraph 16-84-7(c) of

the Hawai'i Administrative Rules requires that apprenticeships must be approved by the BOM. Paragraph 16-84-8 of the Hawai'i Administrative Rules requires that any person seeking a massage therapy apprenticeship must apply to the BOM and must submit a letter of agreement from the sponsoring massage therapist. A sponsoring massage therapist is defined in Paragraph 16-84-2 of the Hawai'i Administrative Rules as a massage therapist licensed in Hawai'i for at least three years who is employed by or registered with a licensed massage establishment and who is registered with the BOM as the person responsible for the direct supervision of the apprentice.

Texas law calls for massage therapy training to be approved by the Texas Department of Health, but goes on to state that massage therapy training at an institution approved by the Texas Education Agency would be acceptable. Washington law requires that massage therapy schools be approved by the Workforce Training and Education Coordinating Board. Washington Administrative Code calls for massage therapy schools and training programs to have the approval of a national professional massage therapy organization or to be the equivalent of schools that do. In West Virginia, massage therapy training must be approved by the State College System Board or must meet the standards set by the National Certification Board for Therapeutic Massage and Bodywork.

### ***3.3 Educational Hours Required For Licensing***

The number of educational hours required for certification, licensure, or registration as a massage practitioner varies state-to-state from a low of one hundred hours to a high of one thousand hours. Delaware has a two-tiered certification/licensure

program and will certify massage technicians after only one hundred hours of education in the field. Paragraph 5302 (4) of the Rules of the Delaware Board of Massage and Bodywork prohibits massage technicians from using the words therapy and therapist in association with their work. Texas will register massage therapists with three hundred hours of education. *Nineteen states will license massage therapists after five hundred hours of education.* (Arkansas, Colorado, Connecticut, Delaware, Florida, Iowa, Louisiana, Maine, Maryland, Missouri, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and West Virginia.) Thirteen of those nineteen states are states which began the legislative regulation of massage therapy after 1990. (Connecticut, Delaware, Iowa, Louisiana, Maine, Maryland, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.) In Delaware, licensure as a massage therapist is the higher status of the two-tiered program. Paragraph 5302 (3) of the Rules of the Delaware Board of Massage and Bodywork provides that licensed massage therapists may use the words therapy and therapist in association with their work. Hawai'i requires five hundred and seventy hours of education for licensure as a massage therapist. Ohio, Utah, and Wisconsin require six hundred hours of education for licensure as massage therapist. Alabama and New Mexico require six hundred and fifty hours of education for licensure as massage therapists. New Hampshire and North Dakota require seven hundred and fifty hours for licensure. Nebraska and New York require one thousand education hours for licensure as massage therapist

## **CHAPTER 4**

### **FINDINGS RELATED TO STATES' REGULATION OF PROPRIETARY VOCATIONAL SCHOOLS**

This study reviewed the Proprietary Vocational Education laws of eight states. (Connecticut, Florida, Hawai`i, Maine, Maryland, Ohio, Utah, and Virginia.) This study also reviewed the *Proprietary Vocational Education* administrative rules, codes, or regulations of eleven states. (Delaware, Florida, Hawai`i, Louisiana, Maine, New Hampshire, Utah, Virginia, Washington, West Virginia, and Wisconsin.) Whether promulgated as rules, codes, or regulations, all are hereafter referred to as rules.

Chapter 10a-22 of the Connecticut General Statutes, the Connecticut legislation concerning the authorization of private occupational schools was revised as of January 1, 1997. That law is typical of such laws and will serve both as an example of the content of such laws and as a base for comparison with the laws of the other states. The Connecticut law defines private occupational school to mean “any entity offering instruction in any form or manner in any trade, industrial, commercial, or service occupation for any remuneration, consideration, reward, or promise of whatever nature, except ‘private occupational school’ shall not include: instruction offered under public supervision and control; instruction conducted by a firm or organization solely for the training of its own employees or members; or, instruction offered by a school authorized by the General Assembly to confer degrees”. This is representative of the definitions used by other states for proprietary vocational schools.

In Connecticut, when a proprietary vocational school has applied for authorization, an evaluation team is required to conduct an inspection and to submit a

written report recommending authorization or non-authorization by the Commissioner of Higher Education.

Section 10a-22b (e) of the Connecticut General Statutes requires that the evaluation team determines whether or not:

- The quality and content of each course or program of instruction, training or study can reasonably and adequately achieve the stated objective for which such course or program is offered;
- The school has adequate space, equipment, instructional materials, and personnel for the instruction offered.
- The qualifications of directors, administrators, supervisors, and instructors do reasonably and adequately assure that students receive education consistent with stated objectives for which a course or program is offered;
- Students and other interested persons are provided with a catalog or similar publication describing the courses and programs offered, course and program objectives, the length of programs and courses, schedules of tuition, fees, and all other charges and expenses necessary for completion of the course or program, and cancellation and refund policies;
- Upon satisfactory completion of the course or program, each student is provided appropriate educational credentials by the school;
- Adequate records are maintained by the school to show attendance and grades, or other indicators of student progress, and standards are enforced relating to attendance and student performance;

- The applicant school is financially sound and capable of fulfilling its commitments to students;
- Any student housing owned, leased, rented, or otherwise maintained by the applicant school is safe and adequate

The Connecticut evaluation team may also indicate in its report such recommendations as may improve the operation of the applicant school. These issues and checkpoints are indicative of other states' concerns in regulating proprietary vocational schools.

All eleven states whose rules were reviewed list the required contents of the application for proprietary vocational school certification or licensure. The following representative list includes the documents required for initial licensing by Chapter 147(3)(A)(1) of the Rules of the Maine Department of Education, Maine's proprietary vocational school administrating agency:

- Fire and health department clearances;
- Financial statements;
- Statements of any accreditations;
- A school calendar for a complete year;
- A school curriculum;
- Copies of school record forms;
- School catalogues;
- School advertising;
- A list of all solicitors;
- A copy of the school's refund policy.

Section 10a-22q of Connecticut's Private Occupational School law establishes a Private Occupational School Benefit Account, a non-lapsing account within the General Fund. The law provides a formula by which monies paid by the private vocational schools are transferred to that account. The Commissioner of Higher Education administers the account with the advice of an advisory committee. The account is used to award financial aid grants for the benefit of private occupational school students. The grants are paid to the private occupational school designated by the grant recipient to be applied against the tuition expenses of such recipient.

Section 10a-22u of Connecticut's Private Occupational School law establishes a second account, the Private Occupational School Student Protection Account, within the General Fund. A certificate to operate a new proprietary occupational school cannot be issued by the Commissioner until the school seeking approval submits an irrevocable letter of credit in the penal amount of ten thousand dollars. The letter of credit is to guarantee the payments required of the school into the Private Occupational School Student Protection Account. These payments are a condition of doing business in the state and failure to make any such payment within thirty days following the date on which it is due results in the loss of the school's authorization.

Any student enrolled in an authorized private occupational school who is unable to complete a course or unit of instruction at such school because of the insolvency or cessation of operation of the school, and who has paid tuition for such course or unit of instruction, may make application to the Commissioner of Higher Education for a refund of tuition from the Private Occupational School Student Protection Account. Upon such refund assignment, the state may take appropriate action against the school or its owner

or owners in order to reimburse the Student Protection Account for any expenses or claims that are paid from the account and to reimburse the state for the reasonable and necessary expenses in undertaking such action.

The rules of four other states, Florida, Louisiana, Virginia, and Washington, provide for a student protection fund into which schools pay monies according to their state's specific formula. These funds are to be used in the event a school is unable to refund the unused portions of tuition in the event of closure or failure to provide instruction. Six states, Delaware, Hawai'i, New Hampshire, Virginia, West Virginia, and Wisconsin, require that schools secure a surety bond in amounts to cover tuition refunds due to students should the school close or fail to deliver instruction.

In Hawai'i, the Hawai'i State Legislative Auditor (2002, p.15) determined that the State's surety bond requirement for private trade, vocational, and technical schools is insufficient and would not adequately protect students against financial losses should a school suddenly cease operations. Having made that determination, the Hawai'i State Legislative Auditor recommended that the Legislature should consider establishing a tuition recovery fund in lieu of the surety bond requirement. In a letter responding to that Hawai'i State Legislative Auditor's report, Kathryn Matayoshi (2002), Director of the Department of Commerce and Consumer Affairs, acknowledged the merits of tuition recovery funds but questioned if Hawai'i's small number of licensed proprietary vocational schools could create a fund of sufficient monies.

The rules of six states, Delaware, Maine, New Hampshire, Virginia, West Virginia, and Wisconsin, specifically require a statement of the school's refund policy for the review of the administering agency.



The rules of all eleven states whose rules were reviewed provide for the disposition of permanent student records in the event that the school closes. Eight of those eleven states require that the closing school forward student records to the regulatory agency. (Delaware, Hawai'i, Louisiana, Maine, New Hampshire, Utah, Virginia, and Washington.) The three other states, Florida, West Virginia, and Wisconsin, require that the closing school provide for the storage of, and the access to, student records and that the closing school notify the agency and its students of the location of the records and of the procedures for access to those records. Wisconsin rules further provide that the regulatory agency may seize the student records if deemed appropriate.

Section 246.222 of the 1999 Florida Statutes authorizes the State Board of Nonpublic Career Education to ensure that the administrators of licensed schools are qualified to conduct the operations of their respective positions and to require such administrators to receive continuing education and training. The Board is required by law to adopt general qualifications for each of the administrative positions and to establish guidelines for the minimum amount and the type of continuing education and training to be required. Records of the continuing education and training received by administrators must be maintained at the school and must be available for inspection at all times. Section 173.604.2 (1) of the Missouri Revised Statutes sets minimum standards for the certification of proprietary vocational schools. It requires that the Coordinating Board for Higher Education require that the educational and experience qualifications of administrators are adequate for students to receive training consistent with the published objectives of the course. Section 3332-1-08 (C) (2) of the Ohio Revised Statutes requires

that school administrators must have educational qualifications and work experience related to their areas of responsibility. Hawai'i law does not address the qualifications of proprietary vocational school administrators.

The rules of six states, Florida, Hawai'i, New Hampshire, Virginia, Washington, and Wisconsin, set or review school standards for administrators. Paragraph 6F-2.002 (3) of the Florida Administrative Rules requires that each proprietary vocational school provide a competent adequate administrative staff to ensure the accomplishment of the purpose of the school. Paragraph 8-101-6 of the Hawai'i Administrative Rules requires that a proprietary vocational school furnish the DOE satisfactory evidence of the principal's qualifications to act as principal. Paragraphs 8-101-3 (1) and (2) of the Hawai'i Administrative Rules describe satisfactory evidence as evidence that includes a complete statement of the training and experience that qualifies the principal and letters from at least three persons testifying to the character, ability, and competency of the principal. There is no requirement that the three persons writing those letters have any special expertise in evaluating the qualifications of a principal. Paragraph Pos 1102.04 (c) of the New Hampshire Code of Administrative Rules requires that a proprietary vocational school designate one person as director or administrator and that that person be a college or university graduate or have five years experience in the trade which is to be taught and have at least one year's experience as a teacher in one or more of the school's major subjects. Paragraph 4.1 of Virginia Regulation 270-01-0034 requires that proprietary vocational school administrators hold a college degree with a major in one of the areas of study offered by the school or appropriate to the job, or qualify by a combination of education and experience, or document four years of experience related to

the job responsibilities. Paragraph 28C.10.050 (6) (c) of the Revised Codes of Washington requires that school directors must have at least two years of experience in either school or business administration, teaching, or other experience related to their duties. Paragraph EAB 4.04 (1) (b) of the Wisconsin Administrative Code requires that proprietary vocational school administrators have suitable educational qualifications and experience, and be of good reputation and character.

Paragraph 6F-2.002 (6) (c) (1) of the Florida Administrative Code, Florida's education rules, requires that proprietary vocational school instructors: be of good character; be licensed in the trade which they teach; and, have completed a four-year college curriculum, or have completed training and have two years of job experience, or have three years of successful job experience in the subjects to be taught. Paragraph 8-101-(6) (1) of the Hawai'i Administrative Code, Administrative Rules on the Licensing of Private Trade, Vocational or Technical Schools requires that all instructors be licensed by the DOE. To be licensed, instructors must have at least three years of successful practical experience beyond the standard learning period for the trade they are to teach. By avoiding licensure, proprietary vocational schools can employ instructors who are not licensed and who do not have the minimum qualifications required by the DOE for teaching. Paragraphs 901 A.5 and A.6 of the Louisiana Rules and Regulations require that proprietary school faculty describe in sufficient detail such educational attainment and years of work experience as to show pertinence to the subject taught. There is no explanation of the term sufficient detail. Paragraph 147 (6) (B) (2) of the Code of Maine Regulations, Maine's proprietary vocational school rules, requires that an instructor be licensed in the field being taught or have extensive training or adequate experience in the

area being taught. Part Pos 1102.12 (b) of the New Hampshire Code of Administrative Rules requires that proprietary vocational school instructors have a bachelor's degree in the field being taught, or possess a valid adult or secondary school teaching certificate in the field of instruction, or have five years experience and tradesman status in the field to be taught, or have held a journeyman's license for five years in the field being taught. Rule 765-171-4.1.1 of the Utah Administrative Code requires that proprietary vocational school faculty be academically prepared in the area of emphasis at the appropriate level or have equivalent job experience based on reasonable standards. Virginia Regulation 270-01-0034 Part 4.2 requires that proprietary vocational school instructional staff have a college or university degree with a major in area to be taught or a related area, or be a graduate of a certified proprietary vocational school in the area to be taught plus have two years occupational experience in the field, or have a minimum of four years work experience above the learning stage in the area to be taught. Paragraph 28C.10.050 (6) (d) of the Revised Codes of Washington requires that faculty who teach a course related to an occupation for which the student must subsequently be licensed must hold or be qualified to hold such a license and have at least two years of work experience or postsecondary education or a combination of the two or possess current evidence of being qualified to teach that has been issued by a regulatory agency. West Virginia rules for proprietary vocational schools do not address faculty qualifications. But, Louise Franklin (personal communication, 21 March, 2000) of the West Virginia Massage Therapy Licensure Board reports that the rules of the West Virginia Massage Therapy Licensure Board do. They require that massage therapy instructors be certified by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). Paragraph

EAB 4.04 (1) (b) of the Wisconsin Administrative Code requires that proprietary vocational school faculty have suitable educational qualifications and experience, and be of good reputation and character. The phrase, suitable educational qualifications and experience, is not elaborated.

