



July 9, 2008

To: DSHS Council  
David Lakey, MD - Commissioner

From: Raul Flores  
President, Texas Association of Massage School Owners (TAMSO)

Re: HB 2644  
Subchapter H Massage Therapy §140 Proposed Rules

My name is Raul Flores. I am the President of the Texas Association of Massage School Owners (TAMSO). TAMSO is the only Massage Therapy School Association in Texas. I am commenting today on behalf of TAMSO as well as a private Massage School Owner. We have grave concerns about and strongly oppose many of the proposed rules being considered today. The staff proposal has nothing whatsoever to do with protecting or improving the health of the public. This proposal, if adopted, would hurt consumers, small business, and massage therapy students.

On January 30, 2008, upon hearing concerns from TAMSO membership and other stakeholders in attendance that day, this Council voted to table an almost identical proposal and directed staff to go back to work with those stakeholders and reach consensus on the issues raised by those stakeholders. Unfortunately, in direct defiance on the part of staff to follow the directive given by this Council, only one meeting was offered by staff, and that meeting, which was conducted more like a public hearing, was used by staff to justify their actions rather than to come to consensus as directed by this Council. The result of staff ignoring this Council's clear directive is that we are as far apart on this issue as we were back in January. We stand firm and justified in our positions which point out:

- Staff has
  - erred on several issues with respect to the intent of HB 2644
  - erred in its interpretation and application of the Occupations Code – see SOAH Hearing – (Appendix B)
  - granted certain illegal exemptions for some schools
  - given preferential treatment to others and in doing so, has contributed to those schools being in violation of the Occupations Code – (Appendix A)
  - attempted to over-regulate small schools by “policy” irrespective of the rule promulgation process mandated by law
  - created an unlevel playing field in the massage school market place with its “policy” decisions. This situation has been created because of staff's biased, hostile, passive-aggressive “policy decisions” which have adversely affected small business – (See Appendix B)
- Staff has erred egregiously in granting an exemption from massage school licensure, and this error could actually pose a risk to the health of the public. Parker College of Chiropractic is offering a massage therapy educational program which is not in compliance with the Occupations Code. According to Yvonne Feinleib, Parker is exempt from the Occupations Code:

*“Parker College is not a licensed massage school - it is a college and as such is regulated by the Texas Higher Education Coordinating Board - so we do not approve/disapprove its programs.” Yvonne Feinleib*

...but according to Linda MacDonough of the Texas Higher Education Coordinating Board, Parker is not exempt and requires approval from DSHS:

*“What is not alright, though, is offering the massage course without **approval from DSHS**. They (Parker) **MUST have that, whether or not they are SACS accredited.**” June 27, 2008*

- The proposed rules related to the curriculum and internship of the new minimum 500 hour program do nothing to protect or improve the health of the public, are not in keeping with the letter or intent of HB 2644 - (see Appendix B for background information) - and will cause and have caused many of the privately owned massage schools across Texas to go out of business due to staff implementing their proposed rules as “policy”
- The proposed rules related to testing for licensure do nothing to protect or improve the health of the public, they violate the Occupations Code, they are not in keeping with the letter or intent of HB 2644, and could potentially cause harm to the public and monetary hardship to future massage therapy exam candidates – (Appendix C). Additionally, as a result of a staff “policy” decision, **exam candidates are currently being denied by staff the opportunity to sit for the state exam as required by law.**

In light of the aforementioned actions and so much stakeholder opposition to the proposal presented by staff, we ask you to consider the proposed rules that we are submitting today – (Appendix D) – instead of those presented by staff. Our proposals satisfy the letter and intent of HB 2644, have the support of an overwhelming majority of stakeholders, protect and improve the health public, protect massage therapy students, and protect small business. These proposed rules, which we submitted to staff over a year ago, have been rejected by staff without good cause. At the very least, we ask that this Council again table the staff proposal. In addition, we ask this Council to direct staff in no uncertain terms to allow all massage therapy candidates who have met the educational requirements of HB 2644 the opportunity to sit for the STATE exam. I thank this Council and the Commissioner for considering our comments today. We stand ready and willing to work with you and staff in the best interest of the citizens of Texas.

