

Licensing Division

Staff Report for the Massage Therapy Advisory Board

October 18, 2021

Statistics

Massage Therapist	FY 20	FY 21
New Licenses	1,247	1,648
Renewed Licenses	9,962	12,349
Total Licensed Population	24,940	25,178

Massage Therapy Instructor	FY 20	FY 21
New Licenses	132	175
Renewed Licenses	598	475
Total Licensed Population	1,417	1,388

Massage Therapy Establishment	FY 20	FY 21
New Licenses	331	496
Renewed Licenses	483	691
Total Licensed Population	2,033	2,077

Customer Service Division

Staff Report for the Massage Therapy Advisory Board

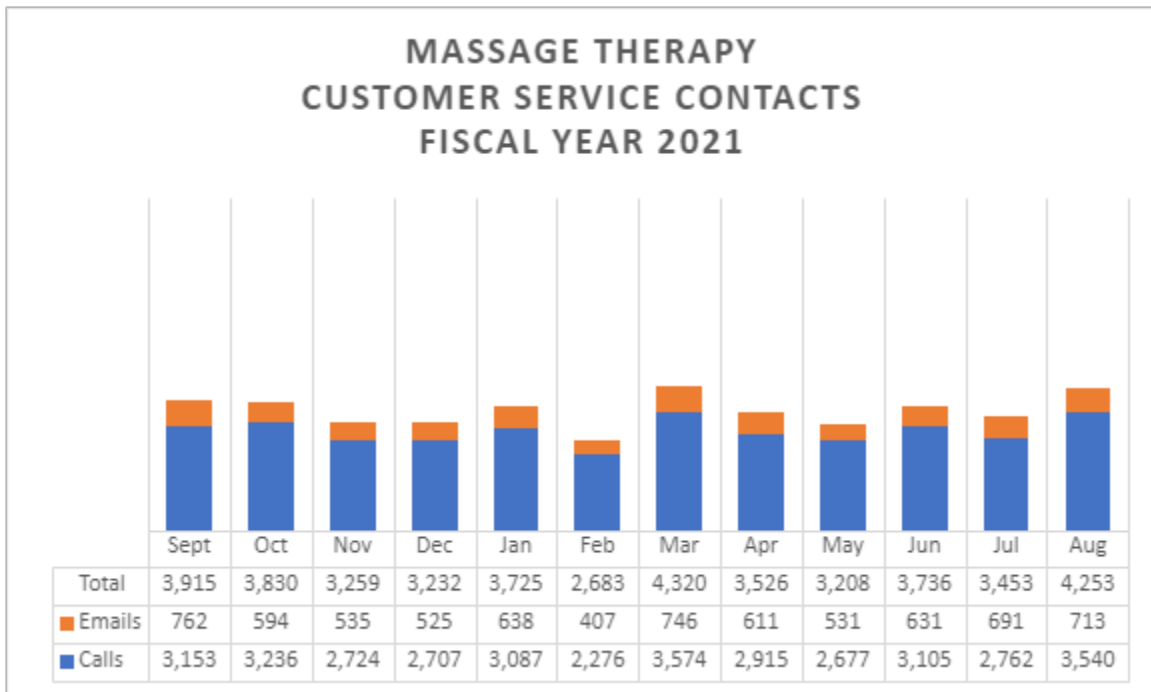
October 18, 2021

Personnel Updates

The new Director of Customer Service is Tuan Nguyen. Tuan has been with TDLR for almost seven years. Previously, Tuan was one of the Managers in the Customer Service Division. Tuan has a very strong analytical background, and we are very excited to see where he will take the Division in the future.

Customer Service has hired 7 new Representatives who started on October 1, 2021. All new agents have extensive previous contact center experience, and we are glad to welcome them aboard.

Statistics



EDUCATION AND EXAMINATION DIVISION

Staff Report for Massage Therapy – October 18, 2021

Statistics

CONTINUING EDUCATION PROVIDERS (AS OF AUGUST 31, 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	4	0	5	25
PROVIDER RENEWED	0	0	0	0	0	3	1	4	0	19	14	33	0	2	0	2	39
TOT MAS PROVIDER	377	368	383	383	383	380	375	375	380	383	392	392	388	392	392	392	392
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 AUGUST 31, 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	158	155	459	1,865
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 AUGUST 31, 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	62	62	62	62
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

- As of September 23, 2021, we have a total of 3,326 message student permits.

