



NORTH CAROLINA BOARD OF MASSAGE & BODYWORK THERAPY

September 11, 2015

VIA EMAIL ATTACHMENT

Ms. Amber May
Rules Review Commission Counsel
Office of Administrative Hearings – Rules Division

Re: 21 NCAC 30 .1001 – 21 NCAC 30 .1015

Dear Members of the RRC,

The Board, Board staff and legal counsel have worked long and hard with legal counsel for the Rules Review Commission to develop rules to protect the public of North Carolina by requiring establishments that provide massage and bodywork therapy services to the public to be licensed by the Board. The Board is of the opinion that it has the power and duty, and therefore the legislative authority, to promulgate these rules through NCGS 90-626(9) which provides as follows:

§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

- (9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

The Board also is of the opinion there is a need for the Board to license massage and bodywork therapy establishments. Attached is a report from the Polaris Project that illustrates some of the issues facing the Board and local law enforcement. While the Polaris Project has a larger task of fighting human trafficking worldwide, the report deals specifically with the problem of Fake Massage Businesses in the United States. The State of North Carolina and the Board have similar and serious problems in many areas of North Carolina. The Board is constantly receiving complaints from the public about these fake massage businesses. It is easy for a person to open a fake massage business and they are doing so. If the fake massage business was required to obtain a license from the Board, the business could be investigated and may deter illegal, fake massage businesses from setting up operation in North Carolina. The Board will provide more information on this issue when its representatives address the Commission.

Lastly, the Board has worked with legal counsel for the Commission to develop clear and unambiguous rules that support and accomplish its mission to protect the public of North Carolina by regulating massage and bodywork therapy establishments. The undersigned legal counsel to the Board and its past chair, Dr. Edwin Preston, will attend the Commission meeting on September 17, 2015 and address the Commission to provide more detail and information on the Board's proposed rules and to answer any questions the Commission members might have.

Sincerely,

A handwritten signature in cursive script that reads "Charles P. Wilkins".

Charles P. Wilkins, Legal Counsel

Fake Massage Businesses in the United States

This document provides an overview of Asian brothels disguised as legitimate massage businesses in the United States. The document is intended to offer a basic understanding of the prevalence and nature of sex trafficking within this specific network, and it should not be viewed as exhaustive.

An Overview of Fake Massage Businesses

Fake Massage Businesses operate as commercial-front brothels claiming to offer legitimate services such as massage, acupuncture, and other therapeutic, health, and spa services. They are distinguishable from other legitimate massage businesses in that they provide commercial sex to customers, though massage and other non-sexual services may be available as well.

Typically, fake massage businesses conceal the commercial sex operation by registering and attempting to behave like legitimate businesses. Unlike other informal underground brothels, these brothels create a veil of legitimacy by interfacing with and operating within normal government and regulatory infrastructures. Common characteristics of fake massage businesses that help them to appear like legitimate businesses include:

- Operating out of commercial spaces, such as strip malls, office buildings, or medical complexes
- Advertising in mainstream public venues, such as major newspapers and magazines, well-known online classified sites like Craigslist, and the Yellow Pages
- Paying rent to legitimate landlords and paying taxes to the government
- Offering a legal service, such as massage
- Displaying and utilizing items commonly used in therapeutic massage businesses, such as massage tables, saunas, and health-related posters
- Acquiring proper business occupancy permits and licensure – *(Note: this practice varies significantly depending on the specific massage business and state laws).*

Defining Characteristics of Fake Massage Businesses

- **Location:** Fake massage businesses frequently operate in strip malls, office buildings, and sometimes residential homes, in urban, suburban, and rural areas in almost all 50 U.S. states.
- **Establishment:** Fake massage businesses often utilize security cameras to screen and monitor clients as they enter the establishment. Many fake massage businesses also have locked doors and use a buzzer system to control the entry of potential customers. Generally, customers cannot enter on their own and must be buzzed in by a mamasan or manager. It is common to see windows covered with bars, boards, or dark curtains.
- **Structure:** Fake massage businesses operate as an extensive, sophisticated organized crime network with multiple controllers who act in concert with each other. The various actors within the network include:
 - The behind-the-scenes business owners who set up and finance the businesses
 - The Brothel Keeper (BK) or “mamasan” who manage each individual location
 - “Kitchen ladies” who function as a helper to the mamasan
 - “Secondary brothel keepers” who function as a future mamasan in training
 - Informal Asian “taxi drivers” who work for the network as transporters
 - Recruiters
 - Smugglers
 - Attorneys who are paid by the network to represent any actor in the network in any legal matters.