Respectfully,



Raul S Flores – San Antonio  
President, Texas Association of Massage School Owners



Victor Terrazas, LMT & Instructor – El Paso

cc: Governor Rick Perry  
Albert Hawkins, Executive Commissioner, HHS  
Representative Patrick Rose  
Representative Diane Delisi, Chair, Public Health Committee  
Representative Frank Corte



Carolyn Scott Naile – Dallas/Mesquite  
President, Texas Coalition of Massage Schools & Instructors



Naomi Morton – School Owner – McAllen

Senator Jane Nelson, Chair, Health & Human Services Committee  
Senator Royce West  
Representative Carl Isett  
Representative Jim Jackson  
Representative Nathan Macias

## Appendix A

In various written statements and/or emails, staff has argued that:

*“In the absence of adopted rules, and due to the passage of HB 2644, we are regulating some aspects of massage school operations by policy.”*

*“We have not issued any provisional approvals to licensed, unaccredited massage schools...No approvals will be granted until after the new rules become final...”*

*“Based on the proposed rules, we issued a provisional approval to ATI to operate a 600 hour program. There is nothing in the proposed rules to require licensed, accredited schools to offer a 500 hour course as well.”*

But the law states:

§ 455.205. PROHIBITED PRACTICES.

(b) A massage school or a massage therapy instructor **may not require** the successful completion of **more** course hours than the number of hours required for licensing as a massage therapist under this chapter.

This is patently unfair and unnecessary. The private, “unaccredited” massage schools are the ones who have been in the market place, working within the law, and doing a great job over the years. The “accredited” schools are the newcomers, some of whom are just entering into the marketplace. Why do they get preferential treatment and allowed to break the law by “policy” in the process?

In the absence of rules, all private schools are following and should follow the law until rules are adopted. Any “policy” decision should not contradict the law, should not cause an adverse economic affect on small business, should not give preferential treatment to some stakeholders, and should not create an unlevel playing field.

## Appendix B

We are strongly opposed to DSHS proposed rules §140.338(j),(k),(l), and (m), and 140.339 (d)(e)

We recommend the following alternate language for §140.338(j),(k):

TAMSO, TCMSI, and AMTA propose a rule setting a maximum number of internship hours:

(j) The maximum number of hours a student may accumulate in an internship before the student is required to be licensed may not exceed a number that is equal to one-third of the entire length of the massage therapy educational program.

In addition, in order to ensure that the content of advanced programs was in keeping with advanced coursework guidelines for the protection of the student, TAMSO, TCMSI, and AMTA propose:

(k) The educational program is state-approved if it includes at least the minimum 500 hour course of instruction required for licensure, it does not exceed internship hours in accordance with §140.338(j) of this title, and it complies with §140.339(a)(b)(c) of this title related to advanced coursework.

I would like to point out that general rule making guidelines in Occupations Code § 455 are intended to set standards to protect the public. All rules being proposed or considered need to be viewed in this context. In particular:

- § 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules adopted under this chapter relating to a massage school must contain minimum standards for:
  - (11) the massage school's curriculum and educational material;
  - (13) any other aspect of the operation of a massage school that the executive commissioner considers necessary to protect students, massage school personnel, or the public

### Background

We understand that Occupations Code 455.053(7) requires the agency to set a maximum number of internship hours a student may complete in a massage school's internship program before the student is required to be licensed. We merely disagree with the number that the department is proposing. For 15 years, From July, 1991 until October 2006, such a rule did not exist, even though the statute required it. During that time there were no abuses, nor were there any public protection issues as a result of the absence of a rule.

In May 2004, a frivolous complaint was filed against a massage therapy school in San Antonio, Academy for Massage Therapy Training. The complaint alleged that this school, my school, was allowing unlicensed persons, students, to provide services to the public for which a license to practice massage was required. These students were providing massage therapy to the public without being compensated as part of a voluntary extended internship program. Under the Occupations Code 455:

*§ 455.158. STUDENT EXEMPTION FROM LICENSING REQUIREMENTS. A student who provides massage therapy as part of an internship program or without compensation is exempt from licensing under this chapter if the student is enrolled in a state-approved course of instruction that consists of at least 300 hours*

This language is still in the Occupations Code 455 today. DSHS claimed in the complaint that by my school allowing students to provide massage therapy to the public beyond the minimum 50-hour internship, I was in violation of rule 141.5(m) which was in effect at that time which states:

(m) A licensee shall not allow an unlicensed person to engage in activity for which licensure is required.