Updates

- We are closing some inboxes and going to a new system named Dynamics. This system will allow us to work smarter and utilize analytics to find the most common questions and effectively respond and ensure the information and education we provide is focused on those specific topics.

Enforcement Division

Staff Report for the Massage Therapy Advisory Board October 18, 2021

Personnel Updates:

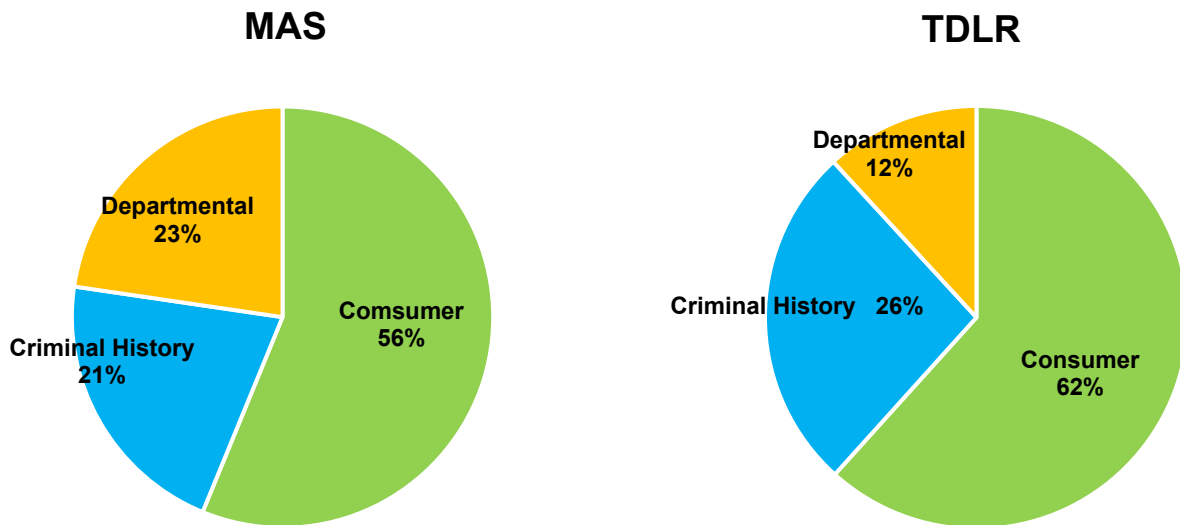
- On August 1, 2021, Cynthia Marple was hired as an Attorney III. She joins TDLR from the Department of Public Safety’s office of Regulatory Counsel Division where she prosecuted compliance and enforcement cases. Cynthia is a member of the Transportation Team, which focuses on cases related to Tow, Vehicle Storage Facilities, Driver’s Education and Motor Fuels
- On September 15, 2021, Kimberly (Kim) Ferreiro Mitchell was promoted to Management Analyst III. Kim has worked for TDLR for 13 ½ years, previously serving as a Legal Assistant III and Legal Assistant II.
- On September 15, 2021, Estella Ramos was promoted to Senior Legal Assistant in our Intake Section. Estella has worked for TDLR for over 6 years, previously serving as an Intake Legal Assistant II and Administrative Assistant.

Statistics:

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

Key Statistics	MAS	TDLR
Cases opened	904	10,121
Cases closed	869	9,335
Average time to close (days)	220.68	209.86
% of cases resolved within 6 months	54.09%	60.00%
% of cases resulting in disciplinary action	24.17%	13.41%
Cases pending at end of fiscal year 2021	626	6,627

Source of Cases Opened for Fiscal Year 2021



Case Outcomes

	MAS	TDLR
Commission Orders	9	44
Default Orders	47	455
Agreed Orders	135	711
Penalties Assessed	\$640,375.00	\$2,570,716.00
Penalties Collected	\$295,337.95	\$1,140,068.95
Licenses Revoked (Disciplinary)	43	103
Licenses Suspended	0	8
Licenses Denied/Revoked (Criminal History)	33	240
Cease & Desist Orders	11	19
Informally Resolved	649	7,976

