

Licensing Division

Staff Report for the Massage Therapy Advisory Board

July 26, 2021

Personnel Updates

- Ms. Karen Davis join TDLR, Licensing Division and the Safety Regulator Team on July 15, 2021.

Statistics

Massage Therapist	FY 20	FY 21
New Licenses	1,247	1,276
Renewed Licenses	9,962	9,235
Total Licensed Population	24,940	25,403

Massage Therapy Instructor	FY 20	FY 21
New Licenses	132	121
Renewed Licenses	598	344
Total Licensed Population	1,417	1,357

Massage Therapy Establishment	FY 20	FY 21
New Licenses	331	333
Renewed Licenses	483	454
Total Licensed Population	2,033	1,997

Current Projects

Emergency License Extension Update:

For the emergency extension we are making sure our licensees aware of the following:

- Under this emergency authorization, if a license expired between August 1, 2020 and September 18, 2021, you will still be able to work for up to 120 days after your expiration date while your renewal is being processed. If TDLR makes a final determination that your renewal application is denied, you will no longer be able to work under the emergency license.
- Due to COVID-19, TDLR is facing an unprecedented challenge with processing paper renewals and applications. **We strongly encourage everyone who can renew online to take advantage of this option.** TDLR's online renewal portal accepts all major credit cards, including MasterCard and Visa branded gift cards.
- We are working as quickly as possible to process all payments that are included with your application. Please be advised that stopping payment through your financial institution will delay and/or stop your application from processing.

We are referring customers to the website for their extension information and to check for any updates.

Customer Service Division

Staff Report for the Massage Therapy Advisory Board

July 26, 2021

Personnel Updates

After 20 years of state service, 15 of those at TDLR, our Director of Customer Service Trey Seals has moved on to pursue other endeavors and we wish him the best of luck in his pursuits. The impact that he has had on the division and the agency cannot be overstated and we will miss him.

Statistics



EDUCATION AND EXAMINATION DIVISION

Staff Report for the Massage Therapy Advisory Board

July 26, 2021

Statistics

CONTINUING EDUCATION PROVIDERS (AS OF JUNE 30, 2021)

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	0	0	2	2	5	4	3	12	1	-	-	-	21
PROVIDER RENEWED	0	0	0	0	0	3	1	4	0	19	14	33	0	-	-	-	37
TOT MAS PROVIDER	377	368	383	383	383	380	375	375	380	383	392	392	388	-	-	-	388
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 JUNE 30, 2021)

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	129	138	177	444	180	158	139	477	146	-	-	-	1,552
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	124	172	181	477	125	31	74	230	132	124	185	441	1,715

MESSAGE SCHOOLS
(AS OF JUNE 30, 2021)

FY2021	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
TOTAL SCHOOLS	55	57	57	57	56	57	61	61	61	63	63	63	61	-	-	-	61
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

- 3,037 Massage Student Permits have been issued as of July 8, 2021.
- Recommence development of Texas MAS exam.
- Continue to make improvements to PALMS
- Getting ready for bill implementation
- The Bill Implementation Team is working with General Counsel to develop clear requirements in Chapter 117 regarding distance learning.
- The provision for distance learning only applies to a licensed massage therapy school. Distance learning allows for an additional delivery method of massage therapy instruction to students and does not change the 500-hour massage therapy curriculum.
- Distance learning is not new to E&E and we have been working with schools who offer distance learning in other programs for over 7 years.
- Distance learning will be limited to only portions of the 500-hour massage therapy curriculum and does not include the hands-on portion.
- The Occupational and Technical Services Team of E&E is in the process of developing clear processing procedures in accordance with the new rules which will be updated in Chapter 117 which include:
 - Approval applications to offer distance learning.
 - Schools will be required to track all hours and attendance of students completing hours through distance learning.
 - Reporting requirements that indicate hours which were completed through distance learning.
 - Record requirements for schools regarding distance learning.