I disagreed because a student was exempt from licensure requirements and I asked for a SOAH hearing and an ALJ opinion.

As a result of the SOAH hearing, Docket Number 537-06-0538, conducted in February 2006, it was determined by Administrative Law Judge (ALJ), Honorable Amy Larson, massage therapy schools are in fact allowed to offer more internship hours than what is minimally required for licensure. Counsel for DSHS was then and is still Mr. Dan Meador. Subsequent to this decision, in October 2006, DSHS adopted rule 141.34(j), which set a maximum number of internship hours at 50, even though it had been finally decided by an ALJ that more internship hours were allowed under the statute and rules. DSHS did so without completing and adverse economic impact analysis and statement, in Violation of Government Code § 2006 related to Agency Actions Affecting Small Business .

Since it was decided that this practice was considered an acceptable way to business under the law, proposed rule 141.34(j), adopted in October 2006, created an adverse economic impact on massage therapy schools and provision should have been made to minimize that impact. No provision was made to minimize the impact. In fact, the analysis was not even performed. Unfortunately, rule 141.34(j) was adopted irrespective of the Government Code Chapter 2006 which requires an adverse economic impact analysis be conducted and provision made to reduce the adverse economic effect on small and micro-businesses, it was adopted irrespective of overwhelming stakeholder input opposing the rule, and it was adopted to harass and otherwise retaliate against Academy for Massage Therapy Training and other massage schools as a result of the ALJ decision.

An overwhelming majority of massage schools in Texas are micro-businesses. The adverse economic impact to massage schools which were affected by the rule has been a reduction in revenues of up to 66%. Some schools have since gone out of business as a result of this rule and as a result of intimidation tactics by the program staff. These adverse economic effects could have been prevented and would have been prevented if the agency had applied Government Code Chapter 2006 to the area of school operations. DSHS did not follow Government Code Chapter 2006 in this instance because the DSHS representatives who wrote the proposed rules made this a personal issue and in doing so, lost their objectivity. The adverse economic effects mentioned earlier will continue and become more severe if these proposed rules offered by the agency are adopted because tuition has also increased due to the increase in number of required hours for licensure.

I must point out that any rules being proposed must include a complete economic impact statement and analysis. This was not done with respect to the proposed rules affecting school operations.

Excerpt from the DSHS proposed preamble:

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

*“Ms. Bourland has also determined that there will be an effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because additional fees will be required for the issuance and renewal of massage therapy establishment licenses to businesses formerly exempt from licensure. Regarding §140.364, there is an anticipated economic cost to businesses which are required to comply with the sections as proposed of \$300 every two years. There is no anticipated negative impact on local employment.”*

#### ECONOMIC IMPACT STATEMENT

*“Regarding §140.364, the purpose of the rule is to clearly set forth any exemptions to the requirement for a business to hold a massage establishment license. The rule language as proposed exactly repeats the language in HB 2644, which also eliminated the department’s authority to adopt rules granting additional exemptions. An estimated 900 small or micro-businesses will be required to comply with the rules as proposed. Less than 100 of these small businesses are already licensed as massage schools.”*

Unfortunately, these statements and analysis are incomplete. They do not include the adverse economic impact some of these rules would have on massage therapy schools; the backbone of massage therapy in Texas. Specifically, proposed rules 140.338(j),(k),(l),and (m) as well as others highlighted later in this document will have a very serious adverse economic impact on massage schools and future massage therapists as well. These proposed rules are new and are not in the interest of public protection. They are being proposed for purposes of harassment and in bad faith.

FYI

§ 2006.002. ADOPTION OF RULES WITH ADVERSE ECONOMIC EFFECT.

