



October 1, 2007

To: David Lakey, MD  
Commissioner, Texas Department of State Health Services

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

Re: HB 2644  
Proposed Rules

Dr. Lakey,

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. Our membership consists of approximately 25 privately owned Massage Therapy Schools whose graduates represent a combined total of about 55% to 60% of all massage therapy school graduates annually.

I am commenting today on behalf of TAMSO as well as a private Massage School Owner. I am asking this agency to adopt rules consistent with the letter and intent of HB 2644, and not write rules intended to stifle small businesses, penalize schools for trying to do what is best for students, and hurt future massage therapy students. I will try to be brief, but quite frankly, Stephen Mills, Yvonne Feinleib and their staff have had the opportunity to spend the last two months developing these proposals, and many of the proposed rules require comment and cannot go unaddressed. Many of the proposals go well beyond what the Occupations Code calls for, and there is no justification for them.

- I would like to point out that general rule making guidelines in Occupations Code § 455 are intended to set **minimum** standards and 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**
- We strongly oppose requiring accreditation for massage schools wanting to offer more than 500 hours because:
  1. It was not the intent of HB 2644
  2. It is not required in HB 2644

3. Competitor "career" schools are already accredited, giving them a huge competitive advantage over smaller private schools.
  4. This requirement would drive up the cost of massage education by at least 20%
  5. 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
  6. Accreditation should be optional
  7. Accreditation is very expensive and takes a minimum two years to obtain
  8. 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
- 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 (see below)
    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:

*§ 455.158. 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***

*§ 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*

*§ 455.053. 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. Rule making authority for this topic is in the Occupations Code 455 and it states:

TAMSO proposed a rule setting a maximum number consistent with ACCSCT accreditation standards:

(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 proposed:

(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 §141.34(j) of this title, and it complies with §141.35 of this title related to advanced coursework.

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

§140.338. Massage School Curriculum Outline and Internship

(j) The department does not approve more than 50 internship 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 and are no longer considered to be students. 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.

(k) A massage school shall not allow an unlicensed student to receive any form of compensation for massage therapy or other massage therapy services. Compensation includes discounted or reduced student fees for tuition, books, supplies, or other educational expenses.

(l) A massage school may 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 in excess of the 50 hour internship

Proposed rule (j) was proposed after the SOAH hearing proved that additional internship hours were allowed. Proposed (k) and (l) below 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!**

We are strongly opposed to DSHS proposed rules §140.342 (d)(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 §140.342 (d)(e) are being proposed in contradiction to what was decided by the judiciary in a SOAH hearing in February of 2006.

The two reasons massage schools want to offer the extended internship are as follows:

- a. In this business, the learning is in the doing. Schools would like to have the ability to allow students to complete more internship hours if they so choose **prior** to licensure
- b. In doing so, schools can offer a financial aid benefit, whereby the student could attend massage school almost for free, and the revenue received by paying clients is applied toward the student tuition. It is a win, win, because students receive the education and experience, clients pay for discounted massage sessions, and taxpayers aren't paying for education via federal financial aid programs. And the best thing is it's all voluntary!

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:

*"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. The Occupations Code does not allow for maximums to be set, just minimum standards:

- § 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

- **Louisiana** law allows for up to 325 hours of the minimally required 500 to be clinical practicum with no maximum
- **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
- **Oregon** law allows up to 300 hours of clinical practical application as part of the minimum 500 hour program with no maximum
- **Utah** law requires a minimum of 600 hours of training, 400 hours of which must be massage technique and clinic practicum with no maximum
- **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

7. The intent of HB 2644 was to allow **current, non-accredited**, privately owned massage schools an opportunity to compete with the CCST 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 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.

- **We strongly oppose the proposed rule which states:**

*§140.338. Massage School Curriculum Outline and Internship.*

*(b) A student must complete the first 450 hours of the supervised course of instruction before the student is eligible to enter the internship program*

We believe that students would benefit the most by starting internship prior to the completion of all of their classroom coursework. ***This in fact was the intent of HB 2644, which is why it was not addressed in the bill!*** Allowing students to begin internship prior to the completion of all of the classroom coursework would benefit the student because she/he could bring her/his clinic experience back to the classroom for discussion and adjustment, then take the new classroom information back to the clinic setting, whereby each setting supports and builds on the other. The statute currently and clearly allows for this:

*§ 455.159. STUDENT INTERNSHIP PROGRAM*

*(b) A student must complete the first 250 hours of required training at a massage school or with a massage therapy instructor before the student is eligible to enter an internship program*

- **We strongly oppose the proposed change to the examination!**

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. the “national” exam fee is three times what the current testing fee is
6. the applicant must test within 3 months or they forfeit the examination fee as compared to one year under the current system
7. passing the “national” exam doesn’t “certify” you “nationally” – it’s deceptive trade on the part of the “national” organization
8. 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
9. 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?
10. 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

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

It is our sincere hope that you would seriously consider these and other similar comments, consider the intent of HB 2644, refrain from over-regulating, remain objective and not vindictive, and consider the alternate language that we in the industry have proposed in lieu of these radical, punitive, unreasonable, and unnecessary rules proposed by DSHS representatives.

Most Respectfully,



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