Enforcement Division

Staff Report for the Massage Therapy Advisory Board

July 26, 2021

Personnel Updates:

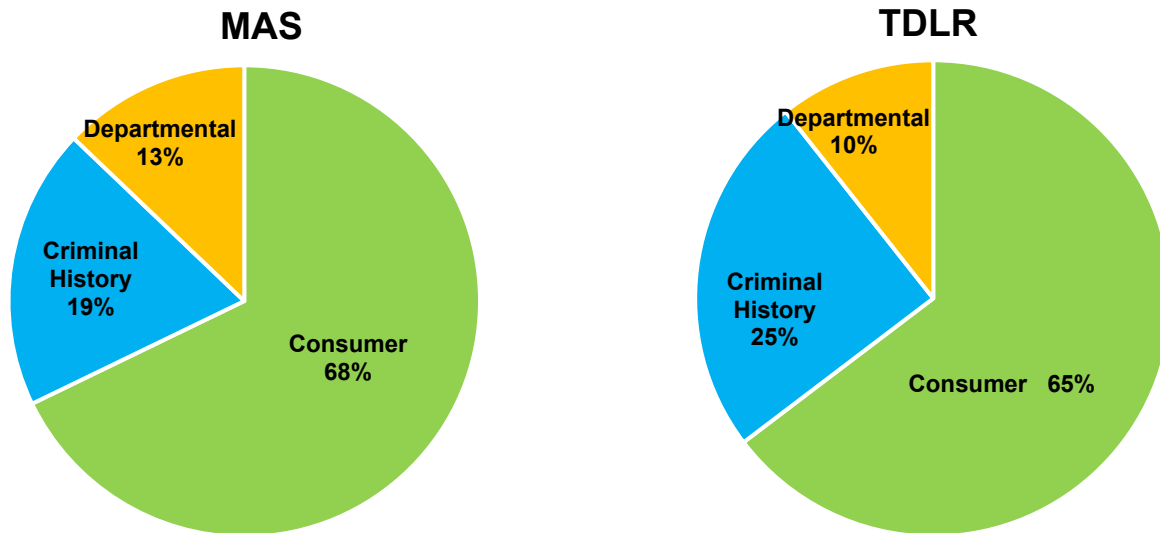
- Three attorneys, Sara McKinney, Rachel Seshan, and Hunter McKinley were hired as Attorney II positions to fill the vacancies created by promotions in the Enforcement Division. These three attorneys will be working our inspections cases and our unlicensed air conditioning and electrical cases. Their hiring’s were effective April 15, 2021.

Statistics:

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

Key Statistics	MAS	TDLR
Cases opened	575	7,008
Cases closed	672	7,086
Average time to close (days)	230	205
% of cases resolved within 6 months	51.04%	60.29%
% of cases resulting in disciplinary action	27.08%	15.00%
Cases pending at end of May 2021	495	5,772

Source of Cases Opened through May of Fiscal Year 2021



Case Outcomes

	MAS	TDLR
Commission Orders	7	33
Default Orders	43	405
Agreed Orders	120	600
Penalties Assessed	\$562,125.00	\$2,248,666.00
Penalties Collected	\$245,150.00	\$934,851.00
Licenses Revoked (Disciplinary)	37	82
Licenses Suspended	0	7
Licenses Denied/Revoked (Criminal History)	24	194
Cease & Desist Orders	9	17
Informally Resolved	480	5,934

TOP MAS Alleged Violations at Opening through May of Fiscal Year 2021

Alleged Violation:	Count
Unlicensed Establishment	140
Sexual Misconduct	116
Criminal History	108
Unlicensed Therapist	95
Allowed unlicensed or expired license	37
Sexual Assault	30
Expired Establishment License	27
Consultation document	25
Advertising violation	20
Allowed person to reside on premises	16
Ethics violation	16

