

Licensing Division

Staff Report for the Massage Therapy Advisory Board January 21, 2021

Personnel Updates

- Mr. Kenneth Clopton started with the team on December 1, 2020
- Mr. Derek Hubbard started with the team on January 1, 2021
- Staff continues to work from home and go into the office on a rotating schedule.
- Licensing Managers go into the office on a rotating schedule.

Statistics

Massage Therapist	FY 20	FY 21
New Licenses	1,247	288
Renewed Licenses	9,962	2,702
Total Licensed Population	24,940	25,417

Massage Therapy Instructor	FY 20	FY 21
New Licenses	132	34
Renewed Licenses	598	65
Total Licensed Population	1,417	1,398

Massage Therapy Establishment	FY 20	FY 21
New Licenses	331	58
Renewed Licenses	483	143
Total Licensed Population	2,033	2,006

Fingerprint Requirement Completed

October 2019 to December 10, 2020 80% completed

Overview on Emergency License Initiative

The Texas Commission of Licensing and Regulation and TDLR developed the Emergency License Initiative to allow our licensees to continue working, while the agency continues to work through a COVID 19 related licensing backlog. The initiative was announced on December 21, 2020 and affects licenses renewed on or after November 23, 2020. TDLR notified licensees of the initiative through email to those subscribed to the agency's Listserv, posted on social media site's and by a notice placed on TDLR's website. For more information and a list of the emergency licenses, please visit the TDLR website.

EDUCATION AND EXAMINATION DIVISION

Staff Report for the Massage Therapy Advisory Board – January 21, 2021

Statistics

CONTINUING EDUCATION PROVIDERS
(AS OF NOVEMBER 30TH, 2020)

FY 2021	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
NEW PROVIDER	3	2	1	6	-	-	-	-	-	-	-	-	-	-	-	-	6
PROVIDER RENEWED	0	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	0
TOT MAS PROVIDER	377	368	383	383	-	-	-	-	-	-	-	-	-	-	-	-	383
FY 2020	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
NEW PROVIDER	3	1	0	4	2	5	2	9	1	0	1	2	2	2	0	4	19
PROVIDER RENEWED	0	0	1	1	0	1	5	6	3	0	1	4	0	1	1	2	13
TOT MAS PROVIDER	447	444	439	439	438	414	413	413	406	391	380	380	380	378	377	377	377

JURISPRUDENCE EXAMINATION
(AS OF NOVEMBER 30TH, 2020)

FY 2021	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
JP EXAM FOR MT	185	160	140	485	-	-	-	-	-	-	-	-	-	-	-	-	485
FY 2020	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
JP EXAMS FOR MT	174	215	178	567	123	171	181	475	-	-	-	0	-	-	-	0	1,042

MESSAGE SCHOOLS
(AS OF NOVEMBER 30TH, 2020)

FY2021	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
TOTAL SCHOOLS	55	57	57	57	-	-	-	-	-	-	-	-	-	-	-	-	57
FY2020	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
TOTAL SCHOOLS	58	58	58	58	58	56	53	53	53	55	55	55	54	52	55	55	55

Current Projects

- 1615 Massage Student permits have been issued as of 1/05/2021.

COVID-19 Update

- 8 massage schools closed due to COVID-19.

Implementation of PALMS

- Updates to PALMS were implemented 12/14/2020 which include the ability for users to unlock an account and make password requests.