- (a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.
- (b) To reduce an adverse effect on small businesses, an agency may:
- (1) establish separate compliance or reporting requirements for small businesses;
  - (2) use performance standards in place of design standards for small businesses; or
  - (3) exempt small businesses from all or part of the rule.
- (c) Before adopting a rule that may have an adverse economic effect on small businesses, a state agency shall prepare:
- (1) an economic impact statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule;
- and
- (2) a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule.
- (c-1) The analysis under Subsection (c) shall consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business.
- (d) The agency shall include the economic impact statement and regulatory flexibility analysis as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register and shall provide copies to the standing committee of each house of the legislature that is charged with reviewing the proposed rule.
- (e) This section does not apply to a rule adopted under Title 2, Tax Code.
- (f) To reduce an adverse effect of rules on micro-businesses, a state agency shall adopt provisions concerning micro-businesses that are uniform with those outlined in Subsections (b)-(d) for small businesses.
- (g) The attorney general, in consultation with the comptroller, shall prepare guidelines to assist a state agency:
- (1) in determining a proposed rule's potential adverse economic effects on small businesses; and
  - (2) in identifying and evaluating alternative methods of achieving the purpose of a proposed rule.

This irresponsible, brazen, zealous, and harassing attitude is apparent in this 2007-2008 rulemaking process and it must stop now. Government Code § 2006 is being ignored again, and the current rule 141.34(j) should have never been adopted. There is no cause for this type of over-regulation which goes beyond the authority given by the legislature. There is also no legal reason to oppose what this industry has proposed – what we in the industry refer to as “the 1/3 rule”. Even Mr. Meador, Counsel for DSHS, stated in an email to one of our members:

October 30, 2007

*“It is true that I said I had no problem with a 1/3 internship. However, I am not the person who makes that decision”*

*Dan Meador, Assistant General Counsel  
Office of General Counsel*

The purpose and intent of HB 2644 was to create an environment where massage schools would be able to offer even more flexibility in educational programs while bringing the minimum educational standards up and at the same time allowing massage schools to offer effective ways to create win-win opportunities for massage students, consumers, and massage schools. The benefits to the student of allowing schools to offer a voluntary extended internship program are two-fold: Experiential & Financial.

### **Student Benefits**

- **Experiential.** The student gains more experience and confidence in working with a much wider array of different types of clients with different needs and conditions. Massage therapists are expected to effectively work with clients that present with various pathologies and conditions ranging from headaches, carpal tunnel syndrome, back surgery, sprains, strains, back pain, fibromyalgia, pregnancies, multiple sclerosis, muscular dystrophy, paralysis, TMJ, cancer, etc. It is impossible in a 50 hour internship program to give the student the opportunity to experience all of the different types of conditions and expectations the average 21<sup>st</sup> century massage client has, not to mention the need for the student to master all of the skills objectives set forth in the required curriculum. It has been argued by the program representatives, ignorantly so, that the students can gain this experience by working with fellow students in class. This argument shows just how out of touch the program is with the realities of massage education. First of all, massage therapy students are generally healthy. They don't have the types of conditions or pathologies that some in the general population seeking massage therapy would have. Second, most massage schools have very small classes – usually between 6 and 14 students. There is no way that a real world setting can be created, with conditions and pathologies mentioned above, with such a small number of relatively healthy individuals.
- **Financial.** Massage schools are allowed by statute to charge a fee to the clients for massage services performed by the student. The student is not allowed to be paid for the massage services provided. The school, however, utilizes the clinic revenue to cover its overhead and expenses. Schools, such as mine, choose to allow students to receive their education and added experience at little to no cost to the student, and with NO TAXPAYER dollars. The ALJ agreed that this practice did not constitute compensation for the massage services, and the ALJ viewed the practice for what it was – clients of the massage school pay the students tuition. Why is the practice of waiving tuition viewed as such a horrible practice by these agency representatives? The only obvious reason for their opposition is to harass and retaliate for losing the SOAH hearing regarding this practice!