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Fake Massage Businesses At-A-Glance | Polaris Project

- **Advertising mechanisms:** As a seemingly legitimate registered business, fake massage businesses often advertise openly in newspapers, magazines, billboards, phone and online directories, and on online community forums such as Craigslist.com and Backpage.com. They also advertise on sexually-oriented websites and message boards including Eroticmp.com, Eros.com, and USAsexguide.info. Advertisements often cater to male customers, or “johns.”
- **Pricing and Payment Structure:** Customers typically pay a “house fee” of \$60-90 USD which purchases a one hour session of commercial sex with one of the women. This “fee” is paid either in cash or credit card, and it frequently is paid in a manner that is distanced from a direct “sex for pay” arrangement. For example, after an hour long sex act, the customer may leave the “house fee” as cash on the table so it appears to be a voluntary “tip.” Customers are also encouraged to provide a separate cash tip to the woman in addition to the house fee, and unlike the house fee, this tip is optional. Victims receive very little or only a fraction of this money. In addition, although it is a seemingly legitimate registered business, the network does not pay any sort of wage or direct compensation to the women there. Voluntary “tips” left at the whim of the customers are the women’s only source of potential income.
- **Victims:** Women found in fake massage businesses typically live on-site, 24 hours a day. The women are also rotated amongst brothels at a certain frequency (e.g., once every 2-3 weeks), and they stay indoors inside each fake massage business for practically the entire time while they are at a specific location. Business hours for these fake massage businesses are often 10am-2am, seven days a week. The women, therefore, often must provide commercial sex in hour-long “sessions” to an average of 6-10 men per day, depending on customer volume. The victims are most often Asian women, of diverse ethnicities and nationalities, including Korean, Thai, Chinese, and ethnically Korean-Chinese citizens. Victims may have come to the U.S. on valid visas, fraudulent visas, or may be undocumented and smuggled into the country. The number of women providing commercial sex at an individual fake massage business can vary from as few as one or two to as many as six or seven. Very rarely does this network include minors.
- **Clients:** Most fake massage businesses can be described as an “open network,” meaning that generally any man of any age or nationality can patronize the establishment. Typically, fake massage business clients are middle to upper class professional males. A massage business with all-male clientele is a strong indicator that commercial sex may be taking place.

Vulnerabilities and Means of Control

Levels of control and exploitation differ among fake massage businesses. It is also important to note that not every woman providing commercial sex within a fake massage business will meet the U.S. federal definition of “severe forms of trafficking in persons.” In general, fake massage businesses control women through many means, including psychological abuse, threats, document confiscation, isolation, debt bondage, or capitalizing on language barriers or the unfamiliarity of the women with their immediate surroundings. Physical abuse and violence may also be present, however relative to other sex trafficking networks, it is less frequently used as a method of control.

Fear of Law Enforcement and Other Authorities –

- The women often do not leave the business unless they are being transported to other fake massage businesses or cities by designated pre-arranged taxi drivers, who also run their errands for them when necessary. The women do not independently control when taxis are called for them. Controllers also exploit knowledge disparities and the women’s naiveté to actively create fear of the world outside the business. For example, mamasans may make up false stories about the outside world, such as telling the women that people will immediately recognize them as illegal immigrants or prostitutes, that there will be many police waiting outside, or that people in nearby buildings are watching them.

- Similar to victims of other types of sex trafficking networks, these women are typically trained to tell canned stories to law enforcement, service providers, and others if they ever encounter anyone who is not part of the network or a john.

Debt–

- Facing large debts and general financial need both play an important role in most women’s entry into a fake massage business. Credit card debt, smuggling debt, family debt, or other forms of financial need such as daunting family medical bills leave the women vulnerable to recruiters, who appear to be offering legitimate jobs and who offer to help the women pay down their debts.
- Deployed in tandem with the control through debt, the network has purposefully designed a complex system of “fees” that the women must constantly pay. A “house fee” must be paid to stay at the business, in addition to a weekly “management fee.” Additional fees are also charged to the women including exorbitant fees for food, personal items, pre-arranged transportation, and “security.” The women are also charged high interest rates on their debt. Similar to a peonage or “company store” situation, the women are totally dependent on the network and also charged inflated fees to stay part of the network without any means of income except for discretionary tips from customers.
- Mamasans may take on a woman’s existing debt or keep her earnings in a bank account as a “favor” to her, thereby maintaining exclusive control of her finances. Because the women are paid only through tips from customers and not from any base wage, the relentless fees put economic pressure on each woman to provide commercial sex to customers to try to pay off their unending debt.

Immigration Status–

- Most of the women trafficked into fake massage businesses are not U.S. citizens, and many do not have legal status. Traffickers use the threat of deportation as well as document confiscation to maintain control of immigrant women. Without legal status, the women frequently fear and distrust police or government authorities. Controllers may also threaten to call the police or call immigration authorities if the woman doesn’t stay in line.
- Controllers also use promises of various immigration benefits to recruit victims and maintain control. Visa fraud is prevalent and controllers may obtain fraudulent visas or other immigration documents for the victims, or they may abuse legitimate visas.

