

Licensing Division

Staff Report for Massage Therapy Advisory Board

October 29, 2020

Personnel Updates

Doreen Garcia last day with the Safety Regulators Team was September 14, 2020.

The Licensing Division has made several adjustments to ensure the work continues. Although, most licensing staff are working from home, there are staff reporting to the office for various duties and this number is adjusted as business needs change, while maintaining safe social distance.

- At the onset of the COVID-19 pandemic, the Licensing Division, with the help of our IT division, prepared for most staff to work from home.
- Some staff continued to report to the office daily, while others reported on a rotating shift to ensure that applications and renewals were made available to the staff working remotely
- Managers also report on a rotating schedule and perform COVID-19 screenings of in-office staff
- The Licensing Division, along with other divisions within the agency, has cross trained staff to assist with heavy workloads where needed.

Statistics

| Massage Therapist | FY 20 | FY 21 |
|---------------------------|--------|--------|
| New Licenses | 1,247 | 125 |
| Renewed Licenses | 9,962 | 833 |
| Total Licensed Population | 24,940 | 24,694 |

| Massage Therapy Instructor | FY 20 | FY 21 |
|----------------------------|-------|-------|
| New Licenses | 132 | 13 |
| Renewed Licenses | 598 | 34 |
| Total Licensed Population | 1,417 | 1,421 |

**Massage Therapy
Establishment****FY 20****FY 21**

New Licenses

331

14

Renewed Licenses

483

60

Total Licensed Population

2,033

2,012

Customer Service

Staff Report for the Massage Therapy Advisory Board

October 29, 2020

Statistics



EDUCATION AND EXAMINATION DIVISION

Staff Report for the Massage Therapy Advisory Board – October 29, 2020

Statistics

CONTINUING EDUCATION PROVIDERS (As Of SEPTEMBER 30TH, 2020)

| FY 2021 | SEP | OCT | NOV | Q1 | DEC | JAN | FEB | Q2 | MAR | APR | MAY | Q3 | JUN | JUL | AUG | Q4 | TOT |
|------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| NEW PROVIDER | 3 | - | - | 3 | - | - | - | - | - | - | - | - | - | - | - | - | 3 |
| PROVIDER RENEWED | 0 | - | - | 0 | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| TOT MAS PROVIDER | 377 | - | - | 377 | - | - | - | - | - | - | - | - | - | - | - | - | 377 |
| 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 SEPTEMBER 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 | - | - | 185 | - | - | - | - | - | - | - | - | - | - | - | - | 185 |
| 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 |

MASSAGE SCHOOLS (As Of SEPTEMBER 30TH, 2020)

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

- PALMS (Program Automation for Licensing of Massage Students) is the portal created for massage schools to report hours, enroll and drop students.
- Massage Student Permit requirements were extended from June 1st to September 1st, 2020.
- Virtual PALMS Training Session was delivered on August 31st for Massage Schools.
- Virtual PALMS Q & A Session was performed on September 28th for Massage Schools.
- 4 PALMS Training Videos have been added to the TDLR website. (Thanks to Kevin Harris and Tela Mange who did an excellent job!)
- As of October 12, 2020, 864 students have been enrolled and 854 student permits have been issued. (There's a difference of 10 students between the enrollment and permit total, because these 10 students have been enrolled, but have not paid the permit fee.)
- We are working very hard to have FAQ's for PALMS added to the website by the end of the week of October 16th, 2020.
- **NOW**, all Massage Therapy Schools can go online to renew. No paper application will be required. They will still be required to be fingerprinted, once a massage school submits their renewal payment, the system will send us a notification and we will send the school the fingerprinting instructions.

COVID-19 Updates

- Some massage schools continue to utilize temporary distance learning and virtual learning to complete all technical standards for the theory and practical portion of a course.
- 28 massage schools participated in virtual learning.
- TDLR has allowed schools to determine when they can safely transition students back into their traditional brick and mortar classrooms.
- TDLR's goal is to enable schools to continue to teach their students despite the current circumstances related to COVID-19. (Internship hours cannot be completed virtually; Some schools have returned to the classroom practicing safe distancing).
- Effective October 5th, 2020, there is now an online massage therapist license application available for those students who completed their education prior to September 1st, 2020.
- 3 massage schools closed due to COVID-19.