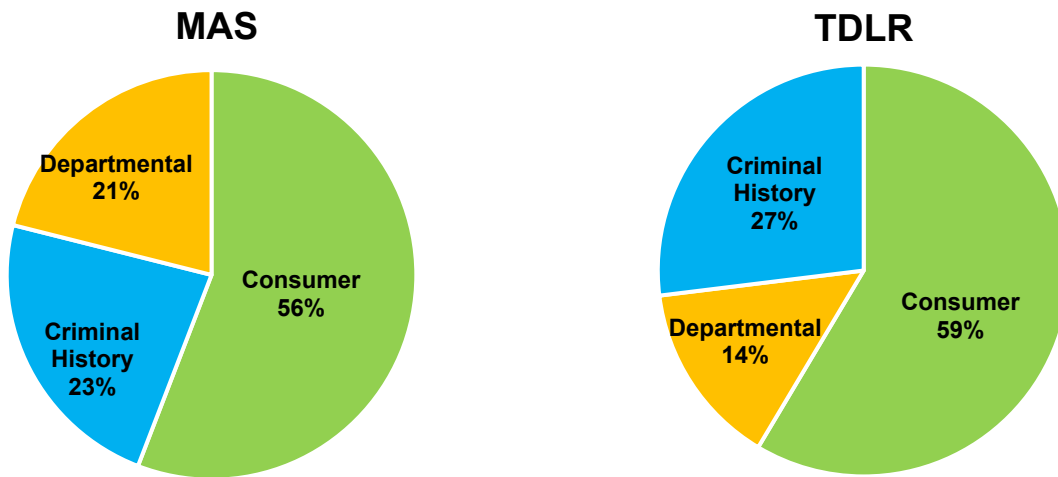
TOP MAS Violations Resulting in Disciplinary Action through May of Fiscal Year 2021

Violation	Count
Allowed unlicensed or expired license	48
Consultation document	39
Unlicensed Therapist	34
Sexual Misconduct	27
Unlicensed Establishment	27
Criminal History	23
Sexual Assault	10
Failed to separate residential/sleep	9
Advertising violation	7
Allowed person to reside on premises	5
Submitted false documents with application	5
Failed to maintain employee records	5

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

Key Statistics	MAS	TDLR
Cases opened	906	10,465
Cases closed	868	9,763
Average time to close (days)	191.33	157.58
% of cases resolved within 6 months	57.37%	68.64%
% of cases resulting in disciplinary action	25.00%	13.48%
Cases pending at end of FY 2020	592	5,850

Source of Cases Opened Fiscal Year 2020



Case Outcomes

	MAS	TDLR
Commission Orders	4	28
Default Orders	13	339
Agreed Orders	174	853
Penalties Assessed	\$474,840.00	\$2,360,451.00
Penalties Collected	\$392,065.06	\$1,296,792.16
Licenses Revoked (Disciplinary)	20	62
Licenses Suspended	0	4
Licenses Denied/Revoked (Criminal History)	38	240
Cease & Desist Orders	13	46
Informally Resolved	646	8,365
Consumer restitution through negotiated settlement	\$4,500.00	\$183,910.04

Top 10 MAS Alleged Violations at Opening for Fiscal Year 2020

Alleged Violation:	Count
Criminal History	200
Unlicensed Establishment	177
Sexual Misconduct	147
Unlicensed Therapist	140
Consultation document	64
Allowed unlicensed/expired	48
Failed to separate residential/sleep	37
Advertising violation	37
Failed to maintain employee records	35
Sanitation	33

Top 10 MAS Violations Resulting in Disciplinary Action for Fiscal Year 2020

Violation:	Count
Consultation document	73
Allowed unlicensed/expired	57
Criminal History	37
Failed to separate residential/sleep	34
Unlicensed Therapist	27
Unlicensed Establishment	21
Failed to cooperate with Department	13
Sexual Misconduct	12
Obtained license by fraud	10
Failed to maintain employee records	9

Case Highlights

- Case No. MAS20200008301 – Meina Xi d/b/a Good Foot d/b/a Good Massage

On March 18, 2021, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent Meina Xi d/b/a Good Foot d/b/a Good Massage. As part of this negotiated settlement, Respondent accepted liability for operating an unlicensed massage establishment and employing unlicensed massage therapists and was assessed a \$10,000 penalty, which has been paid.

