

# Executive Summary

## *Purpose of Review*

Under Utah Code 13-1b the Office of Professional Licensure Review (OPLR) reviewed Utah's licensing laws for massage therapists. The review evaluated how well current regulation:

1. Protects the public from physical and financial harm
2. Ensures fair access to the occupation by consumers and practitioners
3. Limits the economic impact of regulation on consumers and practitioners<sup>1</sup>

OPLR's research to conduct this review included: surveying all current licensees, analyzing DOPL licensee and complaint data, reviewing relevant academic literature, interviewing prominent stakeholders, scanning state regulation of massage therapy, and conducting other secondary data analyses.

## *Background*

The practice of massage therapy includes the application of manual or mechanical techniques, such as pressure, friction, kneading, vibration, gliding, and tapotement, to manipulate and physically affect the soft tissues of the body. Massage occurs most frequently at spas and massage establishments, although homes and private offices are common environments as well.

Massage therapy is well-integrated into medical care and represents a promising adjunct to traditional healthcare, especially as a non-pharmaceutical complement in approaching chronic and acute pain management.

To perform massage therapy in Utah, an individual must 1) complete either a 600-hour program in an approved massage school or 1,000 hours as a licensed apprentice, and 2) pass the national MBLEx exam. Passed in 2023, SB 42 opened another route into the industry through the creation of the massage assistant, a lower-tiered license with a scope of practice restricted to basic massage. This license requires 1) completing either 300 hours in an approved program or 300 hours as a licensed assistant-in-training and 2) passing a Utah-specific massage assistant exam.

Utah's massage therapist license largely mirrors that of most states in the U.S., although the apprenticeship and assistant licenses are unique. Few other states allow apprenticeships, and no other state currently has a lower-tiered license similar to the assistant.

## *Key Findings*

**Consumer Safety:** The practice of massage therapy has the potential to cause multiple forms

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<sup>1</sup> UCA 13-1b

of harm. The therapist-client relationship in massage is uniquely and inherently vulnerable. Massage often occurs one-on-one in a closed room, requires manual touching of an unclothed client, and may include work on particularly vulnerable client groups or acute and subacute injuries. Common harms tend to fall within three categories: sexual harm to a client by a therapist, harm from illicit activity such as human trafficking or commercial sex occurring under the guise of massage, or physical harm to a client due to therapist negligence.

- While the vast majority of massage therapists do not cause sexual harm to clients, **massage has the highest volume of sexual misconduct complaints** among DOPL-regulated professions.
- Between **one-third to one-half of the malpractice claims** nationally across a ten-year span resulted from **sexual misconduct**.
- In Utah, the problem of **illicit massage businesses (IMBs) is widespread and growing**, eroding trust in the legitimate and beneficial practice of massage.
- The Network, a non-profit organization fighting human trafficking, has identified roughly **150 active IMBs in Utah (concentrated in Salt Lake County)**, and estimates a 10% growth rate over the last five years.
- The **risk of physical harm from trained massage therapists is quite low overall**, especially for healthy individuals; however, massage modalities are contraindicated for certain health disorders and injuries treated through massage, requiring added care by a practitioner.
- The **most common insurance claims involve**: strains/tears to muscles or ligaments, burns generally from administering hot stone treatment, fractures of bones, dislocations of bones or joints, and sexual misconduct.
- As massage becomes more common as a treatment for pain, cancer and other health issues, **the line between 'lifestyle' massage and 'medical' massage becomes less distinct**.

**Access:** Utah has a robust supply of massage therapists and stands as one of the most accessible states for new entrants into massage, making access a secondary concern.

- With 7,941 licensed massage therapists and 214 licensed apprentices, Utah is estimated by one national association to have the **second highest number of massage therapists per capita** in the U.S.
- Although the hour requirement is fairly low at 600 hours, **licensed massage therapists (LMTs) spend, on average, \$12k** to attend massage training programs. Many students depend on federal aid to help pay for school, with just under 40% receiving Pell grants and 50% taking out a federal loan.
- Prior to the new federal 'gainful employment' rules for financial aid, **many massage schools in Utah offered programs around 800 hours (above the state hours requirements)** with strong student demand.
- Utah stands as **one of the most accessible states for those looking to enter the massage industry** due to the multiple alternative pathways to licensure that do not exist elsewhere (apprenticeships, new 300-hour massage assistant license).

OPLR found the primary issues in the massage industry to be related to safety rather than access. Sexual misconduct by massage therapists and the proliferation of illicit massage

businesses both cause severe harm and sow doubt into the legitimacy of the massage industry as a whole causing financial harm to legitimate practitioners. Although these problems cannot be entirely addressed by occupational regulation nor fully ascribed to failures in occupational regulation, OPLR posits that there are gaps in regulation that may compound these issues.

While DOPL has authority for criminal background checks for the initial application for licensure, **current regulation does not prevent someone convicted of sexual assault after initially receiving a license** from keeping an active massage therapist license in Utah; **nor does it prevent someone with a license revoked for sexual misconduct in another state** from becoming licensed in Utah.

Additionally, OPLR found that **massage establishments and their owners in Utah lack accountability** due to a fragmented local regulatory structure and varied enforcement for massage establishments. Even assuming a local jurisdiction is very aggressive in investigating and enforcing local codes, IMBs are able to re-open in a nearby city relatively quickly, lessening the impact of local regulation. IMBs continue to receive licenses and permits that legitimize their physical establishments and conceal their illegal activities, indicating that systemic issues exist in this decentralized regulatory environment.

### *Recommendations*

Given concerns about sexual misconduct and IMBs operating in Utah, OPLR recommends:

- Creation of a massage establishment registry to curtail IMBs across the state, and
- Addressing gaps in background checks, oversight, transparency, and education for massage therapists.

First, OPLR recommends that **all massage establishments obtain registration** through DOPL to legally operate within the state of Utah. Such registration should require basic documentation for the business and owners, FBI background checks, and (importantly) a signed attestation stating that the business will not engage in illegal activities, including human trafficking, sex advertising, prostitution, and unlicensed practice. The registration process would allow DOPL to screen for known IMBs and deny registration. The penalty for a registrant engaging in unlawful conduct or violating the attestation should be severe, with fines up to \$10,000 per single violation and \$2,000 per day at the discretion of an administrative law judge. Such a registry would provide overwhelming financial disincentives for IMBs to operate in Utah.

Such a registry does impose a burden on massage businesses, but it is selective: relatively light for legitimate businesses, and very heavy for IMBs. One study estimated that fewer than one-third of business records for massage businesses nationally named an actual person on the registration, and fewer than one-fourth named an owner. The proposed registry would require owners to identify themselves and be accountable for any illegal activities of their businesses.

Second, OPLR recommends **a package of increased accountability and transparency** that would include several elements. Licensees should be checked against the Massage Therapy Licensing Database (MTLD) for interstate licensing information and enrolled in the FBI Rap

Back system for ongoing criminal database checks. Next, licensees (and especially massage assistant and apprentice licensees) should be required to disclose information to clients on DOPL resources, ethics, and their license number to deter sexual misconduct. Lastly, there are several confirming changes that OPLR recommends: standardizing massage instructors' and apprentice supervisors' requirements, enabling massage assistants to count hours towards a full therapist license, and reducing the number of allowable apprentices per supervisor from six to three.

We believe both sets of recommendations are minimally burdensome for legitimate massage therapists, but significantly impair the ability of sexual predators and IMBs and to harm Utah consumers and legitimate massage providers.