Isolation and Lack of Support Network–

- Immigrant women are vulnerable due to language barriers, unfamiliarity with their legal rights in the US, and/or the lack of a local support network. Controllers frequently place restrictions on communication with family or others outside the network to further increase the women’s isolation.

Misrepresentation of Work & Working Conditions–

- Victims are frequently recruited using false promises of a better job and a better life. They are often told that they will be providing massage, and many of the women in the network do not realize the extent to which they are expected to engage in commercial sex.

Trauma and Shame–

- For many victims, the trauma and shame surrounding their experiences facilitate their acceptance of the false beliefs fed to them by traffickers. Controllers also exploit a victims’ sense of loyalty and indebtedness.

**The above list is not comprehensive or cumulative. One element of force, fraud, or coercion may be present, or many.*

Federal Laws Relevant to Fake Massage Businesses

The defining feature in a sex trafficking network is the use force, fraud, and/or coercion to maintain control over victims and to create an environment in which victims believe they have no other choice than to provide commercial sex. The following federal laws are relevant to sex trafficking within fake massage businesses.

- **The Trafficking Victims Protection Act (TVPA)** of 2000 was the first comprehensive federal act to combat human trafficking in the US.
 - Sex trafficking is defined by the TVPA as the recruitment, enticement, harboring, transportation, provision, or obtaining of a person - or benefitting financially or by receiving anything of value from participating in a venture that engages in the above acts - knowing that the means of force, fraud, or coercion will be used to cause the person to engage in commercial sex acts.”¹
 - Sex trafficking of minors does not require the use of force, fraud or coercion.
 - As a result of the TVPA, sex trafficking was criminalized under USC §1591 with penalties as high as life imprisonment for the most severe cases.
- The **Mann Act of 1910** makes it a felony to knowingly transport a person in interstate or foreign commerce for prostitution or any sexual activity for which a person can be charged with a criminal offense, or to persuade, induce, entice or coerce any person to travel across state lines to engage in prostitution or other immoral purposes, or attempts to do so.²
- **The Racketeer Influenced and Corrupt Organizations Act (RICO Act)** ³, passed in 1970, created new rules for admitting evidence of organized crime by creating a way to make a claim based on a “pattern,” defined as two occurrences of “racketeering activity,” which is defined as behavior that violates other specified laws, federal statutes or state laws.⁴ The Trafficking Victim Protection Reauthorization Act (TVPRA) allows “trafficking in persons” to be included in the definition of a “racketeering activity.”⁵
- **U.S. Code 1328 titled “Importation of Alien for Immoral Purpose”**⁶ reads, “The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States, any alien for the purpose of prostitution or for any other immoral purpose...or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose...should be fined until title 18, or imprisoned not more than 10 years, or both.”

State & Local Laws Pertaining to Fake Massage Businesses

Typically, regulation of massage businesses is addressed at the local level and massage business laws and ordinances are written by the county, city, or town. State legislatures more often defer to regulations created by a state’s board of massage therapists, however there are some examples of massage business legislation at the state level. Below are examples of each:

¹ 22 U.S.C. § 1591.

² 18 U.S.C. §§ 2421 - 2428.

³ 18 U.S.C. §§ 1961 - 1968.

⁴ Kathleen Kim and Daniel Werner, *Civil Litigation On Behalf of Victims of Human Trafficking*, 3rd ed. (Southern Poverty Law Center, 2008), 44-45, http://library.ills.edu/atlast/HumanTraffickingManual_web.pdf (accessed November 8, 2010).

⁵ Ibid.

⁶ 8 U.S.C. § 1328

- **State Law:** The California law establishes a uniform standard certification and regulation process for all massage therapists, which applies to all cities and counties.⁷ The law requires that massage therapists obtain training at an approved school, pass an exam and a background check, and provide ID and fingerprints.⁸
- **Board Regulations:** According to the law in Alabama, anyone offering or advertising that they offer massage therapy services must be licensed and regulated by the Alabama Board of Massage Therapy, which creates its own regulations and has the authority to investigate potential violations.⁹
- **Local Ordinance:** The Denver, Colorado Code of Ordinances requires massage therapists to apply for an identity card and prove that they are at least 18 years old. It also allows for the revocation of a license in the case of public indecency or prostitution.¹⁰

Relevant Statistics

Online lists maintained by “johns” that meticulously track fake massage businesses estimate that there are over 4,000 brothels disguised as fake massage businesses nationwide.¹¹

Recent Fake Massage Business Convictions

Identifying sex trafficking cases in AMP networks can be particularly difficult. Fake massage businesses front as legitimate businesses in order to evade detection, and gathering enough evidence to prove that the traffickers used force, fraud, or coercion to compel victims into providing commercial sex is an added challenge. Victims’ movements and interaction with the outside are tightly controlled and there is little opportunity to reach out for help. Victims do not often self-identify as a result of fear and distrust of law enforcement, shame, and unfamiliarity with their rights and the legal system.