The alleged violations are Respondent's second violation of the Massage Law and rules. Specifically, on January 16, 2020, the Executive Director issued an Agreed Order assessing an administrative penalty of \$1,125 against Respondent for operating an unlicensed massage therapy establishment. A Cease and Desist Order was also issued in conjunction with this case.

- Case No. MAS20210002582 – Jose Ignacio Rodriguez

On May 25, 2021, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent Jose Ignacio Rodriguez. As part of this negotiated settlement, Respondent accepted liability for one instance of sexual contact while providing massage therapy as a massage student at a massage school. Resolution of this violation required the revocation of Respondent's Massage Student Permit, as well as Respondent's agreement to pay the Department an administrative penalty of \$3,750, which has been paid.

- Case No. MAS20190009471 – Brian Curtis Beckvold

On March 22, 2021, the Commission issued a Decision of the Commission assessing a \$5,000 administrative penalty and revoking the massage therapist license of Brian Curtis Beckvold for engaging in sexual contact during a massage session without the client's consent. On or about March 29, 2019, Respondent Beckvold provided a massage and engaged in unwanted sexual contact with a client. The Department pursued revocation of Respondent's massage therapist license and a \$5,000 penalty. In response, Respondent requested a hearing at the State Office of Administrative Hearings. A contested hearing was held on October 20, 2020 via the Zoom videoconferencing platform, which included testimony

from the Complainant, Complainant's two family members, two police officers, Department staff, and Respondent. At the conclusion of the case, the Administrative Law Judge found it was more likely than not that the sex contact had occurred and recommended Respondent's license be revoked, but did not impose an administrative penalty.

On March 3, 2021, the Commissioners unanimously voted to adopt the Proposal for Decision, but found that the ALJ erred in failing to assess an administrative penalty in addition to the license revocation. A conclusion of law was amended to recommend that in addition to revocation of Respondent's massage therapist license, Respondent was assessed an administrative penalty of \$5,000 and correct minor grammatical errors. To date none of the administrative penalty has been paid.

- Case No. MAS20180013206– Margarita Dritsas Individually and d/b/a Soma Whole Body Mobile Massage

The Department pursued Respondent Margarita Dritsas Individually and d/b/a Soma Whole Body Mobile Massage for using the word "massage" on advertising without a license and for acting as a massage therapist without a license. The action began when Complainant alleged Respondent accepted prepayment to provide massage therapy services, Complainant terminated the services, and Respondent would not provide a refund of the prepaid sessions. A contested hearing was held in person on February 11, 2020. Respondent was not licensed as a Massage Therapist, but argued she was exempt if the massages were provided under the direction of a doctor. However, there was no evidence that the massages provided were under the authority of a doctor. Therefore, the Administrative Law Judge recommended Respondent be fined a total administrative penalty of \$3,000.

On or about January 19, 2021, the Commission considered the Proposal for Decision and adopted the findings of fact and conclusions of law. Respondent had acted as a massage therapist without the appropriate license and advertised her services as a massage therapist while unlicensed. The Commission ordered Respondent pay a \$3,000 administrative penalty.

- Case No. MAS20200004245 – Jing Shen d/b/a Crystal Spa d/b/a Asian Spa d/b/a Yan Rong Enterprises, LLC

On or about February 23, 2021, the Executive Director granted the Department's Motion for Default against Respondent Jing Shen d/b/a Crystal Spa d/b/a Asian Spa d/b/a Yan Rong Enterprises, LLC. Respondent was ordered to pay \$49,500 for the following administrative violations:

- Acted as a massage establishment without a license (3 counts, \$2,500 each = \$7,500)
- Employed unlicensed massage therapists (5 counts, \$2,500 each = \$12,500)
- Failed to provide an initial client consultation document (1 count, \$1,500)
- Allowed employees to engage in sexual contact (2 counts, \$5,000 each = \$10,000)
- Failed to cooperate during the investigation (1 count, \$4,000)
- Allowed an employee to practice massage therapy in clothing designed to arouse (2 counts, \$5,000 each = \$10,000)
- Allowed an individual to reside at the massage establishment (1 count, \$4,000)

The case was marked for suspected human trafficking and is the result of coordinated investigations between the Houston Police Department's Differential Response Unit, the Houston Police Department's Vice Unit, and the Department's own Enforcement Investigators.