Three states, Delaware, Florida, and New Hampshire, require that proprietary vocational schools establish the ability of each new student to benefit from the school's program of study. In Delaware, requirements for proprietary vocational schools include provisions that the school determine, at the time of enrollment, whether students have the ability to succeed. A high school diploma or its equivalent is sufficient indication of the ability to succeed. If there is neither a high school diploma nor an equivalent, the school must administer a nationally recognized, standardized, or industry generated test approved by the Secretary of the United States Department of Education. Florida law requires that nonpublic schools administer an entry level test of basic skills to each student in a non-degree program of at least four hundred and fifty hours that purports to prepare a student for employment. Utah rules require that a proprietary vocational school consider the student applicant's basic skills, aptitude, and physical qualifications relative to the course of study and not admit a student unless there is a reasonable expectation that the student will succeed.

New Hampshire rules require that a school include documentation of the need for a school like itself with its application for licensure.

Hawai'i law does create a loophole through which proprietary vocational schools can avoid licensing by the Department of Education (DOE) and any other substantial regulation. Section 302A-101 of the Hawai'i Revised Statutes, the education law,

provides that schools registered with the Department of Commerce and Consumer Affairs (DCCA) or by any of its boards or commissions are exempt from licensure by the DOE.

The DCCA maintains the State's business registry. The Hawai'i State Legislative Auditor (2002, p.13) reports that most proprietary vocational schools circumvent licensure with the DOE by simply registering as businesses with the DCCA. The Hawai'i State Legislative Auditor further reports that the DOE estimates that there are two hundred proprietary trade, vocational, and technical schools in the state and that only fifty one of those schools are licensed by the DOE.

## **CHAPTER 5**

### **FINDINGS RELATED TO AGENCIES THAT REGULATE PROPRIETARY VOCATIONAL SCHOOLS**

The laws and rules that were reviewed for this study, both those related to *massage therapy* and those *related to proprietary vocational schools*, refer to agencies that are involved in the regulatory processes or that might be involved in the regulatory processes. There are at least two federal agencies that are involved in the regulation of proprietary vocational schools. This study found no federal agency directly regulating massage therapy.

The state agencies and the private agencies referred to in states' laws and rules are of two types: those that regulate massage therapy, and those that regulate proprietary vocational schools. Some of the states' agencies named in the laws and rules regulate both massage therapy and proprietary vocational schools. Other agencies, primarily regulating massage therapy, are secondarily regulating massage therapy training.

Some of the agencies named in the laws and rules are states' agencies that execute the authority to certify or license proprietary vocational schools. Some state laws and rules accept the certification of proprietary vocational schools through federal agencies. Some state laws and rules accept the certification of proprietary vocational schools by private agencies.

## ***5.1 Federal Agencies Regulating Proprietary Vocational Schools***

### **5.1.1 The United States' Department Of Education**

The impact of the United States' Department of Education (USDOE) on states' regulation of proprietary vocational education is indirect. Some states' regulatory agencies accept massage therapy training at a school that is accredited by an accrediting agency that is recognized by the USDOE. Some states' agencies will accept the successful completion of an examination given by an examination agency recognized by the USDOE in lieu of otherwise required examinations.

The requirement, common to Delaware, Florida, and New Hampshire, that proprietary vocational schools establish the "ability-to-benefit" from the program of study for each new student is a concept developed and established by the USDOE as a way to assure that proprietary vocational schools do not use federal funds to enroll students who will never succeed in the field of work. The Student Guide 2001-2002, published by the USDOE provides that a post secondary vocational student without a high school diploma or its recognized equivalent can be eligible for funds if he or she passes an ability-to-benefit test approved by the USDOE and used for determining the student's ability to benefit from postsecondary education. In Delaware, the attainment of a high school diploma or its equivalent is sufficient evidence of the ability to benefit from vocational education. Paragraph 8504 (7) of the Rules of the Delaware State Board of Education requires that, if a proprietary vocational school in Delaware admits a student who does not hold a high school diploma or its equivalent, the school must first administer to the person a nationally recognized, standardized, or industry developed test



approved by the Secretary of the USDOE that establishes the individuals ability to benefit. In Florida, Paragraph 6F-2.002(5)(b) of the Rules of the State Board of Independent Postsecondary Vocational Trade and Business Schools is similar to Delaware rules but does not directly refer to the USDOE. New Hampshire also requires an ability-to-benefit examination for new students who do not hold a high school diploma or its equivalent. Paragraph 1102.01(b) of the State of New Hampshire Postsecondary Education Commission rules defines ability-to-benefit test as “a standardized test which meets criteria developed by an institution’s accrediting agency which has been determined to be a nationally recognized accrediting agency by the United States Secretary of Education”

#### **5.1.2 The United States’ Veterans’ Administration**

A proprietary vocational school, itself, determines whether or not the United States’ Veterans’ Administration (VA) regulates its activities. Paragraph 21.4250 (a) of Title 38 of the Code of Federal Regulations requires that, if the school wants its students who qualify to be eligible for veterans’ education benefits in any course of study not leading to a standard college degree, the course must be approved by the State Approving Agency for the state in which the school is located. Many veterans and many active duty military personnel are eligible for veterans’ education benefits. So, it is desirable for a proprietary vocational school to be approved by the State Approving Agency. Such approval expands the market base for the school. As long as the VA student is successfully enrolled, the VA assures the payment of tuition.

The VA approval process is left to the discretion of the State Approving Agency but Paragraph 21.4250 (b) of Title 38 of the Code of Federal Regulations requires that the approval process comply with the provisions of Chapter 36 of Title 38 of the United States Code. Each State's Approving Agency furnishes the VA a list of approved schools in the state specifying the courses that are currently approved. In Hawai'i, the State Approving Agency is administratively attached to the State Post Secondary Education Commission at the University of Hawai'i.

In Veterans' Administration Instruction Letter Number 1, the VA requires that schools seeking approval submit three copies of the current catalog or bulletin. It further requires that the catalog or bulletin be "certified on the cover as true and correct in content and policy by an authorized owner or official of the school". The VA expects that the catalog will be kept up-to-date and that the school will file copies of any revisions with the State Approving Agency and will certify that the revisions are true and correct. It is not clear from this study whether or not the VA requires that schools seeking approved status be licensed by their state's Department of Education to operate as a private trade, occupational, or technical school, but VA guidelines in Instruction Letter Number 1, instructions for the approval process, state that schools "are encouraged" to submit copies of a current Hawai'i State Department of Education License to aid the approval process.

## ***5.2 States' Agencies Regulating Proprietary Vocational Schools***

### **5.2.1 States' Departments Of Education**

The New York State Education Department (2000a) reports that it and its Board of Regents are responsible for: the general supervision of all educational institutions in the State, for operating certain educational and cultural institutions, for certifying teachers, and certifying or licensing practitioners in thirty eight professions. Its supervisory activities include: chartering all educational institutions in the State; developing and approving curricula; accrediting programs; and providing and coordinating vocational rehabilitation services. New York is the only state where the Education Department directly regulates massage therapy.

New York State Education Department (2000b) further reports that, since 1891, the New York Board of Regents and the State Education Department have overseen the preparation, licensure, and practice of the professions. The sixteen-member New York Board of Regents currently regulates thirty eight professions through the Office of the Professions of the State Education Department. At its website, About the State Education Department, the New York State Education Department (2000a) reports that professional licensing boards now issue licenses or certificates and discipline practitioners in the following professions: architecture; certified shorthand recording; chiropractic; dentistry; engineering; land surveying; landscape architecture; medicine; nursing; occupational therapy; ophthalmic dispensing; optometry; pharmacy; physical therapy; podiatry; psychology; public accountancy; social work; speech-language pathology and audiology; and veterinary medicine, as well as massage therapy.

At another website, Office of the Professions: About OP, the New York State Education Department (2000b) reports that the Office of the Professions: reviews over 3,300 programs that prepare students for professional licensure, designs and administers licensing examinations, investigates and prosecutes misconduct and unlicensed practice throughout the state, assists professionals who have substance abuse problems, produces consumer brochures that advise the public on professional services, maintains a website to inform and service the public, and also serves as the State Approving Agency for the Veterans' Administration.

### **5.2.2 States' Agencies Regulating Higher Education**

*Three states, Maryland, Tennessee and Virginia require that their State Higher Education Commissions approve massage therapy training programs. At least four more states, Colorado, Connecticut, Missouri, and South Carolina have departments, commissions, or councils of Higher Education but do not require that massage therapy training programs be licensed by those agencies. In other states, the agencies that regulate higher education have names like the Texas Education Agency and the Wisconsin Education Approval Board. The agencies vary from state to state but they share a common responsibility for regulating proprietary vocational schools.*

The Connecticut Department of Higher Education (2000a) transferred the authority for approving proprietary vocational schools to the Private Occupational School Approval Unit of the Department of Higher Education from the State Department of Education in 1993. No entity can offer any occupational instruction in Connecticut without first receiving a certificate from the Commissioner of Higher Education. The

Connecticut Department of Higher Education (CDHE) has assumed regulatory duties at both the state and federal levels.

At the state level, the CDHE (2000a): licenses and accredits all public and private institutions of higher learning, prepares system-wide budget requests for public colleges and universities, operates State student aid programs, prepares legislative proposals, monitors enrollment and graduation trends, assures student diversity and access, encourages foreign exchange programs, and oversees the operation of Connecticut's private occupational or trade schools. At the federal level, the CDHE serves as the State Approving Agency for institutions and programs enrolling veterans and military personnel who are receiving Veterans' education benefits. It implements the National Service Program, which promotes public service among students. It administers the Eisenhower Professional Development Program, which awards grants for the professional development of teachers. It operates federal student aid programs. It assures student access. And, it operates the Education and Employment Information Center, which provides public information on learning and career opportunities especially for dislocated workers.

The New Hampshire Post Secondary Education Commission (2000) serves as both the State approving agency for the VA and as the State licensing agency for proprietary vocational schools. The Wisconsin State Education Approval Board (2000) serves as the Wisconsin State Approving Agency, overseeing the education and training of veterans under the terms of the GI Bills. As such, it oversees more than 180 colleges, universities, technical colleges, hospitals, proprietary career schools, and high schools. It also oversees more than 121 for-profit post secondary schools and businesses, in-state

nonprofit institutions of post secondary education, and out-of-state nonprofit colleges serving Wisconsin's residents.

The Florida Legislature established the Florida Stateboard of Nonpublic Career Education (2000) and assigned that Board's staff to the Department of Education for the purposes of payroll, procurement, and administration. The Florida Stateboard of Nonpublic Career Education (Stateboard) exercises its other powers, duties, and functions independently. The legislation empowering the Stateboard was passed by the legislature to require the licensing of all nonpublic career education schools in order to protect Florida citizens from substandard education. The Stateboard grants and renews licenses for those institutions that meet minimum educational, financial, and administrative standards. Those standards reflect the consumer protection issues relevant to the students. Further, it investigates complaints and gathers and shares information with other agencies. In addition to serving as a consumer protection agency, the Florida Stateboard of Nonpublic Career Education has a mission to protect the integrity of nonpublic career schools and to encourage independent vocational, technical, trade, and business schools that offer degrees, diplomas, and certificates to offer diverse programs that meet the needs of students at risk.

Paragraph 6F-1.001 (6) of the Rules of the Florida State Board of Independent Post-secondary Vocational, Trade and Business Schools, the rules of the Stateboard, requires that proprietary vocational schools make every effort to avoid unfair competition with private enterprise and to avoid the exploitation of students. Those rules further require that schools strive to earn the confidence and respect of their fields of work. And,

Paragraph 6F-1.001 (7) of the rules of the Stateboard requires that a school shall have an acceptable level of employment or satisfaction among its students and graduates.

### **5.2.3 Hawai'i's Agencies Regulating Proprietary Vocational Schools**

Section 302A-425 of the Hawai'i Revised Statutes, Education Law empowers the Department of Education (DOE) to license private trade, vocational, and technical schools and training programs. Paragraph 8-101-5 (a) of the Hawai'i Administrative Rules, the Proprietary Vocational School Rules of the Board of Education, says that the curricula at proprietary vocational schools must be approved by the DOE and allows that the DOE may review the curricula at massage therapy schools with the Board of Massage Therapy (BOM). Although Paragraph 8-101-5 (a) seems to assume that all proprietary vocational schools will be licensed, DOE rules do provide for exemptions to the required proprietary vocational school license. One exemption, allowed by Paragraph 8-101-2 (4) of the Hawai'i Administrative Rules, is for schools and programs that enroll five or less students at any given time. That exemption allows for BOM-approved Workshops and apprenticeships that are neither licensed nor regulated by the DOE.