- 2010 (Massachusetts and New York): Five people in Boston and New York were indicted in April 2010 for operating a sex trafficking ring over the course of 2005 to 2010. The defendants lured women with fraudulent job advertisements in Chinese-language newspapers in New York, Boston and Los Angeles, and placed them in brothels in at least 11 towns in the Boston area. The victims were advertised in a local newspaper and on Craigslist, in an ad offering the “ultimate massage.”¹²
- 2010 (California): Police in Fresno, California raided a fake massage business in January, 2010, finding evidence that several Chinese immigrant women may have been forced into providing commercial sex there. Police believe that the women arrived in Los Angeles from China, and were moved weekly to different fake massage businesses throughout the state. The business owner and one worker were arrested.¹³

⁷ Business and Professions Code, SB 294, California Statutes. (September 30, 2010): Section 19.1, <http://www.leginfo.ca.gov/statute.html> (accessed November 8, 2010).

⁸ Business and Professions Code, Division 2, SB 731, California Statutes. (September 27, 2008): Section 2, <http://www.leginfo.ca.gov/statute.html> (accessed November 8, 2010).

⁹ “Licensure Requirements,” Alabama Board of Massage Therapy, <http://www.almtbd.state.al.us/> (accessed November 8, 2010).

¹⁰ Title II Revised Municipal Code, Chapter 33.5- Massage, Denver, Colorado Code of Ordinances: Article III-Massage Parlors, <http://library.municode.com/index.aspx?clientId=10257&stateId=6&stateName=Colorado> (accessed November 8, 2010).

¹¹ www.eroticmp.com

¹² John Kelly, “Feds: Greater Boston Sex Ring Included Quincy Brothel,” *Patriot Ledger (Quincy)*, April 1, 2010.

<http://www.patriotledger.com/homepage/breaking/x905412914/Quincy-residents-among-five-indicted-in-prostitution-ring> (accessed November 8, 2010).

¹³ “Police Investigate Sex Trafficking Allegations,” *KFSN-TV (Fresno)*, January 30, 2010.

<http://abclocal.go.com/kfsn/story?section=news/local&id=7247384> (accessed November 8, 2010).

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- 2008: U.S. v. Chong, et al. (New York): Len Wah Chong was sentenced to six years in federal prison and ordered to pay \$350,000 for her role in owning and operating a network of fake massage businesses in New York where commercial sex occurred. According to U.S. Attorney Terrance P. Flynn, the women lived in substandard conditions in the fake massage businesses and were not free to come and go. Flynn also stated that the women faced emotional abuse and other coercion. The women also had debts, and Chong utilized a few scheme to keep the women in the fake massage businesses. Chong and three members of her family were accused of operating the business, which included recruiting women to work in the fake massage businesses.¹⁴
- 2006, U.S. v. Kim, et al. (New York): In August 2006, 18 search warrants and 31 arrest warrants were executed at brothels disguised as fake massage businesses throughout the northeast United States. Federal and local law enforcement investigated a criminal organization that trafficked women from South Korea for commercial sex in the fake massage businesses. The women had to pay large debts to the recruiters and other controllers involved in the enterprise. The controllers took the women's identification and travel documents, and threatened the women and their families if they attempted to leave before paying their debts. Eleven defendants were charged with conspiracy to commit human smuggling, human trafficking, and Mann Act violations and all pled guilty. Four defendants were sentenced to prison terms of seven months (time served), 15 months, 27 months and 41 months, with the latter defendant also ordered to forfeit \$200,000.¹⁵

Polaris Project works to empower and mobilize people from diverse backgrounds and of all ages to take meaningful action against human trafficking. Register with www.polarisproject.org/signup to receive regular updates on human trafficking in the United States.

¹⁴ Dan Herbeck. "Massage Parlor Owner's Prostitution Role Nets Prison. [Buffalonews.com](http://www.buffalonews.com/incoming/article128355.ece) (Buffalo). November 20, 2008.

<http://www.buffalonews.com/incoming/article128355.ece> (accessed April 9, 2011).

¹⁵ U.S. Department of Justice, Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006 (Washington, DC, 2007): 43. <http://www.justice.gov/archive/ag/annualreports/tr2006/agreporhumantrafficking2006.pdf> (accessed April 9, 2011)