Comparatively speaking, it is the most fiscally responsible way to offer the vocational education necessary for licensure as compared to what is currently required under other vocational educational programs such as Cosmetology, Esthetician (skin care), nail technician, medical assistant, dental assistant, and others which require a substantial portion of the education experience to be in clinic/internship. For example, to obtain a Cosmetology license, a person must complete 1500 hours of training, 1350 of which is spent in CLINIC where the school charges for services but the student is not paid AND the school collects tuition for all of those hours as well, usually in the form of tax payer funded grants or student loans for \$10,000 to \$15,000. To obtain an Esthetician license, a person must complete 750 hours of training, 675 of which is spent in CLINIC where the school charges for services but the student is not paid AND the school collects tuition for all of those hours as well, usually in the form of tax payer funded grants or student loans. To obtain a Nail Technician license, a person must complete 600 hours of training, 540 of which is spent in CLINIC where the school charges for services but the student is not paid AND the school collects tuition for all of those hours as well, usually in the form of tax payer funded grants. All that just to learn how to do someone's nails!?!?

Conversely, massage schools don't charge tuition if the student completes an extended internship program. The student tuition is waived upon completion. The program length is substantially shorter than the ones mentioned above – 675 hours, the extended program is voluntary, and it gives meaningful and valuable experience to the massage student. Income opportunities are far greater for a massage therapist - \$29,250\* to \$31,474\*\* annually - than they are for a Cosmetologist - \$21,904\*\*\* annually, especially those massage therapists with the kind of experience that is gained through an extended internship program. Moreover, the ALJ concurred that the practice of waiving student tuition through this extended internship program did not violate any law or rule.

From a public protection standpoint, it is reasonable to allow massage schools to offer to students an opportunity to gain more experience as part of a structured massage educational program than it is to require 540 hours of "clinic" for someone who simply wants to do manicures. In doing so, massage schools should have the flexibility to offer programs that meet the needs of the industry and the student at the same time.

Finally, during the 2007 legislative session, when HB 2644 was being considered, I and several of my colleagues were given assurances by Heather Muehr, then Program Director for the Massage Therapy Program, that we would be able to, by rule, set a number of internship hours that was consistent with what the majority of schools agreed upon. The number at the time was a number equal to one-third of the entire massage program. In real numbers, that would mean a program with the minimally required 450 classroom hours could also add internship of up to 225 hours, for a total of 675 hours, but as the classroom hours offered increased, so would the internship hours proportionately. In a 500 classroom hour program, there would be a voluntary extended internship of no more than 250 hours for a total of 750 hours of education in the program. Anything offered by a school which was beyond the minimum requirement for licensure would be and should completely voluntary on the part of the student.

Instead, Yvonne Feinleib, Stephen Mills, and Dan Meador have chosen to continue to harass law abiding, upstanding, tax paying massage schools and their owners by proposing an even more restrictive set of rules affecting private massage schools and their owners and administrators irrespective of the intent, purview, and purpose of HB 2644, irrespective of Government Code § 2006, irrespective of the promises made and assurances given by Heather Muehr, and irrespective of overwhelming stakeholder input opposing such unnecessary restrictions. While trying to over-regulate privately owned massage schools, their proposals are giving preferential treatment to larger, corporate "career schools", creating an unlevel playing field and giving them a competitive advantage. Moreover, they are attempting to undermine the decision of an ALJ by proposing these rules. At the very least, schools that have been operating the way the ALJ said was legal should be allowed to continue to do so without any further harassment.

We strongly oppose requiring accreditation for massage schools wanting to offer more than 500 hours because:

1. Competitor "career" schools are already accredited, giving them a huge competitive advantage over smaller private schools, and these schools also receive Title IV Federal Financial Aid
2. Even if a school were to become accredited, Federal financial aid would not become available to privately owned massage schools until some time after accreditation
3. Accreditation is very expensive (\$15,000 to \$20,000) and takes a minimum two years to obtain
4. Accreditation is not required by law and should be optional
5. It was not the intent of HB 2644
6. It is not required in HB 2644
7. This requirement would drive up the cost of massage education by at least 80%
  - a. Average tuition at a non-accredited massage school is approximately \$5000
  - b. Average tuition at an accredited school is approximately \$9000
8. Of the approximately 55 privately owned Massage Therapy Schools in Texas, only 3 are accredited by an accrediting agency such as what is being proposed by rule