The Hawai'i State Legislative Auditor (2002) reports that the School Improvement/Community Leadership Branch (SICLB) of the Learner, Teacher, and School Support Division of the DOE is directly responsible for regulating proprietary vocational school. In fulfilling those responsibilities, the SICLB reviews the following:

- Staff qualifications
- Surety bonds
- Current catalogues and curricula

- Course descriptions
- Course fees
- Student rights
- Refund policies
- Grading policies
- Facilities, and
- Annual reports

House Bill 257, which was approved on 23 April 1964, established the system of community colleges in Hawai'i. Its language expresses an urgent need for the creation of community colleges offering college-parallel, technical, and vocational education in *different parts of the State so as to make higher education facilities more readily available* to a greater number of high school graduates as well as to the community in general. The Act authorized the Board of Regents of the University of Hawai'i to create community colleges. It also transferred the public technical education programs beyond the twelfth grade level from the Department of Education to the University of Hawai'i.

The Community Colleges of the University of Hawai'i (2002) offer vocational-technical and beginning baccalaureate program courses at seven campuses. Programs of instruction include: early childhood education, computers, culinary arts, health care, business, media, agriculture, marine science, and physical therapy assistant. In 2002, Kapi'olani Community College (2002) began a noncredit program in massage therapy within its Health Sciences Department. That program has been approved by the Board of Massage Therapy (BOM) and could lead to licensure as a massage therapist.



The Employment Training Center was established in the DOE in 1964. It was transferred to the Community Colleges of the University of Hawai'i (2000) by Act 71 of the Hawai'i State Legislature in 1968. The Employment Training Center offers counseling services, basic skills training, and employment skills training particularly to students with special needs.

The Hawai'i State Board for Vocational Education (1985) documents that a State Master Plan for Vocational Education was published in February, 1968 by the Board of Education, the Board of Regents of the University of Hawai'i, and the State Commission on Manpower and Full Development. That master plan recommended that the University's Board of Regents replace the Board of Education as the designated "State Board of Vocational Education". This action was intended to emphasize the role of post secondary vocational education in Hawai'i. As a product of that master plan, the Hawai'i Office for Vocational Education was established by the Legislature in 1968. It was empowered by Chapter 305 A of the Hawai'i Revised Statutes: Vocational Education *under Federal Aid, to cooperate with the federal government and do all things necessary to entitle the State to receive federal funds. It also represents the State in matters relating to federal legislation having to do with vocational education.* The Board of Vocational Education is also charged with establishing the qualifications to be possessed by vocational education teachers. The Office for Vocational Education changed its name to the Office for Career and Technical Education in the late 1990's. The name change reflected a thought that the term, vocational education, is prejudicial.

The Office of the Director of Career and Technical Education monitors programs at both the state and federal levels to assure that the purposes of vocational education

legislation are met. It is authorized by law to perform the functions of the State under the U. S. Department of Education General Administrative Regulations authorized by the federal Carl D. Perkins Vocational and Technical Act of 1998. To perform those regulatory functions in Hawai`i, the Office for Career and Technical Education is focused on public education and is not involved in the regulation of proprietary vocational schools. It does not monitor proprietary vocational schools. Nor is it involved in setting education standards for the professions.

The State Post Secondary Education Commission was established in 1974 by Chapter 305H of the Hawai`i Revised Statutes. Its membership is comprised of the seven members of the Board of Regents of the University of Hawai`i and four other members from the public. The Commission's powers under Section 305H-2 of the Hawai`i Revised Statutes include cooperating with the Federal Government to assure that Hawai`i qualifies to receive funds under Public Law 92-318, the Higher Education Act of 1965. Further, the Commission is to represent Hawai`i when the receipt of federal funds for post secondary education is contingent on a representative state agency and no other agency is suitable.

Title 38 of the Code of Federal Regulations, Part 21, Vocational Rehabilitation and Education, Subpart D, The Administration of Educational Assistance Programs established such a contingency. It makes the receipt of federal funds for the education of veterans in courses not leading to a college degree in Hawai`i contingent on the approval of the courses by the State Approving Agency. Oshiro (1967) indicates that Governor John Burns established that the State Approving Agency would be attached to the University of Hawai`i for administrative purposes. At the University of Hawai`i, the

State Approving Agency has been attached to the State Post Secondary Education Commission.

Instruction Letter Number One, which lists the institutional and course approval criteria of the United States Veterans Administration (1996), requires that the State Approving Agency review the following in the process of approving proprietary vocational schools for the VA:

- A calendar showing school terms, holidays, and other important dates
- Enrollment policies
- Attendance policies
- Academic standards
- Student conduct policies and dismissal policies
- Fee and tuition schedules
- Refund policies
- Facilities and equipment
- Course outlines
- Policies for granting credit for previous work
- Graduation requirements
- Staff qualifications
- Record keeping practices
- Compliance with all local, city, county, and state regulations including fire, building, and health codes
- The school's financial status

- Advertising
- And, any additional criteria deemed necessary.

This list of points for review by the State Approving Agency is very similar to the list of points for review by the School Improvement/Community Leadership Branch (SICLB) of the Hawai'i Department of Education (DOE) in licensing proprietary vocational schools.

### ***5.3 States' Agencies Regulating Massage Therapy And Massage Therapy Training***

The New Jersey Massage, Bodywork, and Somatic Therapist Certification Act of 1999 established a six-member Massage, Bodywork, and Somatic Therapy Examining Committee under the New Jersey Board of Nursing. The recently formed committee is charged with creating regulation standards for certification. The Board of Nursing is in the process of promulgating the necessary rules and regulations. The North Carolina Community College System licensed massage and bodywork therapy training programs until March of 2000. Currently there is no licensing agency in the State. However, the rules of the North Carolina Board of Massage and Bodywork Therapy provide for that Board to approve massage and bodywork therapy schools. The requirements for approval by the Board are essentially the same as the earlier requirements for school licensure (Charles Wilkins, personal communication 12 April, 2000.)

In Hawai'i, Section 452 of the Hawai'i Revised Statutes established the Board of Massage Therapy (BOM) in the Department of Commerce and Consumer Affairs (DCCA) for administrative purposes. The BOM has five members. Three members are

required to be actively employed as massage therapists and to have at least three years experience in the field. Two members of the BOM are from the general public. The BOM has statutory authority to adopt rules for training and for licensure. In practice, it gives minimum supervision to proprietary massage therapy schools that are licensed by the DOE.

#### ***5.4 Private Agencies Regulating Massage Therapy And Massage Therapy Training***

Some states' massage therapy laws and rules identify private agencies whose approval or certification of a massage therapy training program or entry examination will suffice for state approval or certification of that program or examination. In Hawai'i, Paragraph 16-84-48 (c) of the Hawai'i Administrative Rules, the rules of the Board of Massage Therapy (BOM), allows students who have completed a course approved by the Rolf Institute to sit for the massage therapy licensing exam. The Rolf Institute of Structural Integration certifies graduates of the Rolfing training program, which enables them to offer the work to the public. And, the Rolf Institute (2002) is the sole certifying body for Rolfers. Rolfing does include manipulation of the soft tissues of the body and is a form of massage therapy under Hawai'i's massage therapy law. The training requirements for certification as a Rolfer meet and surpass the basic training required for massage therapy licensure in Hawai'i. For those reasons, the completion of training at the Rolf Institute is sufficient education to qualify for the Hawai'i State Massage Therapy Examination. Like Hawai'i, New Mexico and Texas specifically require Rolfers to be licensed massage therapists. Maine specifically exempts Rolfers from licensing as

massage therapists. The other states that regulate massage therapy do not mention Rolfers in their massage therapy laws or rules.

The American Massage Therapy Association (n.d., a) states that its mission is to develop and advance the art, science and practice of massage therapy. One of its stated goals is to be a leader and a resource for issues in the field of massage therapy including: definitions, practice and education standards, legislation, and regulation. Founded in 1943, the American Massage Therapy Association (AMTA) began a program to legitimize massage therapy through state laws. The AMTA has established the American Massage Therapy Association Government Relations Committee (2000) which operates a Law and Legislative Assistance Program. AMTA state chapters are closely affiliated with the national organization and are supported by it. AMTA members and state chapters have been and are at the forefront of efforts to adopt and revise massage therapy legislation and rules in Hawai'i and in other states. In West Virginia, the state affiliate of the AMTA nominates three of the five members of the Massage Therapy Licensing Board.

The AMTA has been and is influential in setting standards of education for massage therapists. Schools and programs that are members of the AMTA Council of Schools must offer curricula approved by the American Massage Therapy Association (n.d.,b). The AMTA is the parent organization for the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) which, now, is an independent, private, and non-profit certification program for massage therapists and other bodyworkers.

Although it is now independent, the National Certification Board for Therapeutic Massage and Bodywork (2000) was a major project of the AMTA. It was founded as a

nonprofit organization in 1992. At its core is a purpose to foster high standards for massage therapy and it is committed to active participation in the evolution of the profession. The West Virginia Massage Board will approve education at a school whose program meets or exceeds the training required to be eligible for the NCBTMB.

Passage of the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB) is required for certification by the NCBTMB. Fourteen states require passage of the NCETMB for massage therapy licensure and require no other examination. (Alabama, Arkansas, Connecticut, Delaware, Florida, Iowa, Maine, Nebraska, Oregon, Rhode Island, South Carolina, Virginia, Washington, and West Virginia.) Two states, Arkansas and New Hampshire, require passage of the NCETMB and a state massage practicum examination. Arkansas also requires the passage of a state jurisprudence exam related to massage laws and rules. Three other states, New Mexico, Utah, and Wisconsin, require passage of the NCETMB and a state jurisprudence examination. Utah further requires the passage of a state massage theory examination. Louisiana requires passage of the NCETMB and an oral state examination. Tennessee will accept either passage of the NCETMB or the completion of an approved training program to meet requirements for licensure. In its Massage Practice Laws Information Guide, the American Massage Therapy Association (n.d., c) confirms that nineteen states require passage of the NCETMB for massage therapy licensure and a twentieth state will accept passage. The National Certification Board for Therapeutic Massage and Bodywork (2000) states that the NCETMB is accredited by the National Commission for Certifying Agencies.

The National Commission for Certifying Agencies (NCCA) was created in 1989 by the National Organization for Competency Assurance (1997) to establish voluntary standards for agencies that certify individuals in professions and occupations. Voluntary, non-profit organizations that have administered at least two national examinations are eligible for NCCA accreditation. Two states, North Dakota and Tennessee, will accept the passage of any massage therapy examination accredited by the NCCA as sufficient qualification for licensure.



## **CHAPTER 6**

### **A SUMMARY OF FINDINGS**

The intent of this study was to inform a discussion about how Hawai'i might better regulate both proprietary massage therapy schools and proprietary vocational schools in general. To do so, this study began with a review of the history of the regulation of massage therapy schools and training programs and other proprietary vocational schools in Hawai'i. That history was used to build an understanding of the status quo of such regulation in Hawai'i. The study then explored the regulation of proprietary massage therapy schools in all thirty states which regulate massage therapy by reviewing the relevant statutes and codes. The massage therapy statutes and rules of *all thirty of those states* were reviewed. Because proprietary massage therapy schools are regulated as proprietary vocational schools, the proprietary vocational school laws of eight of those thirty states and the proprietary vocational school rules of eleven of those states were reviewed. The regulating agencies, some federal, some state, and some private, that are referred to in those laws and rules were noted for each state and the mission statements and duties of those agencies were reviewed. Some of those agencies are focused on the regulation of massage therapy. Others of those agencies are focused on the regulation of proprietary vocational schools

The territorial and state governments of Hawai'i found that the legislative regulation of proprietary vocational schools like massage therapy schools and training programs is important. Act 73 of the Session Laws of Hawai'i, enacted in 1933, was Hawai'i's earliest massage legislation and was to protect the public from the spread of contagious diseases. It was concerned with the laundering and sanitation of uniforms and

linen supplies. The Hawai'i State Legislative Auditor (2002) reports that, in 1939, the Territorial legislature found that regulation would protect legitimate proprietary vocational schools from unfair competition and gave the authority to license all private trade, vocational, and technical schools to the Department of Education (DOE).

In 1945, Act 116 of the Session Laws of Hawai'i assigned the regulation of massage for public health to the Department of Health (DOH). That responsibility is executed under Paragraph 11-11-4 of the Hawai'i Administrative Rules, promulgated by the DOH as a code of sanitation that requires that hot water be readily available for washing hands and that linen supplies are washed in hot, soapy water with chlorine bleach. Currently, Paragraph 8-101-6 (g) of the Hawai'i Administrative Rules, promulgated by the DOE, requires that all licensed proprietary vocational school staff have current valid tuberculosis clearance certificates from the DOH and, thus, the DOE is also functioning to control contagion. Paragraph 16-84-23 (j) (1) (A) of the Hawai'i Administrative Rules, promulgated by the Board of Massage Therapy (BOM), further serves the State's interest in preventing the spread of diseases by requiring that massage school curricula include training in sanitation and hygiene.