Enforcement Division

Staff Report for the Massage Therapy Advisory Board

October 29, 2020

Personnel Updates:

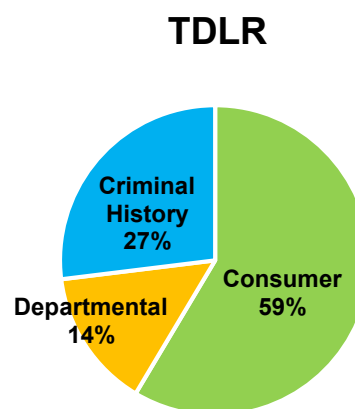
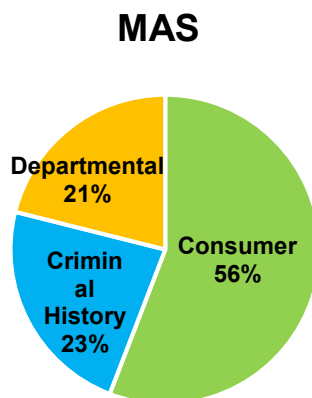
- On February 15, Debbie Hawkins was promoted to Legal Assistant Supervisor. Debbie has worked for TDLR for 8 years as a Legal Assistant in the Enforcement Division.
- On March 1, John Medlock was promoted to Chief Prosecutor. John has worked for TDLR for 7 years, previously serving as a Prosecutor and Senior Prosecutor in the Enforcement Division.
- On May 1, Trevor Theilen was promoted to Senior Prosecutor. Trevor has worked for TDLR for 9 years as a Prosecutor in the Enforcement Division.
- On August 31, Investigations Manager Gregg Dodson retired after 22 years of service with TDLR. Gregg oversaw the Investigations Section within the Enforcement Division, which includes 42 investigators. This position is currently posted on the Department's website, and we hope to conduct interviews soon.
- On August 31, Prosecution Legal Assistant Manager Daryl Kunze retired after 18 years of service with TDLR. Daryl oversaw the Prosecution Legal Assistant Section within the Enforcement Division, which includes 33 legal assistants and administrative assistants.
- On August 31, Senior Investigator Esmer Arguijo retired after 21 years of service with TDLR. Esmer conducted investigations of cases in the building and mechanical, water well, and property tax programs.
- On October 1, Jackie Revilla was promoted to Prosecution Legal Assistant Manager, to fill the vacancy created by Daryl Kunze's retirement. Jackie has worked for TDLR for 18 years, previously serving as a Legal Assistant Supervisor in the Enforcement Division.

Statistics:

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**:

| Performance Measure | 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 | 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**

| Violation: | Count |
|--------------------------------------|--------------|
| Criminal Activity | 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 Activity | 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. MAS20200002536 - Yu Juan Therapy Massage LLC

On February 18, 2020, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Yu Juan Therapy Massage. As part of this negotiated settlement, Respondent accepted liability for the following violations: (i) operating an unlicensed massage therapy establishment, (ii) two separate counts of unlicensed individuals practicing massage therapy on the premises, (iii) allowing the massage therapy establishment to be used as a residence, (iv) unhygienic business premises; and (v) failing to maintain and secure client records. To resolve these violations, Respondent agreed to pay the Department an administrative penalty of \$ 15,300.

- Case No. MAS20190004306 – Zhang Lei d/b/a Foot Joy Massage Center

On August 28, 2020, the Executive Director granted the Department's Motion for Default and issued an Order of Default against **Zhang Lei d/b/a Foot Joy Massage Center**. The Order found Respondent committed following violations: (i) operating an unlicensed massage therapy establishment, (ii) unlicensed individuals practicing massage therapy on the premises, (iii) failing to maintain and secure client records; and (iii) interfering with a Department investigation. Based on these findings, the Order imposed upon Respondent a \$ 9,000 administrative penalty.

- Case No. MAS20190014800 – Boawen Guo

On August 27, 2020, the Executive Director signed an Agreed Order that finalized the settlement agreement between the Department and Boawen Guo. 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) a fraudulent document attesting to Respondent's education from a licensed MAS school that Respondent never attended. To resolve these violations, the massage therapist's license issued in reliance on these fraudulent documents by the Department to Respondent was revoked, and Respondent agreed to pay the Department an administrative penalty of \$ 10,000.