The TAMSO supported HB 2644 with the understanding that:

1. The minimum educational hours consisted of meaningful coursework to benefit the massage therapy student
2. Additional coursework beyond the minimum 500 hours would be allowed as long as it met current statutory and administrative criteria, providing the student the opportunity to specialize in any aspect of massage therapy practice or simply to allow the student the opportunity to gain more experience and confidence in a school clinical setting prior to licensure. This position was upheld by an Administrative Law Judge in February 2006 resulting from a SOAH hearing with respect to additional or advanced coursework.
3. A student providing massage therapy to the public as part of an internship program is NOT the unlicensed practice of massage therapy. This activity is exempted by statute:

*§ 455.158. STUDENT EXEMPTION FROM LICENSING REQUIREMENTS. A student who provides massage therapy as part of an internship program or without compensation is exempt from licensing under this chapter if the student is enrolled in a state-approved course of instruction that consists of at least 300 hours*

4. Internship can in fact be more than the minimum 50 hours. A plain reading of the law shows that the intent was to allow more under certain conditions:

§ 455.001. DEFINITIONS. In this chapter:

(6) "Massage school" means an entity that:

(A) teaches at a minimum the course of instruction required for a massage therapist license

§ 455.159. STUDENT INTERNSHIP PROGRAM. (a) An internship program must:

(2) provide a student with a minimum of 40 hours of hands-on massage therapy experience

§ 455.156. LICENSE REQUIREMENTS FOR MASSAGE THERAPIST.

(b) An applicant for a license under this section must be an individual and:

(1) present evidence satisfactory to the department that the person has satisfactorily completed massage therapy studies in a 500-hour **minimum**, supervised course of instruction provided by a massage therapy instructor at a massage school, a licensed massage school, a state-approved educational institution, or any combination of instructors or schools, in which **at least**:

(l) 50 hours are spent in an internship program;

§ 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules adopted under this chapter relating to a massage school must contain minimum standards for:

(7) the maximum number of hours a student may accumulate in a massage school's internship program before the student is required to be licensed under this chapter;

If the intent was for the minimum to be the maximum, why would there need to be a separate rule specifying a maximum? In fact, the intent was to allow for more hours of internship than what is minimally required, and that number should be set:

- Using some rational basis
- Recognizing stakeholder input
- Recognizing the needs of the industry
- With proper protections built in for the student (enrollment agreements and course end dates)

Internship would be expanded by rule, with proper stakeholder input and consideration, to a number that was agreeable to a consensus of the massage school industry. At the time we testified for the bill, we had agreed that this could be handled through rulemaking.

In summary, we are strongly opposed to DSHS proposed rules §140.338(j),(k), (l, and (m))

§140.338. Massage School Curriculum Outline and Internship

(j) Approved internship programs may not exceed 120 hours. Individuals who have completed the required minimum 500-hour supervised course of instruction, including the 50-hour internship, are eligible for examination and licensure. For the purposes of Texas Occupations Code §455.053(7), 50 hours is the maximum number of hours a student can accumulate in an internship before the student is required to be licensed unless the student is enrolled in a massage therapy educational program with an internship of up to 120 hours which has been approved by the department in accordance with subsection (m) of this section. No student may complete more than one internship program.

(k) A massage school shall not allow an unlicensed student to receive any form of compensation for massage therapy or other massage therapy services.

(l) A massage school shall not allow, authorize, or contract with an unlicensed student enrolled in any course or portion of a course offered by the school to provide massage therapy or other massage therapy services to the public for compensation in excess of the internship approved by the department.