In 1997, the Hawai'i State Legislative Auditor (1997) reviewed the state regulation of massage therapy schools and recommended that regulation be continued for the purposes of maintaining minimum education standards and protecting students. That review further recommended that proprietary vocational school law, Section 302A-425 of the Hawai'i Revised Statutes, be amended to emphasize those purposes. The Hawai'i State Legislative Auditor (2002) later reported that Act 57 of the 1998 legislative session did amend Section 302A-425 of the Hawai'i Revised Statutes to redefine the purpose of

the licensing law to include the protection of consumers and to ensure adequate educational quality at proprietary vocational schools. In that later report, the Hawai`i State Legislative Auditor concluded that the state licensing of proprietary vocational schools is warranted and should be continued; to protect students from financial losses should their school suddenly close, to enable schools to be accredited and to participate in financial assistance programs, and to protect consumers.

Like most of the other states that regulate massage therapy, Hawai`i has placed the regulation of proprietary massage therapy schools at two agencies. The School Improvement/Community Leadership Branch (SICLB) of the Learner, Teacher, and School Support Division of the Department of Education (DOE) regulates those massage therapy schools that choose to be licensed as proprietary vocational schools. DOE Superintendent Hamamoto (2002) acknowledged that the DOE is unable to properly administer any regulatory program that is not compatible with the Department's primary mission of educating K-12 and adult/community students and said that the DOE is especially supportive of a recommendation to transfer the licensing of Private Trade, Vocational, and Technical Schools to the Department of Commerce and Consumer Affairs.

Section 452-6 of the Hawai`i Revised Statutes empowers the Board of Massage Therapy (BOM) at the Department of Commerce and Consumer Affairs (DCCA) to regulate those aspects of massage therapy training that relate to the massage therapy industry. BOM duties include the oversight of massage therapy training programs including proprietary massage therapy schools. Proprietary massage therapy schools that are licensed by the DOE are given minimum supervision by the BOM. Paragraph 16-84-

23(i) of the Hawai'i Administrative Rules, promulgated by the BOM at the DCCA is written so that *proprietary massage therapy training institutions approved by the BOM* need not be licensed as proprietary vocational schools by the DOE. Also, the BOM will register massage therapy training that involves five or less students at a time as Workshops and those training programs need not be licensed by the DOE.

The Director of the DCCA, Kathryn Matayoshi (2002), believes that the DCCA lacks sufficient expertise to take on the licensing of proprietary vocational schools. The DCCA does not want the responsibility of administering the licensing program. The Hawai'i State Legislative Auditor (2002, p.20) says that officials at the DCCA believe that the *expertise for licensing proprietary vocational schools is a specialty of the DOE.*

Sections 302A-101 (1) to (7): Private trade, vocational, or technical school of the Hawai'i Revised Statutes do provide exemptions from licensure for vocational schools and training programs that are not proprietary businesses. Section 302A-101 (8) of Hawai'i law also provides exemptions from licensure by the DOE for proprietary vocational schools that are registered at the DCCA. That exemption allows schools to register with the DCCA or with a Board or Commission at the DCCA rather than be licensed by the DOE and, thus, creates a large loophole through which it appears that *seventy five per cent of Hawai'i's proprietary vocational schools avoid licensure and avoid state regulation*. The language of the legislation is problematic. It exempts from licensure by the DOE schools that are registered by the DCCA or one of its Commissions or Boards. The Hawai'i State Legislative Auditor (2002, p.13) reported that most of the proprietary vocational schools identified by the DOE have simply registered with the DCCA as businesses and have avoided any regulation as schools by the DOE. The DOE

estimates that there are two hundred proprietary trade, vocational, and technical schools in the state. Yet, only fifty one of those schools are currently licensed by the DOE.

Thirty states and the District of Columbia regulate massage therapy and massage therapy schools and training programs (Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawai'i, Iowa, Louisiana, Maryland, Maine, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.) Ohio has the oldest state law directly regulating massage therapy. It was enacted in 1916 and was the only such legislation for almost two decades. The Hawaiian Territorial Legislature began regulating massage therapy in 1933 by requiring that the Department of Health set sanitation standards for the massage industry. In 1943, Florida enacted legislation to regulate massage therapy. Arkansas, Nebraska, and North Dakota began the legislative regulation of massage therapy in the 1950's. New York was the only state to enact such regulation during the 1960's.

Thus, by 1970, only seven states regulated massage therapy by law. Oregon, Rhode Island, and Washington enacted massage therapy legislation during the 1970's. In the 1980's, Texas and Utah legislated the regulation of massage therapy bringing the total number of states regulating massage therapy to thirteen. In the 1990's, another seventeen states enacted such legislation. Those states are: Alabama, Connecticut, Delaware, Iowa, Louisiana, Maine, Maryland, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. In

2000, Colorado enacted a variation of massage therapy legislation when it exempted massage therapists from massage parlor legislation..

So, eighteen of the thirty states which regulate massage therapy only began such regulation since 1990. This trend to regulate massage therapy at the state level may or may not spread to the other twenty states. Although twenty states do not regulate massage therapy on a statewide basis, some cities and counties within those states do regulate massage therapy. Those states may decide that local regulation is preferable.

Most of the massage therapy schools and training programs in those states are proprietary vocational schools. Reasons for regulating proprietary massage therapy schools and training programs stated by those thirty states include:

- First, some of the individuals completing such training will be delivering massage therapy under the direction of a medical doctor in such diverse settings as rehabilitative clinics and hospital neonatal units,
- Second, the consumer has an interest in being sure that the deliverer of services is qualified to do so. Typically, that interest has been protected by states' governments,
- Third, there is a need to assure the quality of massage therapy delivered on workman's compensation and on automobile insurance claims.
- Fourth, since massage therapy schools are sometimes the recipients of public money, the public is entitled to a voice in regulating its use,
- Fifth, if proprietary schools are unregulated, legitimate massage therapy schools and training programs may face unfair competition.

- Sixth, as consumers, massage therapy students are vulnerable to unfair practices.
- Seventh, regulation can help assure fair access to the field of work
- And eighth, there is a potential for contagion at unsanitary clinics.

Hawai'i and sixteen other states have created Boards of Massage or Boards of Massage Therapy which are involved in the regulation of massage therapy training. (Alabama, Arkansas, Delaware, Florida, Louisiana, Missouri, North Carolina, North Dakota, New Hampshire, New Mexico, New York, Oregon, Tennessee, Utah, Washington, and West Virginia.) Two more states, Iowa and Nebraska, have Boards of Examiners for Massage Therapy for such regulation. The administrative placements of those agencies vary from state to state, but most are placed within health-related agencies. Five states, Hawai'i, Maine, New York, Rhode Island, and Wisconsin have their Boards of Massage placed at agencies which regulate professional licensing in other occupations as well. In Hawai'i, Section 452-4 (a) of the Hawai'i Revised Statutes, the Massage Therapy law created the BOM is at the DCCA.

Paragraphs 16-84-23(i)(2)(H) and 16-84-48(b)(3)(c) of the Hawai'i Administrative Rules state that the BOM will accept massage therapy training completed at: proprietary vocational school licensed by the DOE, a school approved by the American Massage Therapy Association (AMTA), the Roling Institute, the University of Hawai'i system, or at Workshops approved by the BOM. And, Paragraph 16-84-7(c) of the Hawai'i Administrative Rules says that the BOM will accept massage therapy training completed in apprenticeships. Four other states Florida, Missouri, Utah, and Washington also accept apprenticeships in massage therapy. In Hawai'i, apprenticeships

must be approved by the BOM. Paragraph 16-84-8 of the Hawai'i Administrative Rules requires that any person seeking a massage therapy apprenticeship must apply to the BOM and must submit a letter of agreement from the sponsoring massage therapist. Paragraph 16-84-2 of the Hawai'i Administrative Rules, promulgated by the BOM, defines sponsoring massage therapist as a massage therapist licensed in Hawai'i for at least three years who is employed by or registered with a licensed massage establishment and who is registered with the BOM as the person responsible for the direct supervision of the apprentice

Twenty two states, including Hawai'i, require that massage therapy schools or training programs be approved by the same agency that regulates massage therapy. (Alabama, Arkansas, Delaware, Florida, Hawai'i, Iowa, Maine, Missouri, Nebraska, North Carolina, North Dakota, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Washington, and Wisconsin.) Four states, Hawai'i, Louisiana, Oregon, and Virginia, will accept licensing as a Proprietary Vocational School by their Departments of Education as sufficient qualification for massage therapy schools. Five states, Maryland, Missouri, South Carolina, Tennessee, and Virginia, will accept massage therapy schools and training programs that are approved by their Higher Education Commissions. Two states, North Dakota and Rhode Island, require that massage therapy schools conform to standards developed by the American Massage Therapy Association (AMTA). Paragraph 16-84-48(b)(3)(c) of the Hawai'i Administrative Rules says that Hawai'i would accept training at a massage therapy school approved by the AMTA.



Five states, Hawai'i, New York, Ohio, Oregon, and Texas, will accept training relevant to massage therapy that is completed at community colleges. Paragraph 16-84-23(i)(2)(H) of the Hawai'i Administrative Code indicates that Hawai'i will also accept relevant training at the University of Hawai'i and will accept massage therapy training at Workshops approved by the BOM. Hawai'i is also one of five states that will accept massage therapy training completed as apprenticeships. In Hawai'i, apprenticeships must have the prior approval of the BOM. Table 1 summarizes some of the states' regulations for massage therapy training.

Table 1State Regulation of Massage Therapy Schools

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
Alabama	1996	Board of Massage Therapy	650	State Massage Therapy Examination or NCETMB <sup>a</sup>
Arkansas	1957	State Board of Massage Therapy	500	State Massage Therapy Examination or NCETMB, plus Practicum and Jurisprudence Examination

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
Colorado	2000	Local  Governmental Regulating Agencies	500	None
Delaware	1993	Board of Massage and Bodywork	100 Certified Massage Technician 500 Licensed Massage Therapist	NCETMB
Florida	1943	Department of Health	500 at approved school or 1,456 in apprenticeship	NCETMB
Hawai'i	1933	Board of Massage Therapy	570 plus Cardio- Pulmonary Resuscitation Training	State Massage Therapy Examination

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
Iowa	1992	Department of Public Health	500	NCETMB
Louisiana	1992	Board of Massage Therapists	500	NCETMB
Maine	1991	Department of Professional and Financial Regulation	500	NCETMB accepted in lieu of educational hours
Maryland	1996	Board of Chiropractic Examiners	500	NCETMB
Missouri	1999	State Board of Therapeutic Massage	500	NCETMB

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
Nebraska	1955	Health and Human Services Credentialing Division	1,000	NCETMB
New Hampshire	1995b	Office of Program Support	750	NCETMB
New Jersey	1999	Board of Nursing	500	NCETMB
New Mexico	1991b	Board of Massage Therapy	650	NCETMB and State Jurisprudence Examination
New York	1968	Board of Massage Therapy	1,000	State Massage Therapy Examination

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
North Carolina	1998	Board of Massage and Bodywork Therapy	500	NCETMB
North Dakota	1959	Massage Board	750	State Massage Therapy Examination and Practicum
Ohio	1916	State Medical Board	600	State Massage Therapy Examination
Oregon	1971	Board of Massage Technicians	500	State Massage Therapy Examination and Practicum
Rhode Island	1979b	Department of Health	500	NCETMB

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
South Carolina	1996	Department of Labor	500	NCETMB
Tennessee	1995	Massage Licensure Board	500	NCETMB
Texas	1985	Department of Health	300	State Massage Therapy Examination and Practicum
Utah	1981	Department of Commerce	1,000	State Massage Therapy Examination or NCETMB
Virginia	1996	Board of Nursing	500	NCETMB
Washington	1976	Department of Health	500	NCETMB and State Practicum

<b>State</b>	<b>Date of original massage therapy legislation</b>	<b>Agency regulating massage therapy</b>	<b>Educational hours required for licensing</b>	<b>Required examinations</b>
West Virginia	1998	Massage Therapy Licensure Board	500	NCETMB
Wisconsin	1998	Department of Regulation and Licensing	600	NCETMB or Equivalent, plus State Jurisprudence Examination

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<sup>a</sup> The National Certification Examination for Therapeutic Massage and Bodywork.

<sup>b</sup> Various sources offered different dates for the first massage therapy legislation in these states. The dates included in this table and accepted for this study are from the agency regulating massage therapy in these states.



This study reviewed the Proprietary Vocational Education laws of eight states. (Connecticut, Florida, Hawai'i, Maine, Maryland, Ohio, Utah, and Virginia.) Chapter 10a-22 of the Connecticut General Statutes concerns proprietary vocational schools and is typical of such law. It defines private occupational school to mean “any entity offering instruction in any form or manner in any trade, industrial, commercial, or service occupation for any remuneration, consideration, reward, or promise of whatever nature, except ‘private occupational school’ shall not include: instruction offered under public supervision and control; instruction conducted by a firm or organization solely for the training of its own employees or members; or, instruction offered by a school authorized by the General Assembly to confer degrees”. This is representative of the definitions used by other states. Section 10a-22b (d) of the Connecticut General Statutes requires that, when a proprietary vocational school applies for authorization in Connecticut, an evaluation team determines if the school meets requirements for such authorization.