- Case No. MAS20180008234 – Vicki Nguyen

On May 2, 2007, Respondent was issued Massage Therapist License number MT102379, which Respondent last renewed on April 1, 2018.

On April 30, 2008, in Harris County Criminal Court Number 8, Respondent pled guilty to, and received deferred adjudication for, the offense of Prostitution.

On April 8, 2019, in correspondence titled "Mandatory Revocation of License," the Department notified Respondent by her guilty plea to the charge of prostitution made her ineligible for licensure as a massage therapist, and that her existing massage therapist license must be revoked. Respondent requested a hearing to contest the Department's decision, and on May 30, 2019 the contested case was placed on the Docket of the State Court of Administrative Hearings.

On August 9, 2019, the Department filed a Motion for Summary Disposition that argued Respondent had no valid defense against this revocation action, and that the contested case should be resolved in the Department's favor without a hearing.

On September 16, 2019, the SOAH granted this motion and dismissed the case, and on February 19, 2020, TDLR's commission adopted SOAH's ruling and revoked Respondent's license.

- Case Nos. MAS20180005213 & MAS20180005210 - Chun Bai & Lejian "Vivian" Wang

On November 1, 2019, the Executive Director signed an agreed order that finalized the Department's settlement agreement with Chun Bai, and also signed a separate agreed order that did the same in a separate action against Lejian "Vivian" Wang.

From 2015 through 2019, Mr. Bai and Ms. Wan operated the massage therapy school J & G as (respectively) its designated "Owner" and "Director."

In 2018, a Department investigation uncovered a massive fraud conducted by Respondents through their operation of the school. Specifically, while the Department found that most J & G students never attended any class or even stepped foot onto the campus, their education was reported by Respondents as legitimate and thereby become licensed.

To resolve these violations, both Respondents agreed to be "permanently restrained and enjoined from any association with a massage therapy school" for the rest of their lives, to the permanent extirpation of the J & G license, and that a material breach by either Respondent of their respective agreement imposed a \$301,500 penalty, due immediately.

Regulatory Program Management

Staff Report for the Massage Therapy Advisory Board Meeting October 29, 2020

Personnel Updates

Elizabeth “Bebe” Perez resigned effective August 31, 2020. She began working for TDLR in 2005 and worked for the State of Texas for over 43 years.

Marinela La Fleur will be retiring October 31, 2020. She also began working for TDLR in 2005 and worked for the State of Texas for over 30 years.

Both, Bebe and Marinela, assisted with the massage therapy program. We will miss them and wish them well.

Current Projects

Staff assisted with various PALMS system implementation assignments. TDLR has posted several instructional videos on the Massage homepage (<https://www.tdlr.texas.gov/mas/mas.htm>).

Staff also assisted in the implementation of HB2059 which requires massage therapists to take a human trafficking prevention training course as a condition of renewal, effective September 1, 2020. The human trafficking prevention training course must be approved by the Texas Health and Human Services Commission (HHSC). This is not a one-time training requirement. Licensees must complete a new training course for each renewal cycle after the effective date.

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.

RPM recently published volume 12 of our newsletter – TDLR Health Monitor. If you are not signed up for emails, you can find the latest edition on your program webpage.

Staff facilitated a Standard of Care workgroup meeting October 2, 2020.

Staff is assisting the Licensing Division with processing applications.

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

During the COVID-19 pandemic, RPM staff have been unable to attend conferences due to cancellations, including American Massage Therapy Association's (AMTA) Texas Chapter Convention and Texas Administrators of Continuing Education (TACE) Healthcare Committee Conference both of which were to be held April.

If you are aware of any upcoming outreach opportunities that we may be able to attend virtually, please contact Jerry Gonzalez.

Just a reminder you can sign up to receive important program notices regarding rule changes, legislative updates, examination requirements, upcoming meetings and newsletters on the TDLR website.

FIELD INSPECTIONS DIVISION

Staff Report for the Massage Therapy Advisory Board

October 29, 2020

Personnel Updates

Field Inspections recently posted an opening for an Inspector V in the East Region, Harris County and surrounding areas. Interviews were held October 13 through 15. We will announce our selection soon.