TOP 10 MAS Alleged Violations at Opening for Fiscal Year 2021

Alleged Violation:	Count
Unlicensed Establishment	221
Criminal History	186
Unlicensed Therapist	166
Sexual Misconduct	162
Consultation document	84
Allowed unlicensed or expired individual	83
Failed to maintain employee records	54
Allowed person to reside on premises	46
Sexual Assault	39
Expired Establishment License	35

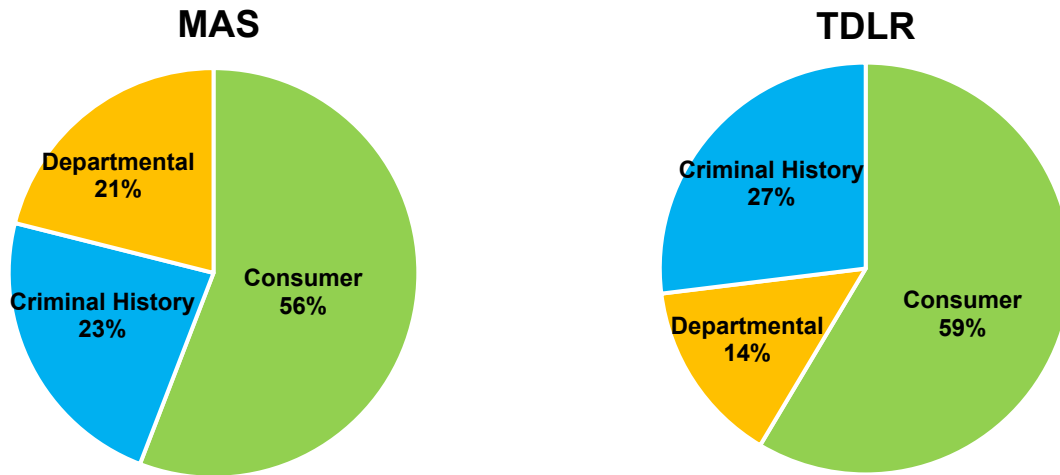
TOP MAS Violations Resulting in Disciplinary Action for Fiscal Year 2021

Violation	Count
Allowed unlicensed or expired	59
Consultation document	45
Unlicensed Therapist	35
Criminal History	32
Sexual Misconduct	30
Unlicensed Establishment	29
Sexual Assault	10
Failed to separate residential and sleep quarters	10
Advertising violation	8
Allowed person to reside on premises	6
Failed to cooperate with the Department	6
Failed to maintain employee records	6
Ethics Violation	6

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 for 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. MAS20200009042 – John M. Schmidt

On June 30, 2021, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent John M. Schmidt. The Department alleged Respondent engaged in sexual contact and failed to provide all required information in the client consultation document. Without admitting the violations, Respondent agreed to retire from the massage industry. Respondent agreed to a lifetime ban and revocation of his Massage Therapist license. Respondent agreed that he will no longer practice as a massage therapist in the state of Texas or own an establishment in the state of Texas.

- Case No. MAS20210008201 – Mery A. Good

On August 15, 2020, Respondent sought to renew her Massage Therapist license. As a part of the renewal, the Department conducted a check of Respondent's criminal history. The check revealed that on or about March 2, 2021, Respondent pled guilty and received deferred adjudication for the offense of prostitution. Thus, on May 28, 2021, the Department notified Respondent that her Massage Therapist license had been revoked by operation of law and cannot be renewed.

- Case No. MAS20190012860 – JQ Wang Inc & Quang Hue Tran (Respondents) d/b/a Perfecta Massage

On June 3, 2021, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent owners of Perfecta Massage. As part of this negotiated settlement, Respondents accepted liability for three counts of employing an unlicensed massage therapist, allowing an employee to practice massage in clothing designed to arouse, and failure to provide a consultation document to a client. Respondents were assessed a \$7,750 penalty, which has been paid, and Respondents further agreed to cease and desist from

employing unlicensed massage therapists.

- Case No. MAS20200001220 – Wen Yi Wang d/b/a Sedona Massage

On June 8, 2021, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Respondent owner of Sedona Massage. As part of this negotiated settlement, Respondent accepted liability for having a consultation document which lacked required items, employing an unlicensed massage therapist, and allowing an employee to reside onsite. Respondent was assessed a \$6,750 penalty, which has been paid.