Section 10a-22b (e) of the Connecticut General Statutes says that the evaluation team is to determine whether or not:

- The quality and content of each course or program of instruction, training or study can reasonably and adequately achieve the stated objective for which such course or program is offered;
- The school has adequate space, equipment, instructional materials, and personnel for the instruction offered.
- The qualifications of directors, administrators, supervisors, and instructors do reasonably and adequately assure that students receive education consistent with stated objectives for which a course or program is offered;

- Students and other interested persons are provided with a catalog or similar publication describing the courses and programs offered, course and program objectives, the length of programs and courses, schedules of tuition, fees, and all other charges and expenses necessary for completion of the course or program, and cancellation and refund policies;
- Upon satisfactory completion of the course or program, each student is provided appropriate educational credentials by the school;
- Adequate records are maintained by the school to show attendance and grades, or other indicators of student progress, and standards are enforced relating to attendance and student performance;
- The applicant school is financially sound and capable of fulfilling its commitments to students;
- Any student housing owned, leased, rented, or otherwise maintained by the applicant school is safe and adequate The Connecticut evaluation team may also indicate in its report such recommendations as may improve the operation of the applicant school. The requirements for authorization in Connecticut are representative of requirements in other states.

This study also reviewed the Proprietary Vocational Education administrative rules, codes, or regulations of eleven states. (Delaware, Florida, Hawai`i, Louisiana, Maine, New Hampshire, Utah, Virginia, Washington, West Virginia, and Wisconsin.) All eleven states whose proprietary vocational school rules were reviewed list the required contents of the application for authorization as a proprietary vocational school. The application contents required by Chapter 147(3)(A)(1) of the Rules of the Maine

Department of Education are typical. The required contents include: fire and health department clearances, financial statements, accreditation statements, school calendars, curricula, school record forms, catalogues, advertising, identities of solicitors, and refund policies.

All of the eleven states whose proprietary vocational school rules were reviewed in this study, including Hawai'i, require that a proprietary vocational school provide for the return of unused portions of tuitions in the event that the school is unable to deliver instruction. The Hawai'i State Legislative Auditor (2002) found that Hawai'i's requirement of surety bonds is inadequate to protect students and recommended the establishment of a tuition recovery fund. Kathryn Matayoshi (2002), Director of the Department of Commerce and Consumer Affairs (DCCA) disagreed with that recommendation and suggested that it would be impractical to build a recovery fund from the small population of fifty one licensed proprietary schools.

All eleven states provide for the disposition of permanent school records in the event that the school closes. Eight of those eleven states require that the closing school forward student records to the regulatory agency. (Delaware, Hawai'i, Louisiana, Maine, New Hampshire, Utah, Virginia, and Washington.) In Hawai'i, Section 8-101-3 (18) (I) of the Hawai'i Revised Statutes requires that permanent school records of a licensed school that has closed are to be housed at the DOE

Florida law authorizes the State Board of Nonpublic Career Education to ensure that the administrators of licensed schools are qualified to conduct the operations of their respective positions and to require such administrators to receive continuing education and training. The Board is required by law to adopt general qualifications for each of the

administrative positions and to establish guidelines for the minimum amount and the type of continuing education and training to be required. Section 246.222 of the 1999 Florida Statutes requires that records of the continuing education and training received by administrators must be maintained at the school and available for inspection at all times. Section 173.604.2 (1) of the Missouri Revised Statutes requires that the Coordinating Board for Higher Education require that the educational and experience qualifications of administrators are adequate for students to receive training consistent with the published objectives of the course. Section 3332-1-08 (C) (2) of the Ohio Revised Statutes requires that school administrators must have educational qualifications and work experience related to their areas of responsibility. Hawai'i law does not address the qualifications of proprietary vocational school administrators.

The rules of six states, Florida, Hawai'i, New Hampshire, Virginia, Washington, and Wisconsin, set standards for proprietary vocational school administrators. Paragraph 6F-2.002 (3) of the Florida Administrative Rules requires that each proprietary vocational school provide a competent adequate administrative staff to ensure the accomplishment of the purpose of the school. Paragraph 8-101-6 of the Hawai'i Administrative Rules requires that a proprietary vocational school furnish the DOE satisfactory evidence of the principal's qualifications to act as principal. Paragraphs 8-101-3 (1) and (2) of the Hawai'i Administrative Rules indicate that such evidence includes a complete statement of the training and experience that qualifies the principal and letters from at least three persons testifying to the character, ability, and competency of the principal. There is no requirement that the three persons writing those letters have any special expertise in evaluating the qualifications of a principal. Paragraph Pos 1102.04 (c) of the New

Hampshire Code of Administrative Rules requires that a proprietary vocational school designate one person as director or administrator and that that person be a college or university graduate or have five years experience in the trade which is to be taught and have at least one year's experience as a teacher in one or more of the school's major subjects. Paragraph 4.1 of Virginia Regulation 270-01-0034 requires that proprietary vocational school administrators hold a college degree with a major in one of the areas of study offered by the school or appropriate to the job, or qualify by a combination of education and experience, or document four years of experience related to the job responsibilities. Paragraph 28C.10.050(6)(c) of the Revised Codes of Washington requires that school directors must have at least two years of experience in either school or business administration, teaching, or other experience related to their duties. Paragraph EAB 4.04 (1) (b) of the Wisconsin Administrative Code requires that proprietary vocational school administrators have suitable educational qualifications and experience, and be of good reputation and character.

Paragraph 6F-2.002 (6) (c) (1) of the Florida Administrative Code, Florida education rules, requires that proprietary vocational school instructors: be of good character; be licensed in the trade which they teach; and, have completed a four-year college curriculum, or have completed training and have two years of job experience, or have three years of successful job experience in the subjects to be taught. Paragraph 8-101-(6) (1) of the Hawai'i Administrative Code, Hawai'i Administrative Rules on the Licensing of Private Trade, Vocational or Technical Schools requires that all instructors at licensed proprietary vocational schools also be licensed by the DOE. To be licensed by the DOE, instructors must have at least three years of successful practical experience

beyond the standard learning period for the trade they are to teach. By avoiding licensure by the DOE, proprietary vocational schools can employ instructors who are not licensed by the DOE and who do not have the minimum qualifications required by the DOE for teaching. Paragraphs 901 A.5 and A.6 of the Louisiana Rules and Regulations require that proprietary school faculty describe in sufficient detail such educational attainment and years of work experience as to show pertinence to the subject taught. There is no explanation of the term sufficient detail. Paragraph 147 (6) (B) (2) of the Code of Maine Regulations requires that an instructor be licensed in the field being taught or have extensive training or adequate experience in the area being taught. Part Pos 1102.12 (b) of the New Hampshire Code of Administrative Rules requires that proprietary vocational school instructors have a bachelor's degree in the field being taught, or possess a valid adult or secondary school teaching certificate in the field of instruction, or have five years experience and tradesman status in the field to be taught, or have held a journeyman's license for five years in the field being taught. Rule 765-171-4.1.1 of the Utah Administrative Code requires that proprietary vocational school faculty be academically prepared in the area of emphasis at the appropriate level or have equivalent job experience based on reasonable standards. Virginia Regulation 270-01-0034 Part 4.2 requires that proprietary vocational school instructional staff have a college or university degree with a major in area to be taught or a related area, or be a graduate of a certified proprietary vocational school in the area to be taught plus have two years occupational experience in the field, or have a minimum of four years work experience above the learning stage in the area to be taught. Paragraph 28C.10.050 (6) (d) of the Revised Codes of Washington requires that faculty who teach a course related to an

occupation for which the student must subsequently be licensed must hold or be qualified to hold such a license and have at least two years of work experience or postsecondary education or a combination of the two or possess current evidence of being qualified to teach that has been issued by a regulatory agency. West Virginia rules for proprietary vocational schools do not address faculty qualifications. But, Louise Franklin (personal communication, 21 March, 2000) of the West Virginia Massage Therapy Licensure Board reports that the rules of the West Virginia Massage Therapy Licensure Board do require that massage therapy instructors be certified by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). Paragraph EAB 4.04 (1) (b) of the Wisconsin Administrative Code requires that proprietary vocational school faculty have suitable educational qualifications and experience, and be of good reputation and character. The term, suitable educational qualifications and experience, is not elaborated.

New Hampshire rules require that a proprietary vocational school documents the need for a school like itself with its application for licensure. Pos 1102.07 of the New Hampshire Code of Administrative Rules requires that proprietary vocational schools applying for licensure submit documentation of the job opportunities available to persons who have completed the proposed program. It also requires evidence of a state-specific market demand for persons who have completed the proposed program.

The federal government also has interests in regulating proprietary schools and programs, some of which receive federal monies. There are at least two federal agencies, the United States Department of Education (USDOE) and the Veterans' Administration (VA), whose policies influence states' regulation of proprietary vocational schools. Some states' regulatory agencies accept massage therapy training at a school that is

accredited by an accrediting agency that is recognized by the USDOE. Some states' agencies will accept the successful completion of an examination given by an examination agency recognized by the USDOE in lieu of otherwise required examinations. The establishment of each student's ability to benefit from the proprietary vocational school's program of study that is required by Delaware, Florida, and New Hampshire reflects criteria established by the USDOE. In its publication, *The Student Guide 2001-2002*, the USDOE (2002, p.3) discusses student aid topics and states that a student who passes an ability-to-benefit test may be qualified for federal aid without a high school diploma or a General Education Development (GED) Certificate.

In order for proprietary vocational school students who qualify to be eligible for veteran's education benefits, Paragraph 21.4250 (a) of Title 38 of the Code of Federal Regulations requires that, if their course of study does not lead to a standard college degree, it must be approved by the State Approving Agency for the VA. The VA approval process is left to the discretion of each State Approving Agency but Paragraph 21.4250 (b) of Title 38 of the Code of Federal Regulations says that the approval process must comply with the Code of Federal Regulations. Each State Approving Agency furnishes the VA a list of approved schools specifying the courses that are currently approved.

Some proprietary vocational schools, including massage therapy schools in Hawai'i, seek approved status from the Veterans' Administration (VA). Such status allows qualified students, both veterans and active duty military personnel, to use their veterans' educational benefits for tuition and other costs at the approved schools. Approved status for the VA can only be granted by the State Approving Agency which,



in Hawai'i is attached to the State Post Secondary Education Commission at the University of Hawai'i for administrative purposes.

The attachment of the State Approving Agency for the VA to the University of Hawai'i is problematic. The Hawai'i State Legislative Auditor (2002, p.19) indicates that there is a potential conflict of interest in having the university regulate proprietary schools that teach courses that are similar to courses offered through the university's community college system. Section 305H-2 of the Hawai'i Revised Statutes does empower the State Post-Secondary Education Commission to cooperate with the Federal government in order to qualify the State to receive funds made available through VA educational assistance programs. But Section 305H-2 of the Hawai'i Revised Statutes also says, "No such funds appropriated by the legislature may be used to aid a person attending an institution not owned or exclusively controlled by the State or a department of the State or to pay for any staff work distributing federal or private funds to students attending such schools".

Oshiro (1967) indicated that provisions are made by the VA for the reimbursement to the State for salary and travel expenses incurred by the State Approving Agency. Those reimbursed funds might be construed to be paying for any state staff working to distribute VA funds to students attending such schools. But, the Hawai'i State Legislative Auditor reads Section 305H-2 to preclude the State Post Secondary Education Commission of the University of Hawai'i, as a state agency, from assisting proprietary schools in obtaining funding.

Most of the states' agencies and the private agencies concerned with regulating proprietary massage therapy schools are one of two types of agencies: those that regulate

massage therapy and those that regulate proprietary vocational schools. In New York, however, one agency, the New York State Education Department (2000a), is responsible for regulating both the massage therapy profession and proprietary vocational schools. That same agency also functions at the federal level and serves as the State Approving Agency for the VA.

In Connecticut, one agency, the Connecticut Department of Higher Education (2000), has assumed regulatory duties at both the federal and state levels. At the federal level, the agency serves as the State Approving Agency for the VA, implements the National Service Program, administers the Eisenhower Professional Development Program, operates federal student aid programs, assures student access, and operates an Education and Employment Information Center. Among other duties at the state level, the Connecticut Department of Higher Education oversees the operation of private occupational and trade schools, including massage therapy schools. Like Connecticut and New York, New Hampshire and Wisconsin have one agency regulating proprietary vocational schools at both the federal and state levels.

Hawai'i has separate and distinct agencies regulating proprietary vocational schools at the federal and state levels. The State Approving Agency for the Veterans' Administration, administratively attached to the State Post Secondary Education Commission at the University of Hawai'i, regulates those proprietary vocational schools that choose to be approved as veterans' education providers. The School Improvement/Community Leadership Branch (SICLB) of the Department of Education (DOE) administers the State proprietary vocational school licensing program. The duties of these agencies overlap and are duplicative, but only for schools seeking VA approval.

The policies and practices followed by the SICLB in regulating schools that choose to be licensed by the DOE are very similar to those of the State Approving Agency in approving schools for the VA.

The laws of five states, Maryland, Missouri, South Carolina, Tennessee, and Virginia, accept massage therapy schools and training programs that are approved by their Higher Education Commission or a Higher Education Coordinating Board. Four more states have departments, commissions, or councils of Higher Education but do not require that massage therapy schools be approved by those agencies.

Private agencies referred to in states' massage therapy laws and rules include: the Roling Institute, the American Massage Therapy Association (AMTA), the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), and the National Commission for Certifying Agencies. The Roling Institute references are based on the fact that Roling is similar to massage therapy and is regulated as massage therapy by some states. The Roling Institute does not set standards for other schools. The AMTA and the NCBTMB do set standards for massage therapy schools and training programs. One standard set by the AMTA (n.d., b) is that schools in jurisdictions that require licensing be licensed.