Enforcement Division

Staff Report for the Massage Therapy Advisory Board

January 21, 2021

Personnel Updates:

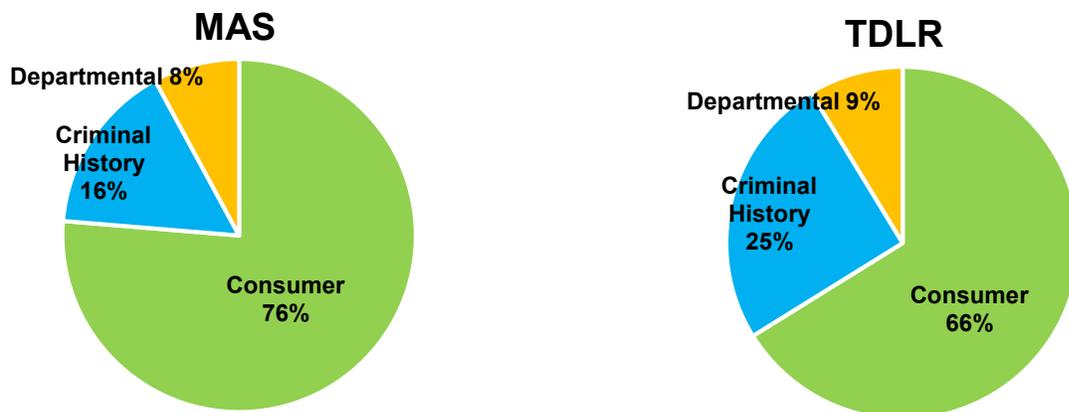
- On November 6, 2020, Prosecutor Ken Sharp retired after 7 years of service with TDLR and 13 years of total service to the citizens of Texas. During his tenure at TDLR Ken worked briefly on the Transportation team before joining the criminal history review team where he evaluated thousands of criminal records in an effort to protect our citizens from those not fit to hold a license due to their criminal history. Ken was also very active in the Department's Veteran's Association, where he was both a cofounder of the organization and its first Commander.
- On December 4, 2020, Prosecutor Michael Shirk retired after 8 years of service with TDLR and nearly two decades of service to the citizens of Texas. Michael was a member of the Transportation team where his enthusiasm for public service and protecting the citizens of Texas was clearly evident. He was a joy to work with and served as a mentor for many of our attorneys on staff. He will be missed, but he left a legacy of public service that will be long remembered.
- Three Attorneys, Amanda Barrera, Aroosa Nizami and Natalie Olvera, were promoted to Attorney III positions to fill the vacancies that were created by the promotions and retirements in the Enforcement Division. Amanda's and Aroosa's promotions were effective December 15, 2020 and Natalie's promotion was effective January 1, 2021.
- On January 4th, 2021, Arthur Arevalo was hired to fill the Investigations Manager's position. Art retired from the Austin Police Department after nearly 26 years of service. Since then, he worked for the Travis County Sheriff's Office and more recently served as a Captain with the Texas State University Police Department. We look forward to his contribution to the success of our team as we continue to strengthen the Enforcement division with staff that embraces our mission and shares our dedication to make a positive impact serving the citizens of Texas.

Statistics:

Shown below are the Enforcement Performance Measures and key statistics for the Massage Therapy (MAS) program and all TDLR programs combined through November 2020 (first quarter) of **Fiscal Year 2021**:

Performance Measure	MAS	TDLR
Cases opened	190	2,402
Cases closed	273	2,709
Average time to close (days)	233.22	199.73
% of cases resolved within 6 months	49.45%	61.24%
% of cases resulting in disciplinary action	34.43%	17.64%
Cases Pending at end of November 2020	509	5,546

Source of Cases Opened for Fiscal Year 2021 through November 2020



Case Outcomes	MAS	TDLR
Commission Orders	1	4
Default Orders	22	163
Agreed Orders	58	234
Penalties Assessed	\$259,800.00	\$932,855.00
Penalties Collected	\$92,550.00	\$356,490.00
Licenses Revoked (Disciplinary)	19	33
Licenses Suspended	0	5
Licenses Denied/Revoked (Criminal History)	11	62
Cease & Desist Orders	4	7
Informally Resolved	174	2,182
Consumer restitution through negotiated settlement	0	\$41,689.18

**Top 10 MAS Alleged Violations at Opening
for Fiscal Year 2021 through November 2020**

Violation:	Count
Unlicensed Establishment	45
Sexual Misconduct	41
Unlicensed Therapist	40
Criminal History	28
Allowed unlicensed or expired license	10
Expired Establishment License	8
Ethics violation	8
Advertising violation	7
Sexual Assault	7
Fraud, deceit, negligence or incompetence	5