- Case No. MAS20190014116 – Yuehui Li d/b/a Sunny Health Spa

On or about June 8, 2021, the Executive Director granted the Department's Motion for Default against Respondent Yuehui Li d/b/a Sunny Health Spa. The Massage Establishment license was revoked and Respondent was ordered to pay \$21,000 for employing unlicensed massage therapists (2 counts), failing to separate residential areas, failing to provide an initial client consultation document, failing to maintain employee records, and for allowing an employee to practice massage therapy in the nude or while dressed in clothing designed to arouse. Respondent has not complied with this order.

The case was 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.

After the Default Order was signed with TDLR, the City of Houston secured an Agreed Final Judgment and Permanent Injunction against Yuehui Li, which found Respondent's operation of Sunny Health Spa was a nuisance under Chapter 125 of the Texas Civil Practices and Remedies Code, ordered Respondent to cease and desist operating any massage establishment while unlicensed, and awarded the City attorney's fees.

Regulatory Program Management

Staff Report for Massage Therapy Advisory Board

October 18, 2021

Current Projects

Staff are currently serving on teams to implement bills that passed during the last regular legislative session.

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.

Staff updated the sample massage therapy consultation document. The update includes a checklist that licensees may use to ensure that their consultation document meets current requirements if they choose to not use the sample.

Outreach

Jerry Gonzalez will be attending the Federation of State Massage Therapy Boards Annual Meeting. The meeting will be held virtually on October 8, 2021.

Volume 14 of the TDLR Health Monitor was distributed in August. The latest issue can be found on the program web page. Links to previous issues can be found under Agency Newsletters on the main TDLR page.

If you have any outreach opportunities that you would like us to attend and/or give a presentation, please contact Jerry Gonzalez.

FIELD INSPECTIONS DIVISION

Staff Report for the Massage Therapy Advisory Board October 18, 2021

Personnel Updates

Liaison James Turner resigned effective August 18, 2021. James began his career with TDLR as a Field Inspector in the North region and was promoted to Liaison in September 2019. James will be greatly missed — we wish him all the best in his new endeavors.

Central Region Inspector Dalinda Jew has accepted a promotion and began working as a Liaison effective September 1, 2021. Congratulations, Dalinda!

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	59
Jul	131	49
Aug	195	56
Q4	326	164
YTD/Year End	570	361

† 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	2
Q4	5	2
YTD/Year End	50	19

† 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, 4th 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. 117.82(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).
4. **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.
5. **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.
6. **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)
7. **16 Tex. Admin. Code Ch. 117.82(a)(3)**. – Failed to make available a completed I-9 form if an Employee, or if Independent Contractor a copy of the contract signed by both the owner or operator and the licensed massage therapist.
8. **16 Tex. Admin. Code Ch. 117.83(j)**. – After linens have been used once, they must be deposited in a fully closed or partially closed container and shall not be used again until properly washed and disinfected in chlorinated bleach and hot water.
9. **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.
10. **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.

Most Common Violations Found During Inspections

Massage Therapy Schools Most Common Violations Found During Inspections

Fiscal Year 2021, 4th Quarter

No violations found for Massage Therapy School Inspections performed during FY2021, 4th Quarter (June 01, 2021 – August 31, 2021).

Current Projects

- On August 3-6, Field Inspections, in a joint effort with the Anti-Trafficking Unit (ATU) and local law enforcement, participated in a successful inspection “blitz” of massage therapy establishments in the Corpus Christi area. Eleven Field Inspections staff, including three region managers and one Liaison, participated in this event. Field Inspections conducted 22 inspections and confirmed the closure of 6 additional establishments. Way to go team!
- On September 9, Juan Munoz, Central Region manager, conducted Massage Therapy School Inspection refresher training. The four veteran Massage School inspectors, Ulises Ossio, Liaison, and the East, North, and South region managers attended this training.
- As of September 29, all five inspectors that were enrolled in Massage establishment inspection training were released to inspect massage establishments. With these newly trained inspectors there are now ten inspectors to conduct inspections on massage establishments.

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 August 31, 2021, the Field Inspections division has conducted virtual inspections of 3 Massage Therapy establishments and 3 Massage Therapy schools.