The National Certification Board for Therapeutic Massage and Bodywork (2000) was a major project of the AMTA during the 1990's. It was founded in 1992 as an independent non-profit organization. At its core is a purpose to foster high standards for massage therapy and it is committed to active participation in the evolution of the profession. Passage of the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB) is required for certification by the NCBTMB. American Massage

Therapy Association (2002c ) reports that fourteen states require passage of the NCETMB for massage therapy licensure and require no other examination. (Alabama, Arkansas, Connecticut, Delaware, Florida, Iowa, Maine, Nebraska, Oregon, Rhode Island, South Carolina, Virginia, Washington, and West Virginia.) Two states, Arkansas and New Hampshire, require passage of the NCETMB and a state massage practicum examination. Arkansas also requires the passage of a state jurisprudence exam related to massage laws and rules. Three other states, New Mexico, Utah, and Wisconsin, require passage of the NCETMB and a state jurisprudence examination. Utah further requires the passage of a state massage theory examination. Louisiana requires passage of the NCETMB and an oral state examination. Tennessee will accept either passage of the NCETMB or the completion of an approved training program to meet requirements for licensure. Nineteen states, then, require passage of the NCETMB for massage therapy licensure and a twentieth state will accept passage.

Thirteen of those twenty states are among the eighteen states that began statewide regulation of massage therapy since 1990. (Alabama, Connecticut, Delaware, Iowa, Louisiana, Maine, Maryland, New Hampshire, New Mexico, South Carolina, Tennessee, Virginia, and Wisconsin.) And seven of those twenty states are among the thirteen states which had enacted massage therapy legislation prior to 1990. (Arkansas, Florida, Nebraska, Oregon, Rhode Island, Utah, and Washington.) More than two-thirds of the states with new massage therapy legislation since 1990 will accept passage of the NCETMB as full or partial qualification for licensing and, so will almost two-thirds of the states with legislation before 1990. In the ten years since its inception, the acceptance of the NCETMB has spread widely among the states that regulate massage therapy.

The National Certification Board for Therapeutic Massage and Bodywork (2000) is accredited by the National Commission for Certifying Agencies. The National Commission for Certifying Agencies was created in 1989 by the National Organization for Competency Assurance (1997) and it establishes voluntary standards for agencies that certify individuals in professions and occupations.

Nineteen states will license massage therapists after five hundred hours of education. (Arkansas, Colorado, Connecticut, Delaware, Florida, Iowa, Louisiana, Maine, Maryland, Missouri, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, and West Virginia.) Thirteen of those nineteen states are states which began the legislative regulation of massage therapy after 1990.

(Connecticut, Delaware, Iowa, Louisiana, Maine, Maryland, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.)

To be eligible to take the NCETMB, and thus to be eligible for certification by the NCBTMB (2000, pp.6-7), an applicant must document five hundred hours of education or the equivalent. The fact that nineteen states, thirteen of which have only recently enacted massage therapy legislation, require five hundred hours of education for massage therapy licensure may reflect the influence of the AMTA and the NCBTMB on state legislation.

In Hawai'i, at least three State agencies, the Department of Health, the Department of Education, and the Board of Massage Therapy, are concerned with the prevention of the spread of diseases. All three of those agencies regulate licensed proprietary massage therapy schools to prevent contagion. While this would seem to assure that massage practitioners will be trained well in the prevention of contagion, there

is no provision that massage therapy students specifically learn about the universal precautions currently used by other health and medical professionals to prevent the spread of diseases.

## **CHAPTER 7**

### **CONSIDERATIONS AND CONCLUSIONS**

**The findings of this study suggest that the Hawai'i State Legislature take the following actions to fulfill the purposes of both proprietary vocational school law and massage therapy law:**

- Close the legislative loophole through which one hundred and fifty of the estimated two hundred proprietary vocational schools in Hawai'i are avoiding any meaningful regulation**
- Legislate that the School Improvement/Community Leadership Branch (SICLB) of the Learner, Teacher, and School Support Division at the Department of Education will administer the proprietary vocational school licensing program and both fund and empower that agency to do so.**
- Detach the State Approving Agency for the Veterans' Administration from the Office of Post Secondary Education at the University of Hawai'i and attach it to the School Improvement/Community Leadership Branch (SICLB) of the Learner, Teacher, and School Support Division at the Department of Education to avoid both the question of conflict-of-interest and the duplication of work and expense.**
- Establish a tuition recovery fund that involves all proprietary vocational schools, licensed or not, and which effectively protects**

**students from financial loss should their school suddenly close without delivering education for which tuition has been paid.**

- Establish clearly defined professional qualifications for proprietary vocational school administrators and faculty and require that the licensing agency monitor the schools to assure that staff meet those qualifications**
- Establish a monitoring program that assures that proprietary vocational schools do not exploit students as cheap labor or in any other way**
- Ensure fair and socially just access to the massage therapy profession by nurturing public massage therapy programs at community colleges, by continuing to allow massage therapy training in Workshops approved by the Board of Massage Therapy, and by continuing to allow massage therapy apprenticeships.**
- The Legislature should require that all massage therapy schools, both public and private, teach their students to use universal precautions with every client and patient for the prevention of the spread of diseases..**
- Authorize the Board of Massage Therapy to study the feasibility of requiring that applicants for massage therapy licensure pass the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) in lieu of, or in addition to State-generated examinations.**



It was 1939 when Hawai'i's Territorial Legislature first gave the Department of Education (DOE) the authority to regulate proprietary vocational schools. The Hawai'i State Legislative Auditor (2002) reports that that action was taken specifically to protect legitimate schools from unfair competition.

Now, more than sixty years later, schools still have a legal loophole through which to avoid regulation. The Hawai'i State Legislative Auditor (2002) found that only about fifty one of the estimated two hundred proprietary vocational schools in Hawai'i are currently licensed by the DOE. Legitimate and law-abiding proprietary massage therapy schools can be subjected to unfair and illegal business practices in spite of regulation by state agencies including: the Department of Commerce and Consumer Affairs (DCCA) and its Board of Massage Therapy (BOM), the DOE and its School Improvement/Community Leadership Branch (SICLB) of the Learner, Teacher, and School Support Division, and the State Approving Agency for the Veterans' Administration (VA).

Paragraph 8-101-6 (g) of the Hawai'i Administrative Rules, promulgated by the DOE, requires that all licensed proprietary vocational school staff have current valid tuberculosis clearances. But, the DOE is not monitoring the staff of the one hundred and fifty proprietary vocational schools that are not licensed. Paragraph 16-84-23 (j) (1) (A) of the Hawai'i Administrative Rules, promulgated by the BOM, requires that massage school curricula include training in sanitation and hygiene. But, no agency is checking to assure that the training is delivered.

The 1998 Legislature redefined the purpose of the proprietary vocational school law to include the protection of consumers and to assure adequate educational quality. But, that Legislature took no further actions related to proprietary vocational school law that would either protect consumers or assure adequate educational quality. The Hawai'i State Legislative Auditor (2002) concluded that the state licensing of proprietary vocational schools is warranted and should be continued: to protect students from financial losses should their school suddenly close, to enable schools to be accredited and to participate in financial assistance programs, and to protect consumers. Still, three-fourths of the proprietary vocational schools in Hawai'i are not licensed. As they are, Hawai'i's regulatory practices may serve only to lull Hawai'i's students, consumers, and legitimate law-abiding proprietary vocational schools into a false sense of security that they are protected from unfair business practices, inadequate education, and contagion.

The Hawai'i State Legislature must address the loophole which allows seventy five percent of the State's proprietary trade, vocational, and technical school to operate without any substantial regulation. Simply changing the language of Section 302A-101 of the Hawai'i Revised Statutes could assure that all proprietary vocational schools would face at least minimal regulation. Now the law reads so as to exempt proprietary vocational schools from licensure by the Department of Education (DOE) if the school is registered by the Department of Commerce and Consumer Affairs (DCCA) or by one of its administratively attached boards or commissions. Because of that exemption, schools can, and do, bypass the entire licensing process by simply registering with the DCCA's Business Registration Division. The law could read, and perhaps should read, so as to exempt schools that are registered by one of the boards or commissions of the DCCA.

That simple change will make it difficult for most of Hawai'i's proprietary vocational schools to avoid all regulation, as they now do, because the boards and commissions of the DCCA have their own regulations. But, it might be far more effective to drop the exemption altogether and to require that all proprietary vocational schools be licensed by the DOE.

This study suggests that the Legislature reopen its deliberations about which agency or agencies might best regulate proprietary vocational schools including massage therapy schools. The State Office for Career and Technical Education was inappropriately considered in the similar discussions of 1999. The State Approving Agency for the VA was not considered in those deliberations when it could have been. That agency does, already, regulate the proprietary vocational schools that choose to apply for and maintain an approved status for veteran's educational benefits with the Veteran's Administration. Connecticut, New Hampshire, New York, and Wisconsin have one agency serving as both the state approving agency for the VA and as their licensing agencies for proprietary vocational schools. The administrative re-attachment of the State Approving Agency to whatever agency is licensing proprietary vocational schools might serve Hawai'i well.

The other States have such a variety of agencies regulating massage therapy and massage therapy schools that it may seem as if any agency could perform the regulatory duties if organized and funded to do so. Hawai'i might well drop the ongoing discussion of what agencies other than the DOE and the BOM might better regulate massage therapy training that is delivered at proprietary vocational schools. The DOE is already in place and designated as the agency to regulate proprietary vocational schools. The BOM is

already in place and designated as the regulating agency for massage therapy and massage therapy training programs. A most practical approach would be to fund and empower these two agencies to perform their duties well. Having so funded them, the Legislature would be in a position to insist that they perform their duties well.

It is interesting that both the DOE and the DCCA have asked the Legislature to relieve them of duties related to proprietary massage therapy schools. It seems appropriate that the Department of Education would be involved in the regulation of proprietary vocational schools. In all states included in this study, the agency regulating massage therapy is involved in the regulation of massage therapy training. It is not easy to imagine that massage therapy training could be regulated without any involvement of the Board of Massage Therapy at the DCCA.

In all of the thirty states which regulate massage therapy, the agency regulating proprietary vocational schools is involved in the regulation of proprietary massage therapy schools. It is understandable that the DOE would want to be relieved of its responsibility to regulate proprietary vocational schools if it is not funded by the Legislature to do so. But, funding the SICLB at the DOE to regulate proprietary vocational schools is likely to be a simpler measure than forming a new agency or reorganizing another agency to do so. And, if the SICLB were actually regulating all two hundred proprietary vocational schools in Hawai'i the argument for such funding would be stronger.

This study found that the Hawai'i Department of Education's School Improvement/Community Leadership Branch (SICLB) and the DCCA's Board of Massage Therapy (BOM) are not duplicating functions. The SICLB is concerned with

the affairs of proprietary vocational schools. The BOM is concerned with the affairs of massage therapy. The duties of the SICLB and the BOM do converge at the proprietary massage therapy school. Having two such agencies involved in the regulation of massage therapy training typifies the practices of the states included in this study. This could be expected. Those agencies that are best informed about massage therapy are not the agencies best informed about proprietary vocational schools, and vice versa.

A notable exception to the generalization that other states have two agencies regulating proprietary massage therapy schools is New York. In New York, the Education Department regulates thirty eight professions, including massage therapy, and regulates proprietary vocational schools. New York has one agency regulating both those aspects of massage therapy schools that relate to the massage therapy industry and those aspects that relate to proprietary vocational schools. And, that same agency serves as the state approving agency for the VA.

This study did find that, in Hawai'i, the policies and practices of the SICLB in licensing proprietary vocational schools overlap and are similar to the policies and practices of the State Approving Agency for the VA. The requirements for VA approval and the requirements for licensure as a proprietary vocational school are similar. Hawai'i could, and perhaps should, consider a change that would have one agency responsible for both approval processes. Moving the licensure of proprietary vocational schools from the SICLB to the State Approving Agency is conceivable. However, the Hawai'i State Legislative Auditor (2002) found that the most significant argument against transferring responsibility for licensing massage schools to the State Board for Vocational Education, now the State Board for Career and Technical Education, which is administratively

attached the University, was a potential conflict of interest. The Board includes the members of the Board of Regents of University of Hawai'i which has community colleges that offer courses in massage therapy that compete for students with proprietary massage therapy schools. That finding by the Hawai'i State Legislative Auditor suggests that there are already conflict-of-interest issues with the placement of the State Approving Agency for the VA at the University of Hawai'i. At least as far as massage therapy schools are concerned, the State Approving Agency for the VA regulates proprietary schools whose programs compete with the University and its community colleges. In the light of the Hawai'i State Legislative Auditor's findings, assigning the proprietary vocational school licensing program to any agency attached to the University would seem to create a clear conflict of interest.

It might be easier to attach the State Approving Agency for the VA to the SICLB at the DOE. The SICLB already reviews the application of proprietary vocational schools for licensure. The processes for approving proprietary vocational schools for the VA are similar to the processes for licensing proprietary vocational schools. The State might reduce considerable duplication of labor and save money by requiring the SICLB serve as the State Approving Agency for the VA in addition to licensing proprietary vocational schools. Given that the VA reimburses the State for salaries and travel expenses incurred in the approval process, State expenses in licensing proprietary vocational schools might be reduced.

By having one and the same agency serve as both the State Approving Agency for the VA and the regulatory agency for proprietary vocational schools, Connecticut, New Hampshire, New York, and Wisconsin have established a practical arrangement. Schools

can submit applications to one agency, not two or more. Those States do not pay the staff of two agencies to review the same application materials. Their agencies could serve as models if Hawai'i chose to follow their lead. Even if the SICLB were the State Approving Agency for the VA, the Board of Massage Therapy would still be regulating those aspects of massage therapy schools and training programs that relate to the massage therapy industry.