Statistics

| Massage Establishments | | |
|-----------------------------------|----------|------------|
| | FY 2021 | FY 2020 |
| Sept | 1 | 24 |
| Oct | 0 | 56 |
| Nov | 0 | 28 |
| Q1 | 1 | 108 |
| Dec | 0 | 21 |
| Jan | 0 | 48 |
| Feb | 0 | 54 |
| Q2 | 0 | 123 |
| Mar | 0 | 12 |
| Apr | 0 | 0 |
| May | 0 | 1 |
| Q3 | 0 | 13 |
| Jun | 0 | 0 |
| Jul | 0 | 131 |
| Aug | 0 | 195 |
| Q4 | 0 | 326 |
| Year To Date/ Year End | 1 | 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 | 0 | 12 |
| Q1 | 1 | 21 |
| Dec | 0 | 10 |
| Jan | 0 | 3 |
| Feb | 0 | 11 |
| Q2 | 0 | 24 |
| Mar | 0 | 0 |
| Apr | 0 | 0 |
| May | 0 | 0 |
| Q3 | 0 | 0 |
| Jun | 0 | 1 |
| Jul | 0 | 1 |
| Aug | 0 | 3 |
| Q4 | 0 | 5 |
| Year To Date/ Year End | 1 | 50 |
| † 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 Establishment Most Common Violations

Fiscal Year 2020, 2nd Quarter

- 1. Failure to maintain a current list of all establishment employees and/or contractors. –**
16 Tex. Admin. Code Ch. 117.82(h)(2)
- 2. Failed to post the Consumer Compliant sign in public view. –**
16 Tex. Admin. Code Ch. 117.90(q)
- 3. Failed to provide a consultation document with all required information to a client before the first session. –** 16 Tex. Admin. Code Ch. 117.91(a)(1)-(6)
- 4. Establishment failed to post the license for each massage therapist who practices in the massage establishment. –** Tex. Occ. Code Ch. 455.204(b); 16 Tex. Admin. Code Ch. 117.23(b)
- 5. A massage establishment shall properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records. –**

Tex. Occ. Code Ch. 455.202(c)(1); 16 Tex. Admin. Code Ch. 117.82(h)(1)

6. **Failed to properly maintain client records for at least two years.** – 16 Tex. Admin. Code Ch. 117.90(f)
7. **Employed an unlicensed person to perform massage services; Employed non-citizen without a valid work permit to perform massage services.** – Tex. Occ. Code Ch. 455.202(a); 16 Tex. Admin. Code Ch. 117.82(a)
8. **Failed to maintain sufficient separation between massage therapy establishment premises and rooms used for residential or sleeping purposes by a solid locked door.** – 16 Tex. Admin. Code Ch. 117.82(c)
9. **Failed to wash used towels in chlorinated hot water.** – 16 Tex. Admin. Code Ch. 117.83(i)
10. **Licensee failed to publicly display license in the appropriate location, or failed to carry current identification card.** – Tex. Occ. Code Ch. 455.204(a); 16 Tex. Admin. Code Ch. 117.82(d)

Most Common Violations Found During Inspections

Massage School Most Common Violations

Fiscal Year 2020, 2nd Quarter

1. **Failed to provide a prospective student with all required information before enrollment.** – 16 Tex. Admin. Code Ch. 117.62(a)
2. **Failed to provide student a copy of or maintain in a student's file copies, a signed acknowledgement form.** – 16 Tex. Admin. Code Ch. 117.62(c)
3. **Failure to keep student enrollment agreements and contracts. for at least three years.** – 16 Tex. Admin. Code Ch. 117.64(c)
4. **Failed to base progress evaluation system on grading periods, or used a grading period covering more than 25% of the required program hours** - 16 Tex. Admin. Code Ch. 117.67(b)
5. **School failed to make available, for inspection by the department, all records relating to the massage therapy educational program and necessary data required for approval.** – 16 Tex. Admin. Code Ch. 117.64(a)
6. **Written attendance policy failed to require termination of students, as required.** – 16 Tex. Admin. Code Ch. 117.68(e)

Current Projects

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.