(m) A massage school shall request and receive approval to offer a course of instruction designed as a massage therapy educational program which exceeds the 500 hour minimum required for licensure and is otherwise conducted in accordance with all rules pertaining to a massage therapy educational program. A massage school shall not offer a massage therapy educational program which exceeds the 500 hour minimum required for licensure without receiving approval in writing from the department. Such approval shall only be granted by the department if:

(1) the massage therapy educational program or massage school is accredited by an accrediting body approved by the US Department of Education; or

(2) the massage therapy educational program is approved by the department and meets the following requirements:

\_\_\_\_\_ (A) the massage therapy school also offers the 500 hour minimum course of instruction required for licensure concurrently and the student is allowed to choose whether or not to enroll in a program that exceeds the minimum number of hours required for licensure;

\_\_\_\_\_ (B) the massage therapy educational program shall follow the curriculum outline prescribed by the department for the minimum 500 hour supervised course of instruction;

(C) all classroom hours in excess of 450 hours are structured to achieve specific educational goals approved by the department which are directly related to one or more of the competencies included in the curriculum approved by the department;

\_\_\_\_\_ (D) all internship hours in excess of 50 hours are structured to achieve specific educational goals approved by the department which are directly related to the clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue;

\_\_\_\_\_ (E) the total number of classroom hours does not exceed 880 hours;

\_\_\_\_\_ (F) the total number of internship hours does not exceed 120 hours;

\_\_\_\_\_ (G) the massage therapy school:

(i) provides the student with a department form designed to inform the student that the massage therapy educational program exceeds the minimum number of hours required by law for licensure;

(ii) obtains the student's signature on the form prior to enrollment;

(iii) provides a copy of the signed form to the student; and

(iv) maintains a copy of the signed form in the student's file.

(H) Failure to comply with this subchapter shall constitute grounds for the department to deny or withdraw approval of programs or to take disciplinary action against a massage school.

Proposed rule (j) was proposed after the SOAH hearing proved that additional internship hours were allowed. Proposed (k), (l), and (m) are written specifically to go against what the SOAH judge ruled is allowed under the statute and rules. The agency must not be allowed to change the way schools do business by writing rules that are clearly written to be vindictive and are outside of the authority given to them by the legislature!

In addition, we are strongly opposed to DSHS proposed rules §140.339 (d) and (e)

(d) A massage school may not represent that advanced course work is approved by the department.

(e) Unlicensed students enrolled in advanced coursework may not provide massage therapy or other massage therapy services to the public.

The proposed rules §140.339 (d)(e) are being proposed in contradiction to what was decided by the judiciary in a SOAH hearing in February of 2006.

5. The intent of HB 2644 was to create an environment whereby massage schools in Texas could offer programs that would allow for the most opportunity for portability and reciprocity. According to the author of HB 2644:

*“Currently, a massage therapy instructional program in Texas is required to include a 300 hour mandated curriculum. Under this curriculum, Texas graduates are prohibited from qualifying for national certification as a minimum of 500 hours is required by the National Certificate Examination for Therapeutic Massage and Bodywork Program, accredited by the National Commission for Certifying Agencies. Because of this, Texas graduates currently have no licensing reciprocity when moving to other states and the District of Columbia. All other states that regulate the curriculum and practice of massage therapy instruction require a minimum of 500 hours, with many states exceeding that number with programs that include up to 1000 hours of training to be licensed or recognized.”*

*Chairman Patrick Rose, Author HB 2644  
Letter of Intent HB 2644 7/18/2007*

6. Placing a maximum on what schools can offer goes against the intent of HB 2644. In addition, it is criminal to attempt to do so because it violates the Occupations Code with respect to rule making authority.

§ 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules adopted under this chapter relating to a massage school must contain **minimum** standards for:

(11) the massage school's curriculum and educational material;

The intent of HB 2644 was to allow Texas massage schools the ability to offer more hours in massage education without any other approvals or accreditation so that Texas massage school graduates could be prepared to move to other states if they so chose and practice massage therapy because they were able to obtain in Texas the education needed to move to virtually any other state. In addition, other states DO NOT PLACE a maximum number of hours that can be taught, with or without accreditation, and most state massage laws don't place a maximum number of internship hours either. For example:

