



May 1, 2014

The Honorable Assemblymembers Susan Bonilla, Jimmy Gomez, and Chris Holden  
California State Assembly  
Sacramento, CA 95814

**RE: Assembly Bill 1147 – Massage Therapy Act of 2014 - Comments**

Dear Assemblymembers Bonilla, Gomez, and Holden,

On behalf of the City of San Gabriel, we would like to express our continued thanks to you in addressing the need to allow cities to effectively regulate massage therapy businesses as set forth in Assembly Bill 1147, as amended.

The change in composition of CAMTC along with the recognition that the primary aim of the Act is on public safety is a much needed change. Additionally, we welcome the provisions of certificates for massage establishment operators and massage establishment registrations through the CAMTC.

Perhaps most important are the revisions made that will allow us flexibility in imposing local control. However, we have discovered what may be a flaw in the draft language. As stated in our previous correspondence of April 8, 2014, it was our hope that San Gabriel and other cities that enacted similar regulations would be able to have clear authority to issue Operator Permits and Certificates of Operation for the business at the local level as they have proved to be a very helpful tool in dealing with illicit businesses. While the draft language of AB 1147 now provides that we can require a license, permit or other authorization if the same requirement applies to *any* other business as defined by Section 13401 of the Corporations Code, we do not believe that we can impose those requirements on such businesses.

Corporations Code Section 13401 defines “professional services” as “any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” However, Business and Professions Code 460 provides:

(a) No city or county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof.

(b) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.

It therefore appears that requirements for Operator Permits and Certificates of Operation may likely be prohibited under Business and Professions Code section 460. If this interpretation is correct, then Operator Permits and Certificates of Operation cannot be placed upon certified massage professionals and businesses that use only such individuals. We would therefore urge that the language be amended to provide local government with the authority to impose such regulations and require all other health, safety, zoning, and other similar requirements to apply only if they are applied to at least one other business as defined by Corporations Code Section 13401. Of course, this should not apply to regulatory provisions which are unique to the massage industry.

Other substantive comments relating to AB 1147 are as follows:

- We believe owners, as well as Operators, should be responsible for the conduct of employees, independent contractors, or volunteers if they knew or should have known of the conduct.
- Section 4609(a)(8) and (9) should be amended to include pleas of “nolo contendere” as well as convictions or violations related to qualification, functions, or duties of a certificate holder as it convictions for these types of crimes are very rare.
- Based on the realities of limited resources being available to District Attorneys, we also suggest that Government Code section 41803 be amended to provide:

*(c) Notwithstanding subsection (a) above, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of a violation of Penal Code section 647(a) or (b) without the consent of the district attorney of the county.*

- Section 4610(d) should be amended to clarify that establishment registrations can be revoked.
- Section 4613(a)(5) should be amended to clarify that in addition to obtaining fingerprints of owners, background checks may also be conducted.
- Section 4617 should be amended to provide that local jurisdictions may bring actions as well.

Assemblymembers Bonilla, Gomez and Holden  
Massage Therapy Act of 2014  
May 1, 2014  
Page 3

- It was our understanding from the League that Section 4612(b)(2)(b)(ii) was going to be amended to provide that the prohibition against locked doors would only apply if there was only one person working at the establishment
- Government Code section 51030 provides that cities can regulate massage. This section should be amended to provide a cross-reference to the Business and Professions Code.

Please do not hesitate to contact me if you think I can be of any assistance. I can be reached by e-mail at [lisa@wkrklaw.com](mailto:lisa@wkrklaw.com) or at 310/450-9582, ext. 215.

Very Truly Yours,

*Lisa Kranitz*

Lisa E. Kranitz  
Deputy City Attorney  
City of San Gabriel

cc: Senator Ed Hernandez  
Assemblymember Ed Chau  
Assemblymember Al Muratsuchi  
Senate Business, Professions, and Economic Development Committee  
Assembly Business, Professions and Consumer Protection Committee  
Henry Lo  
Daisy Ma  
Mayor John Harrington and City Council  
Steven A. Preston, City Manager  
Robert L. Kress, City Attorney  
Kirstin Klopitcke, League of California Cities  
Beverly May, CAMTC