It is certainly worth considering a suggestion made by William Oshiro (1967). He suggested that several agencies serve as State Approving Agencies for the VA. He suggested that the University of Hawai'i approve community colleges, institutions of higher learning, and hospital training programs. He suggested that the DOE approve proprietary technical and vocational schools. He further suggested that the Department of Labor approve apprenticeships and on-the-job trainings. These suggestions are even more worthy of consideration given that the VA would reimburse the State for salaries and travel expenses incurred in the approval processes. The legislature should at least consider whether or not the attachment of the State Approving Agency for the VA to the University of Hawai'i for administrative purposes constitutes a conflict of interest as the Hawai'i State Legislative Auditor suggests. If there is a conflict of interest, the issue might readily be resolved by reattaching the State Approving Agency to the SICLB at the DOE.

As with other states, Hawai'i's regulation of massage therapy schools as proprietary vocational schools focuses on consumer protection issues. Hawai'i's requirement that licensed proprietary schools post a surety bond for the return of any unused portions of tuition reflects a common practice. Still, other states have created

special tuition refund accounts for this purpose, and have expanded their bureaucracies to administer those accounts. Larger states have more proprietary vocational schools to regulate and the dollar amounts of their tuition refund accounts are large. So long as loopholes in education law allow more than seventy five per cent of Hawai'i's proprietary vocational schools to avoid licensure with the DOE, it is unlikely that Hawai'i would have tuition refund accounts so large. So, at first glance, Hawai'i's approach might seem as effective as those of larger states without the added bureaucracy. However, the Hawai'i State Legislative Auditor (2002, p.15) found that Hawai'i's current surety bond requirement is not protecting students sufficiently. Given its interest in consumer protection, the State would do well to establish an adequate tuition recovery fund or a similar program that is effective. If the Legislature were to close the loopholes in education law and require that all proprietary vocational schools be licensed by the DOE, a much larger tuition recovery fund might be established and it might be much more feasible to administrate such a fund through DOE regulations.

Other states' requirements that proprietary vocational school administrators and faculty be qualified suggest that Hawai'i also might do well to assure that they are qualified. Although present Hawai'i regulations call for those administrators to be competent, there are no guidelines for determining competence. As things are now, it might be in the interests of the owners of outlaw proprietary vocational schools to hire administrators that are not so competent. Such administrators might be unlikely to fully understand regulations. They might be unlikely to recognize violations of laws and rules. Those who were competent enough to recognize violations might be reluctant to challenge the owners regarding them. Administrators, who are not confident in their



positions, might be willing to falsify information on applications for the approval of regulatory agencies just to secure their income. Since those applications are submitted over the administrator's signature, the owner would be screened from the responsibility for unfair or unlawful business activity. It would serve Hawai'i to set particular qualifications for proprietary vocational administrative staff. Some measure of competence might desirably be spelled out in the law or in the rules. Further, Hawai'i could follow Florida's lead and require that proprietary vocational school administrators receive and document continuing education in school administration.

But perhaps what is most needed is some sort of monitoring system. Hawai'i has already set qualifications for massage therapy instructors. Those instructors are to be licensed by the DOE. But, if the school itself is not licensed, there is no agency monitoring the faculty and it is unlikely that the instructors are licensed by the DOE. The SICLB, which does the licensing, has no one in the field to check that those actually performing the instruction are either licensed or qualified. Proprietary vocational schools that avoid licensure by the DOE are essentially free from monitoring by any agency. No agency is looking to State interests concerning the qualifications of administrators or instructors at those schools. In fact, no agency is looking to any State interests, other than business registry, at the seventy five per cent of proprietary vocational schools that are operating in Hawai'i through the loophole in education law.

It is possible that unqualified instructors are full faculty members even at schools that are licensed. A licensed proprietary vocational school's administrator can ignore the requirement that all faculty changes must be reported to the SICLB within five days. The school could conceivably omit the unqualified teacher's name from the annual

reapplication for licensure. Courses and class sessions taught by the unqualified teacher might even be advertised and published. At some later point in time, when the instructor does qualify by virtue of having been licensed for three years, his or her name can then be added to the DOE application forms. In the total absence of monitoring, the SICLB might never notice. Schools that avoid licensure by the DOE are free to ignore the basic instructor qualifications and hire whatever instructors they choose. The Legislature should fund and empower the SICLB to assure that all proprietary vocational schools are monitored to ensure that administrators and faculty are qualified.

It is conceivable that a business person could open a proprietary school in any given occupation and exploit the students. Under the ruse of training, the students could be used as cheap labor. The products of their labor could then be marketed in ways that gave the school owner an unfair advantage over her business competitors. Massage therapy students and apprentices in Hawai'i are vulnerable to such exploitation. The format and curricula for four hundred and twenty hours of the required five hundred and seventy hours of training are at the discretion of the school or training program. Many students spend those four hundred and twenty hours working in clinics that offer student massages to the public at less than the market price for massage. Some of those students actually do receive further instruction and guidance while they work in clinic. All, or at least most of the students and apprentices do receive hands-on experience in clinic. But for some of them, that hands-on experience is simple repetition of the skills gained in the first one hundred and fifty hours of classroom training and does not include further instruction. Massage clinic owners can and do collect up to thirty dollars for one hour of the student's time in clinic. Some owners charge tuition for the student's or the

apprentice's hours in clinic as well. This leaves massage therapy students and apprentices vulnerable to exploitation. Florida's rules prohibiting the exploitation of students at proprietary vocational schools suggest that Hawai'i, too, might more clearly prohibit exploitation.

Hawai'i is fortunate to have alternatives to proprietary vocational schools for access to the massage therapy industry and is especially fortunate to have alternatives now, given the status quo of the regulation of proprietary vocational schools. Legislation establishing the community college system at the University of Hawai'i expressed the urgent need for access to vocational education. The new massage therapy training program at Kapi'olani Community College responds to that need and has broadened access to the field. The University of Hawai'i should be commended for initiating that program and should be encouraged to nurture it to maturity. The program could be, and perhaps should be, duplicated at other community colleges in the system to provide access to public massage therapy training to students on the other Hawaiian Islands. It is good that the BOM will accept training in the Workshop format. This practice of allowing for massage therapy training to take place outside of proprietary vocational schools has some measure of social justice. It affords access to the profession for individuals who cannot afford or who otherwise could not attend proprietary massage therapy schools or community colleges. Even though only five states allow for massage therapy study in an apprenticeship, Hawai'i would do well to keep this option. Educators on the world scale are looking for ways to enhance the use of apprenticeships. Apprenticeships help assure fairer and broader access to the massage therapy profession. Hawai'i seems wise not to have abandoned such apprenticeships.

Although the involvement of at least three State agencies, the Department of Health, DOE, and the BOM, would seem to assure that massage practitioners would be well trained in the prevention of contagion, there is no provision that massage therapy students specifically learn about the universal precautions used by other health and medical professionals to prevent the spread of diseases. Because they work with the general public, massage therapists, knowingly or unknowingly, may work with clients who have a contagious disease. Some massage therapists knowingly work under medical supervision with persons who have contagious conditions. Because of this, it is essential that massage therapists implement universal precautions with every client. Instruction in the implementation of universal precautions should be mandated by law at every massage therapy training program.

The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) has existed for only ten years. Yet, already, it is required or accepted for licensure by twenty of the thirty states that regulate massage therapy. This suggests that there are advantages either for the states that do require or accept the NCETMB or for the massage therapists who have passed the NCETMB. Hawai'i and the massage therapists in Hawai'i may be missing out on those advantages. A study by the Board of Massage Therapy could identify any such advantages and could determine the desirability of either replacing the State-generated massage therapy examination with the NCETMB or of accepting passage of the NCETMB in lieu of the State-generated examination. At least, it seems that, by requiring the NCETMB, the State could save the expenses involved with administering the State-generated massage therapy examination. It would still seem prudent for the state to administer a jurisprudence examination, supplemental to the

NCETMB, to assure that applicants for massage therapy licensure are aware of Hawai'i massage therapy law and rules.

This study concludes that is not necessary to look outside of Hawai'i to find ways of improving the regulation of proprietary vocational schools. A basic understanding of the status quo of such regulation in Hawai'i suggests needed changes. Simple changes in the language of proprietary school law could bring significant improvement. Still, this study also concludes that Hawai'i can learn from her sister states. This review of the regulation of massage therapy schools as proprietary vocational schools in other states suggests that Hawai'i already has a common and reasonable regulatory process for massage therapy schools. It is only for the State to develop the funding and the political will to regulate proprietary vocational schools well. It is clear, though, that the status quo of the regulation of private massage therapy schools and other proprietary vocational schools in Hawai'i involves an ineffective bureaucracy and conjures a false sense of protection from unfair and illegal business practices for students, for legitimate businesses, for consumers, and for the State. If the Legislature were to acknowledge that, it could then implement changes that are needed to protect more effectively all Hawai'i from unfair practices at proprietary vocational schools including massage therapy schools and training programs.

**APPENDIX A**  
**A List of the States' Laws Regarding Massage Therapy and  
Massage Therapy Training That Were Reviewed for This Study**

Alabama Act 96-661: The Alabama Massage Therapy Licensure Act.

Arkansas House Bill 1516 of the 1999 Regular Session of the Eighty-second  
General Assembly: An Act to Amend Various Sections of Arkansas Code Relating to the  
Authority and Responsibility of the Arkansas State Board of Massage Therapy; and for  
Other Purposes.

Connecticut House Bill 5648 of the 1999 Legislative Session: An Act Concerning  
Massage Therapists and Professional Counselors.

Connecticut Section 20-206a to Section 20-206e of Chapter 384a of Title 20 of  
the General Statutes: Massage Therapists.

Delaware Paragraph 5301 to Paragraph 5317 of Chapter 53 of Title 70 of the  
Law: Massage and Bodywork.

Florida Chapter 480 and Chapter 455, Part II of the Statutes: Massage Practice.

Hawai'i Chapter 452 of the Revised Statutes: Massage Therapy.

Iowa Chapter 152C of the Law: Massage Therapy.

Louisiana Chapter 57 of the State Law: Massage Therapists and Establishments.

Maine Paragraph 14301 to Paragraph 14311 of Section 32 of Chapter 127 of the Revised Statutes: Massage Therapists.

Maryland Subtitle 5A of the Laws: Certification of Massage Therapists.

Missouri Chapter 324 of the Revised Statutes: Massage Therapy.

Nebraska Section 71-1,278 to Section 71-1,283 of the Statutes: Statutes Relating to Massage Therapy.

New Hampshire Chapter 328-B of the Law: Massage Therapists.

New Mexico Chapter 61, Article 12C NMSA 1978: The Massage Therapy Practice Act.

New York Article 130 of Education Law: General Provisions.

New York Article 155 of Education Law: Massage.

Oregon Chapter 687 of the Law: Massage Technicians.

Rhode Island and the Providence Plantations Chapter 23-20.8 of the General  
Laws: Licensing of Massage Therapy Establishments.

South Carolina Chapter 30 of the Statutes: Massage/Bodywork Practice Act.

Tennessee Chapter 18 of the Law: Massage Therapist.

Texas Occupation Codes Title Three. Health Professions Subtitle H. Professions  
Related to Certain Types of Therapy. Chapter 455: Massage Therapy

Utah Chapter 47b of Title 58 of the Code: Massage Therapy Practice Act.

Virginia Article 5 of Chapter 30 of the Virginia Statutes: Certification of Massage  
Therapists.

Washington Chapter 18.108 of the Revised Code: Massage Practitioners.

West Virginia Article 37 of Chapter 30 of West Virginia Law: Professions and  
Occupations: Massage Therapists.



**Wisconsin Subchapter X of Chapter 440 of the Law: Registry of Massage  
Therapists and Bodyworkers.**

## **APPENDIX B**

### **A List of the States' Administrative Rules, Codes, and Regulations Regarding Massage Therapy and Massage Therapy Training That Were Reviewed for This Study**

Alabama Chapter 532-X-1 of the Administrative Code: Promulgated by the Alabama Board of Massage Therapy.

Arkansas House Bill 1516 of the 1999 Regular Session of the Eighty-second General Assembly: An Act to Amend Various Sections of Arkansas Code Title 17, Chapter 86 Relating to the Authority and Responsibility of the Arkansas State Board of Massage Therapy.

Delaware Rules and Regulations of the Board of Massage and Bodywork.

Delaware Proposed Changes to Rules and Regulations (January 2000): Promulgated by the Board of Massage and Bodywork.

Florida Rule Chapter 64B7 of the Administrative Code: Promulgated by the Board of Massage Therapy.

Hawai'i Chapter 84 of the Administrative Rules-Massage Therapy: Promulgated by the Department of Commerce and Consumer Affairs' Board of Massage Therapy.

Iowa Chapter 130 to Chapter 139 of the Iowa Administrative Rules: Promulgated by the Iowa Board of Massage Therapy Examiners.

Louisiana Part XLV of Title 46 of the Administrative Rules-Professional and Occupational Standards-Massage Therapists: Promulgated by the Board of Massage.

Maine Rules for the Licensing of Massage Therapists: Promulgated by the Office of Licensing and Registration.

Maryland Section 10.43.17 of Subtitle 43 of Administrative Regulations: Promulgated by the Board of Chiropractic Examiners.