Regulatory Program Management Division Staff Report for the Massage Therapy Advisory Board July 26, 2021

Personnel Updates

Angela Sanders was selected as the Senior Style and Wellness Professions Program Specialist. She previously worked as a Liaison in our Field Inspections Division and has worked for TDLR since 2017. Angela was a licensed Cosmetology Operator and Instructor for eight years. She worked as an Adjunct Cosmetology Instructor for Delmar College and as an instructor at Vogue Beauty Academy. Angela has a bachelor's degree in marketing from the University of Houston. Angela lives and works in Corpus Christi.

Shawn O'Neal was selected as the Style and Wellness Professions Program Specialist. Shawn came to TDLR in September 2005 when the Texas State Board of Barber Examiners was abolished, and the regulation of the profession was transferred to our agency. He also previously served as a Liaison in our Field Inspections Division and worked as a Compliance Inspector prior to that. Shawn has been a licensed barber since 1984. He is a veteran and served as a supply specialist for the United States Army prior to his state service. Shawn lives and works in Houston.

Current Projects

With the end of the 87th Legislative Session, we are actively reviewing passed legislation and working on Bill Implementation Teams to make necessary program updates.

Staff members have been involved in the development of the new Texas Licensing System. Massage is in the first phase of implementation. We anticipate the system to go live by November 2021.

Staff members have been working with executive staff and other divisions to discuss and develop outreach opportunities to the profession regarding the current atmosphere of harassment and mistreatment of massage therapists. We also met and discussed the issues with the Standard of Care Workgroup.

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

Outreach

We are beginning to attend outreach events again, so if you have a conference, meeting, or professional association gathering and would like for us to have a booth or come give a presentation, please contact Jerry Gonzalez.

FIELD INSPECTIONS DIVISION

Staff Report for the Massage Therapy Advisory Board

July 26, 2021

Personnel Updates

Congratulations to Eric Beverly, who accepted the position as the new Director of the Field Inspections Division. Eric joined Field Inspections on February 1, 2021. Eric comes from TDLR’s Office of Strategic Communication where he served as Senior Government Relations Officer since November 2016.

Effective February 1, 2021, Angela Sanders and Shawn O’Neal moved to the Regulatory Program Management Division’s Health Professions Team. Angela is the lead for the Style and Wellness Team; and Shawn is the Senior Program Specialist for the Style and Wellness Team. Congratulations to you both!

Statistics

Massage Establishments		
	FY 2020	FY 2021 (YTD)
Sept	24	1
Oct	56	5
Nov	28	3
Q1	108	9
Dec	21	4
Jan	48	1
Feb	54	4
Q2	123	9
Mar	12	10
Apr	0	30
May	1	139
Q3	13	179
Jun	0	0
Jul	131	0
Aug	195	0
Q4	326	0
YTD/Year End	570	197

† TDLR suspended inspections on March 17, 2020 in response to the COVID-19 pandemic and returned to limited inspections May 19, 2020.

Schools	Massage Schools	
	FY 2020	FY 2021 (YTD)
Sept	3	1
Oct	6	0
Nov	12	1
Q1	21	2
Dec	10	3
Jan	3	1
Feb	11	0
Q2	24	4
Mar	0	0
Apr	0	10
May	0	1
Q3	0	11
Jun	1	0
Jul	1	0
Aug	3	0
Q4	5	0
YTD/Year End	50	17

† TDLR suspended inspections on March 17, 2020 in response to the COVID-19 pandemic and returned to limited inspections May 19, 2020.