- New York requires a minimum 1000 hours of massage education for licensure as a massage therapist with no maximum
  - Nebraska law requires a minimum 300 hours of clinic as part of the minimum 1000 hour program with no maximum (30%)
  - Louisiana law allows for up to 325 hours of the minimally required 500 to be clinical practicum with no maximum (65%)
  - North Carolina law allows for a minimum of 150 hours of clinic as part of the minimum 500 hours required for licensure with no maximum (30%)
  - Oregon law allows up to 300 hours of clinical practical application as part of the minimum 500 hour program with no maximum (60%)
  - Utah law requires a minimum of 600 hours of training, 400 hours of which must be massage technique and clinic practicum with no maximum (66%)
  - New Mexico law allows up to 150 of the required minimum 650 hours to be internship hours
  - Florida law, in addition to a traditional classroom experience, allows for an apprentice training program of 1678 hours, 700 of which are clinic practice supervised by a licensed massage therapist in a massage establishment (42%)
7. The intent of HB 2644 was to allow **currently licensed, non-accredited**, privately owned massage schools an opportunity to continue to be competitive in the free market with other vocational schools by allowing those private schools the ability to offer extended internship programs in lieu of becoming eligible for federal financial aid programs. This practice of offering extended internship programs was proven to be perfectly legal and acceptable under the statute, as ruled by an ALJ in February 2006. This is one of the reasons why TAMSO supported HB 2644.
8. The intent was never to require accreditation of schools nor place a limit on the number of hours a massage school could offer – not require.

## Appendix C

We strongly oppose the proposed change to the examination for licensure!

We are strongly opposed to the requirement of any “national” exam because:

1. It violates the Occupations Code.

The Occupations Code §455.101 states:

§ 455.101. GENERAL DUTIES OF DEPARTMENT. The department shall:

(4) **prepare** and **administer** a **state** examination under this chapter.

HB 2644 states:

Section 455.156(b), Occupations Code, is amended to read as follows:

(b) An applicant for a license under this section must be an individual and:

(2) pass the [practical and] **written** [portions of the] **state** examination; and

2. The Occupations Code does not give the department the authority to adopt a “national” exam.
3. The proposed “national” exam tests on information not included in the curriculum allowed to be taught by schools.
4. There are no checks and balances for the test candidate with respect to timely processing of the application, available test dates and sites.
5. None of the proposed “national” exams are available in any language other than English.
6. The “national” exam fee is three times the current testing fee.
7. The applicant must test within 3 months or they forfeit the examination fee as compared to one year under the current system.
8. Passing the “national” exam doesn’t “certify” you “nationally” – it’s **deceptive trade** on the part of the “national” organization.
9. The current testing contractor submitted a proposal to DSHS to develop a new state exam at no expense to the state, and offer a rebate to the state for every person taking the new exam.
10. If DSHS is allowed to break the law and require the “national” exam, candidates will still have to take a Texas jurisprudence exam prior to licensure. The jurisprudence could be and should be part of the statute required state exam. Why would DSHS want to require candidates take two exams?
11. Currently, it takes a massage therapist candidate approximately 5 weeks from the time she/he submits her/his application for testing and licensure to the time she actually receives a license. Under the new “national” proposal, that process will take an average of 6 to 7 months.
12. Texas massage therapists stay in Texas. Less than 1000 therapists have been nationally certified out of the more than 30,000 therapists licensed in the state. The national exams should be optional, while a Texas-based examination would ultimately fulfill the needs of this regulated community.

In closing, DSHS and its representatives have ignored the letter and intent of HB 2644, ignored the will, input, and needs of the industry, and staff has resorted to Gestapo-like tactics to intimidate, control, and destroy small business, and they must be stopped!

We strongly encourage this council to step in and do what the law and relevant codes require, and stop these rules from moving forward. We ask you to adopt the rules that the industry has offered to the agency, all of which meet statutory requirements, are consistent with the intent of HB 2644, provide public protection while addressing the needs of the industry, the needs of prospective massage students, the needs of the public, and which consider the expertise of those who make massage therapy a successful, highly regarded part of this state's economy and way of life every day.

\* US Department of Labor, Bureau of Labor & Statistics

\*\* Payscale.com

\*\*\* Salary.com

## **Appendix D**

HB 2644

Subchapter H Massage Therapy §140 Proposed Rules

### **With Stakeholder Consideration**

The sections underlined and highlighted in yellow are the sections that either replace or build on the DSHS proposals, strengthen language already in the law, or clarify any ambiguities which may exist in the law.