**Top MAS Violations Resulting in Disciplinary Action
for Fiscal Year 2021 through November 2020**

Violation:	Count
Allowed unlicensed or expired license	22
Consultation document	20
Unlicensed Therapist	18
Unlicensed Establishment	15
Sexual Misconduct	15
Criminal History	10
Failed to separate residential/sleep	6
Submitted false documents with application	4
Advertising violation	4
Sexual Assault	3
Fraud, deceit, negligence or incompetence	3

Case Highlights

- **MAS20190014946 – Xingjuan Nie**

On October 28, 2020, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent Xingjuan Nie. As part of this negotiated settlement, Respondent accepted liability for the following violations: (i) submission of a fraudulent MBlex Score Report, (ii) submission of a fraudulent Jurisprudence Exam “Certificate of Completion;” and (iii) submission of a fraudulent document attesting to Respondent’s education from a licensed MAS school that Respondent never attended. Resolution of these violations required the revocation of Respondent’s massage therapist’s license, as the Department issued this license in reliance on documents later revealed as false. In addition, the Respondent agreed to pay the Department an administrative penalty of \$ 5,000.

- **MAS20200000798 – Robert Lee Presser Jr.**

On September 17, 2020, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent Robert Lee Presser Jr. d/b/a Wang's Spa. As part of this negotiated settlement, Respondent accepted liability for two instances where Respondent allowed an individual to engage in sexual contact while on the premises of Respondent’s licensed massage therapy establishment. Resolution of these violations required the revocation of Respondent’s massage therapy establishment license, as well as Respondent’s agreement to pay the Department an administrative penalty of \$ 5,000.

- **MAS20190009632, MAS20190014993 and MAS20200000492 – YKC Belfort, LLC d/b/a CC Spa**

On October 9, 2020, the Executive Director granted the Department’s Motion for Default and issued an Order of Default resolving three separate cases, each brought against Respondent YKC Belfort, LLC d/b/a CC Spa. The Order found Respondent committed the following nine violations: (i) operating an unlicensed massage therapy establishment (three counts), (ii) allowing unlicensed individuals to practice massage therapy on the establishment premises (three counts); and (iii) allowing an individual to engage in sexual contact while on the premises of Respondent’s licensed massage therapy establishment (three counts).

In addition, these three cases are the Department’s second enforcement action against Respondent. Specifically, on June 14, 2019, the Executive Director issued an Agreed Order assessing an administrative penalty of \$1,875 against Respondent for operating an unlicensed massage therapy establishment.

As prior violations help justify penalties on the higher end of the penalty classifications, the Order imposed upon Respondent a \$43,000 administrative penalty.

On June 24, 2020, a Cease and Desist Order was signed by the Executive Director on these three cases, ordering Respondent to immediately cease and desist from operating as a Massage Establishment and from performing and/or offering to perform massage therapy until properly licensed.

- **MAS20190015079 – Jie Xiong**

On October 28, 2020, the Executive Director granted the Department’s Motion for Default and issued an Order of Default resolving the enforcement action opened against Respondent Jie Xiong a/k/a Lucy Xiong, Individually and d/b/a MeiMei Spa. The Order found Respondent committed the following violations: (i) providing massage therapy services without a massage therapist’s license (two counts), and (ii) allowing an individual to engage in sexual contact while on the premises of Respondent’s licensed massage therapy establishment.

Based on these findings, the Order imposed upon Respondent a \$12,000 administrative penalty, and also revoked the massage therapy establishment license issued to MeiMei Spa, the massage therapy establishment owned by Respondent and the situs of the violations.

Regulatory Program Management Division

Staff Report for the Massage Therapy Advisory Board

January 21, 2021

Personnel Updates

The Section currently has two vacant positions. Those positions work with and support this program. We hope to have them filled soon.