Missouri Division 197 of Title 4 of the Administrative Rules: Promulgated by the Board of Therapeutic Massage.

Nebraska Title 172 NAC 81 of the Administrative Regulations: Promulgated by the Health and Human Services System.

New Hampshire Chapter He-P 900 of the Code of Administrative Rules-Massage Regulations: Promulgated by the Department of Health and Human Services.

New Mexico Chapter 7 of Title 16 of the Administrative Code-Occupational and Professional Licensing-Massage Therapists.

New York Part 59 and Part 78 of the Commissioner's Regulations: Promulgated by the Commissioner of Education.

New York Part 17, Part 24, Part 28, and Part 29 of the Rules of the Board of Regents: Promulgated by the Board of Regents.

North Carolina Chapter 30 Of Title 21 of the Administrative Code: Promulgated by the Board of Massage and Bodywork Therapy.

Ohio Section 4731.02 to Section 4731.99 of Title 47 of the Administrative Code: Promulgated by the State Medical Board of Ohio.

Oregon Chapter 334 of the Administrative Rules: Promulgated by the Oregon Board of Massage Therapists.

Rhode Island and the Providence Plantations Section R23-20.8-MA-Licensing Requirements for Massage Therapists, Masseurs, and Masseuses: Promulgated by the Department of Health

South Carolina Chapter 77 of the Administrative Regulations-Massage/Bodywork Therapy Regulations: Promulgated by the Department of Labor, Licensing, and Regulation.

Tennessee Rules of the Massage Licensure Board: Promulgated by the Massage Licensure Board.

Texas Chapter 141 of Title 25 of Texas Administrative Code-Massage Therapy Rules: Promulgated by the Department of Health.

Utah Rule R156-47b of the Administrative Code-Massage Therapy Practice Act Rules.

Virginia 18 VAC 90-50-10 et seq. of the Administrative Regulations-Final Regulations Governing the Certification of Massage Therapists: Promulgated by the Virginia Board of Nursing.

Washington Chapter 246.830 of the Administrative Code-Massage Practitioners: Promulgated by the Department of Health.

West Virginia Series I and Series 2 of Title 194 Of West Virginia Procedural Rules: Promulgated by the Massage Therapy Licensure Board.

\* Wisconsin Administrative Code Relating to the Practice of Massage Therapist and Bodyworkers: Promulgated by the Department of Regulation and Licensing.

**APPENDIX C**  
**A List of the States' Proprietary Vocational School Laws**  
**That Were Reviewed for This Study**

Connecticut Section 10a-22a to Section 10a-22x of the General Statutes:  
Concerning the Authorization of Private Occupational Schools.

Florida Title XVI Education, Chapter 246 of the 1999 Florida Statutes: Nonpublic  
Post-Secondary Institutions.

Hawai'i Chapter 302A-101 of the Revised Statutes: Education: General  
Provisions: Definitions

Hawai'i Chapter 305A of the Revised Statutes: Vocational Education under  
Federal Aid.

Hawai'i Chapter 305H of the Revised Statutes: State Post-secondary Education  
Commission.

Maine Section 20A Paragraph 9501 to Paragraph 9508, Chapter 323 of the  
Revised Statutes: Private Business, Trade, and Technical Schools.

Missouri Section 173-604 of Chapter 173 the Revised Statutes: Minimum  
Standards for Certification of Proprietary Schools: Out-of-State Applicants

Missouri Section 173.612 of Chapter 173 of the Revised Statutes: Coordinating Board for Higher Education to Administer Law-Powers and Duties-Rules and Regulations, Suspension and Reinstatement.

Ohio Section 3332.01 to Section 3332.126, Title 33 of the Revised Statutes.

Utah Section 53B-5-101 to Section 53B-5-201, Chapter 167 of the Statutes: Utah Post-secondary Proprietary School Act.

Virginia Section 22.1-319 to Section 22.1-335, Chapter 16 of the Statutes: Private Trade, Technical, Business and Correspondence Schools: Schools for Children with Disabilities.

**APPENDIX D**  
**A List of the States' Proprietary Vocational School**  
**Administrative Codes, Rules, and Regulations**  
**That Were Reviewed for This Study**

Delaware Rules, Regulations and Procedures of the State Board of Education for  
*the Approval of Private Business and Trade Schools: Promulgated by the Delaware*  
Department of Education.

Florida Chapter 6F State Board of Independent Post-secondary Vocational, Trade  
and Business Schools: Promulgated by the Florida Department of Education.

Hawai'i Chapter 101 of Title 8 of the Hawai'i Administrative Rules: Licensing of  
Private Trade, Vocational or Technical Schools: Promulgated by the Hawai'i Department  
of Education.

Louisiana Rules and Regulations Bulletin 1442: Advisory Commission on  
Proprietary Schools: Promulgated by the Louisiana Board of Regents.

Maine Chapter 147 Rules for the Licensing of Privately Owned Business, Trade  
and Technical Schools-Proprietary Schools: Promulgated by the Maine Department of  
Education.



New Hampshire Chapter 1100 Rules Governing the Licensing of Private Trade, Commercial, and Other Schools and Correspondence School Representatives:  
Promulgated by the Post-secondary Education Commission.

Utah Rule R765-171 Post-secondary Proprietary School Act Rules: Promulgated by the Utah Board of Regents.

Virginia Chapter Two of VR 270-01-0034 Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits: Promulgated by the Virginia Department of Education.

Washington Section 28C.10.010 to Section 28C.10.902 of the Revised Codes- Private Vocational School Approval Handbook: Promulgated by the Workforce Training and Education Coordinating Board.

West Virginia Title 131 of the Legislative Rules-Correspondence, Business, Occupational, and Trade Schools: Promulgated by the State College System of West Virginia Board of Directors.

Wisconsin Chapter EAB 1 through Chapter EAB 10 of the Rules: Promulgated by the Education Approval Board.

## References

Aizawa, Herman, 1997. Response to State Auditor's Report: Study of the Licensing of Massage Schools, State of Hawai'i Department of Education  
Correspondence to the Office of the Auditor, 8 December.

American Massage Therapy Association. (n.d., a). American Massage Therapy Association Homepage. Retrieved April 15, 2002 from <http://www.amtamassage.org>

American Massage Therapy Association. (n.d., b). Benefits of School Membership. Retrieved April 15, 2002, from  
<http://www.amtamassage.org/membership/cosbenefits.htm>

American Massage Therapy Association. (n.d., c). Massage Practice Laws Information Guide. Retrieved July 5, 2002, from  
<http://www.amtamassage.org/about/lawstateguide.htm>

American Massage Therapy Association Council of Schools. (n.d.). Council of Schools Mission and Goals. Retrieved April 15, 2002, from  
<http://www.amtamassage.org/membership/commission.htm>

American Massage Therapy Association Government Relations Committee.  
(n.d.). Government Relations Committee. Retrieved June 28, 2000, from

<http://www.amtamassage.org/members/annualreport/governmentrelations.htm>

Broadbent, William A. (1998). *A Partial and Informal History of Vocational Education in Hawai'i: 1809-1995*. Honolulu, Hawai'i: University of Hawai'i.

Connecticut Department of Higher Education. (2000, March 7). Connecticut's Private Occupational Schools. Retrieved March 8, 2000 from <http://www.ctdhe.commnet.edu/dheweb/dhe6.htm>

Deplorable Reputation of Massage Parlors Cited by Association Head. (1946, August 9) *The Honolulu Star Bulletin*, p.12.

Florida Stateboard of Nonpublic Career Education (2000, July 5). Stateboard of Nonpublic Career Education Homepage. Retrieved July 5, 2000, from <http://www.firn.edu/webfiles/others/sbne/index.htm>

Hamamoto, Patricia (2002, March 28). Correspondence from the Office of the Superintendent of the State of Hawai'i Department of Education to the Hawai'i State Legislative Auditor.

Hawai'i Paragraph 11-11-4 of the Administrative Rules: Sanitation. (1981). Promulgated by the Board of Health.

Hawai'i State Board for Vocational Education. (1985). Vocational Education Update. Honolulu, Hawai'i: University of Hawai'i, Office of the State Director for Vocational Education.

Hawai'i State Legislative Auditor. (1981, January). Sunset Evaluation: Massage Therapists and Establishments. Report Number 81-1. Honolulu, Hawai'i: Higa.

Hawai'i State Legislative Auditor. (1987, January). Sunset Evaluation: Massage. Report Number 87-3. Honolulu, Hawai'i: Higa

Hawai'i State Legislative Auditor. (1992, November). Sunset Evaluation Update: Massage. Report Number 92-17. Honolulu, Hawai'i: Higa.

Hawai'i State Legislative Auditor. (1997, November). Sunset Evaluation: Study on the Licensing of Massage Schools. Report Number 97-17. Honolulu, Hawai'i: Higa

Hawai'i State Legislative Auditor. (2002, April). Sunset Evaluation: A Study on the Licensing of Private Trade, Vocational, and Technical Schools. Report Number 02-08. Honolulu, Hawai'i: Higa.

Hawai'i State Senate Combined Committees on Commerce and Consumer Protection and Education and Technology. (1999, February 19). Standing Committee Report Number 421, 1999: Correspondence to the President of the Senate.

Hawai'i State Senate Committee on Ways and Means. (1999, March 5). Standing Committee Report Number 664: Correspondence to the President of the Senate.

Hiatt, Robert W. (1967, October 10). Correspondence from the Office of the President of the University of Hawai'i to John A. Burns, Governor of the State of Hawai'i.

Kapi'olani Community College. (2002). Schedule of Non-Credit Courses Spring 2002, January-May. 3, (1).

Langenstein, Thomas. (1999a, March 17). A request to Hold SB 1238 S.D.2. Correspondence from the American Massage Therapy Association Legislative and Law Committee to the House Committee on Consumer Protection and Commerce.

Langenstein, Thomas. (1999b, March 17). Board of Massage Therapy Statement on Senate Bill Number 1238, S.D.2. to House Committee on Consumer Protection and Commerce.

Langenstein, Thomas. (2000). Keeping in Touch, Volume 6. Ka Pa'ana o Ke Aloha: Winter. 7 (1). Honolulu, Hawai'i: The Hawai'i Massage Therapy Association.

LeMahieu, Paul (1999, March 17). Testimony before the Hawai'i House of Representatives Committee on Consumer Protection and Commerce.

Matayoshi, Kathryn. (1999, March 17). A Presentation of the Department of Commerce and Consumer Affairs to the Hawai'i House of Representatives Committee on Consumer Protection and Commerce.

Matayoshi, Kathryn. (2002, April 1). Department of Commerce and Consumer Affairs Correspondence to the Hawai'i State Legislative Auditor.

Mortimer, Kenneth. (1997, December 2). Response to Auditor's Report. University of Hawai'i and the State Board of Vocational Education Correspondence to the Office of the Hawai'i State Legislative Auditor.

National Certification Board for Therapeutic Massage and Bodywork. (2000, March). National Certification Candidate Handbook.

National Organization for Competency Assurance. (1997, August). Background Information on the National Commission for Certifying Agencies. Retrieved June 28, 2000, from <http://www.noca.org/docs/background.doc>

New Hampshire State Postsecondary Education Commission. (2000). Regulation of Private Trade, Commercial, Correspondence and Other Schools and Correspondence School Representatives.

Newspapers halt outcall massage ads. (1976, March 5). The Honolulu Star Bulletin, pp. A1, A9.

New York State Education Department Office of the Professions, Division of Professional Licensing Services. (1997, April 7). Professional Licensing Services- Handbook-27: Massage Handbook. Albany, New York: The University of the State of New York.

New York State Education Department. (2000a, January 18). About the State Education Department. Retrieved August 10, 2000, from <http://www.nysed.gov/about.html>

New York State Education Department. (2000b, August 1). Office of the Professions. Retrieved August 10, 2000, from <http://www.op.nysed.gov/>

New York State Education Department. (2000, August 1). Office of the Professions: About OP. Retrieved August, 10, 2000, from <http://www.op.nysed.gov/aboutop.htm>

Oshiro, William C. (1967, October 18). Correspondence from the Office of the Manager of the Veterans' Administration Regional Office in Honolulu to John A. Burns, Governor of the State of Hawai'i.

Rolf Institute. (n.d.). The Rolfing Institute <sup>TM</sup> of Structural Integration. Retrieved July 4, 2002, from <http://www.rolf.org/institute/index.html>

Toner, T. (1976, January 26). Doi Hits Laxity on Prostitution. The Honolulu Star Bulletin, p. A22.

United States Code of Federal Regulations, Part 21 of Title 38, Vocational Rehabilitation and Education Subpart D: Administration of Educational Assistance Programs.

United States Department of Education. (n.d.). The Student Guide from the U. S. Department of Education 2001-2002/ Important Terms. Retrieved June 29, 2002, from [http://www.ed.gov/prog\\_info/SFA/StudentGuide/2001-2/terms.html](http://www.ed.gov/prog_info/SFA/StudentGuide/2001-2/terms.html)

United States Veterans Administration. (1996, March). Instruction Letter Number One: Institutional and course approval criteria.

University of Hawai'i. (2001, June 16). General Information about the University of Hawai'i System. Retrieved August 13, 2002, from <http://www.Hawai'i.edu/uinfo.html>

Williams, Margaret. (1999, March 17). Testimony before the Hawai'i House of Representatives Committee on Consumer Protection and Commerce.



Wisconsin State Education Approval Board. (2000, March 1). Education Approval Board Homepage. Retrieved March 1, 2000, from <http://www.eabdev.state.wi.us>