Most Common Violations Found During Inspections

Massage Therapy Establishment Most Common Violations Found During Inspections Fiscal Year 2021, 3rd Quarter

1. **16 Tex. Admin. Code Ch. 117.82(h)(2)**. – Failed to maintain a current list of all establishment employees and/or contractors with full name, license number and expiration date (if licensed as a massage therapist).
2. **16 Tex. Admin. Code Ch. 117.23(d)**. – Failed to attach to the displayed license under subsection (b) a current photograph of the individual massage therapist.
3. **16 Tex. Admin. Code Ch. 117.91(a)(4)**. – Failed to have a statement that draping of the genital area and gluteal cleavage will be used at all times during the session for all clients.
4. **Tex. Occ. Code Ch. 455.207(a); 16 Tex. Admin. Code Ch. 117.82(j)**. – Each massage establishment shall display in the form and manner prescribed by the commission a sign concerning services and assistance available to victims of human trafficking. (Five (5) languages).
5. **16 Tex. Admin. Code Ch. 117.23(b)**. – Failed to display the massage therapist license in an appropriate and public manner at the business location of the licensed business. In the absence of a primary office or place of employment, the licensed individual shall carry a current identification card.
6. **16 Tex. Admin. Code Ch. 117.91(a)(3)**. – Failed to have a statement that the licensee shall drape the breasts of all female clients and not engage in breast massage of female clients without the written consent of the client.
7. **16 Tex. Admin. Code Ch. 117.91(a)(6)**. – Failed for the consultation document to have the

signature of both the client and the licensee.

8. **16 Tex. Admin. Code Ch. 117.90(g)**. – Failed to notify each client of the name, mailing address, telephone number, and web address of the department for the purpose of directing complaints to the department on (1) each written contract or (2) on sign prominently displayed in primary place of business or (3) on a bill for services or (4) by another written and documented method.
9. **16 Tex. Admin. Code Ch. 117.90(f)**. – For each client, a licensee shall keep accurate records of the dates of massage therapy services, types of massage therapy & billing information. Such records must be maintained for a minimum of two years. (Direct to Enforcement violation).
10. **16 Tex. Admin. Code Ch. 117.82(c)**. – A massage establishment must maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours. (Direct to Enforcement violation).

Most Common Violations Found During Inspections

Massage Therapy School Most Common Violations Found During Inspections Fiscal Year 2021, 3rd Quarter

1. **16 Tex. Admin. Code Ch. 117.62(c)**. – Each massage school shall use a department-approved acknowledgment form to verify the prospective student's receipt of the information required in subsection (a). A signed copy of the form shall be given to the prospective student and the original shall be maintained in the student's file.
2. **16 Tex. Admin. Code Ch. 117.64(e)**. – Each massage therapy educational program shall retain the following student records for at least three years: (1) enrollment agreements and contracts; (2) written record and evaluation of previous education and training on a form provided by the department; and (3) official transcript(s) from all previous post-secondary schools attended by the student.
3. **16 Tex. Admin. Code Ch. 117.62(e)**. – Each student shall be given a copy of his or her executed enrollment agreement and a copy shall be kept in the student's file maintained by the school along with copy of acknowledgment form required by subsection (c).

Current Projects

- Currently, five inspectors are enrolled in Massage establishment inspection training. Once training is complete, Field Inspections will have a total of 11 inspectors to inspect massage establishments, representing an 83 percent increase in capacity.

COVID-19 Response

- On March 17, 2020, TDLR suspended all inspections in response to the COVID-19 pandemic.
- From April 2020 through December 2020, staff from the Field Inspections Division assisted the Licensing Division with processing Massage Therapy fingerprint emails.
- In August 2020, TDLR began field-testing a virtual inspection process for Massage Therapy establishments and schools.
- On October 1, 2020, TDLR resumed limited, onsite inspections for the Massage Therapy program.
- On April 6, 2021, all counties were removed from the COVID-19 suspended county list and are open for inspection activity.
- As of May 31, 2021, the Field Inspections division has conducted virtual inspections of 195 Massage Therapy establishments and 14 Massage Therapy schools.