Current Projects

We are actively tracking and reviewing bills related to various TDLR professions.

Staff continue to work with licensees regarding the human trafficking prevention training that went into effect on September 1, 2020. The course must be approved by the Texas Health and Human Services Commission (HHSC). As 12/31/2020, there were ten (10) approved courses listed on the HHSC website.

Staff has been involved in the development of the new licensing system to be called Texas Licensing System (TLS). This new system will eventually be used by all TDLR programs. Massage is in the first phase of implementation. We anticipate the system to be live by October 2021.

We recently published another edition of our newsletter – TDLR Health Monitor. If you are not signed up for emails, you can find the newsletter on your program webpage.

Staff continues assisting Enforcement, Field Inspections, Licensing, Education & Examination, and Customer Service with questions that arise during investigations, inspections, as well as addressing daily industry questions and emails.

Outreach

Due to the COVID-19 pandemic, staff have not been able to attend conferences. If you are aware of any upcoming outreach opportunities that we may be able to attend virtually, please contact Jerry Gonzalez.

FIELD INSPECTIONS DIVISION

Staff Report for the Massage Therapy Advisory Board January 21, 2021

Personnel Updates

Our Division Director, Tanya Gauthreaux, retired Effective October 30. Tanya began her career with TDLR 36 years ago as a part-time employee while attending the University of Texas here in Austin. Since then, Tanya has moved up the ranks within the agency. She leaves behind a legacy of great leadership, quiet strength, compassion and a wealth of knowledge within the entire agency. Congratulations!

Inspector Ramon Rodriguez accepted the Inspector V position for the East Region, effective November 1. Congratulations, Ramon!

Statistics

Massage Establishments		
	FY 2021	FY 2020
SEPT	1	24
OCT	5	56
NOV	3	28
QTR 1	9	108
DEC	0	21
JAN	0	48
FEB	0	54
QTR 2	0	123
MAR	0	12
APR	0	0
MAY	0	1
QTR 3	0	13
JUNE	0	0
JUL	0	131
AUG	0	195
QTR 4	0	326
Year to Date/ Year End	9	570
† TDLR suspended inspections on March 17, 2020 in response to the COVID-19 pandemic and returned to limited inspections May 19, 2020.		

Massage Schools		
	FY 2021	FY 2020
SEPT	1	3
OCT	0	6
NOV	1	12
QTR 1	2	21
DEC	0	10
JAN	0	3
FEB	0	11
QTR 2	0	24
MAR	0	0
APR	0	0
MAY	0	0
QTR 3	0	0
JUNE	0	1
JUL	0	1
AUG	0	3
QTR 4	0	5
Year to Date/ Year End	9	50
† TDLR suspended inspections on March 17, 2020 in response to the COVID-19 pandemic and returned to limited inspections May 19, 2020.		

COVID-19 Response

TDLR suspended all inspections on March 17, 2020 in response to the COVID-19 pandemic. After distributing personal protective equipment and providing safety training to field staff, inspectors began to perform limited on-site inspections in May 2020. On-site inspections of Massage Establishments and Massage Schools resumed October 1, 2020.

Due to high COVID-19 case numbers, Field Inspections stopped conducting on-site inspections in the following counties:

- Cameron
- Collin
- Dallas
- El Paso
- Fort Bend
- Galveston
- Gregg
- Hale
- Harris
- Hidalgo
- Lubbock
- Montgomery
- Nueces
- Potter
- Randall
- Tarrant
- Tom Green
- Webb
- Wichita

The drafting of Standard Operating Procedures (SOP) for virtual inspections for the Massage Therapy program is ongoing. Field-testing will begin when the procedures are finalized.

Liaisons Shawn O'Neal and Angela Sanders provided virtual training to the Anti-Trafficking Unit (ATU Team) on November 18, which covered violations in the Massage Therapy program.

Juan Munoz and Colleen Cloudy, continue to provide support for the new licensing database, **TLS** (Texas Licensing System).