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Massage Therapy Licensure in Oklahoma

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The Massage Therapy Practice Act, which became effective on November 1, 2016, has no sunset date, but the Oklahoma State Board of Barbering and Cosmetology, which acts as the licensing board for massage therapists, is due to expire on July 1, 2021.

Introduction

Massage therapy is the practice of treating the body's soft tissues (skin, muscles, and joints) for the purposes of pain or stress relief, relaxation, and health. In general, massages are applied with the hands and fingers on a patron who sits or lies down. Massage therapists have very little potential to do harm, physical or otherwise; they do not prescribe medicines, diagnose illnesses, or break the skin, and their services are inexpensive. Nonetheless, in 2016, Oklahoma passed a law that requires massage therapists to obtain a license from the state.

Some lawmakers supported the law because they believed that it would reduce human trafficking.¹ However, licensing is not an adequate or necessary legislative response to human trafficking.² Positive signs that licensing the industry has reduced human trafficking are sparse.³ Meanwhile, the number of massage therapists in the state has decreased 18 percent since 2016, reversing a decade-long upward trend, a clear sign that massage therapy as an economic opportunity has been stifled.⁴

Most states (44) license massage therapists; however, a few states (including Kansas) *do not regulate the industry at all*. That fact alone is reason to question whether licensing the industry.

Current Law

The Massage Therapy Practice Act authorizes the Oklahoma State Board of Barbering and Cosmetology to oversee the licensure of massage therapists. The Act also creates a five-member Advisory Committee to help the Board perform its statutory function. That Committee, by law, must include three licensed massage therapists, one administrator or faculty member at a massage therapy school, and one citizen member. Members are appointed by the governor and serve four-year terms.

To qualify for a license, applicants must: (1) be at least eighteen years old, (2) complete at least 500-hours of massage therapy education, (3) pass a nationally recognized exam, (4) have liability

insurance (for massage therapy practice), and (5) disclose any past crimes (misdemeanors and felonies) to the Board.

The law also contains a grandfather provision which grants a license to any applicant who: (1) is at least 18 years old, (2) has liability insurance, and (3) either: (a) has five years of experience, (b) has completed at least 500-hours of massage therapy education, or (c) has passed a nationally recognized exam.

Grandfather provisions in licensing laws undermine claims that such Acts are serious about protecting the public. The supposed bad actors on the prowl prior to 2016 could easily be grandfathered in. They could attain licensure simply by being old enough, having insurance, and having one of either five years of experience or a passing grade on an exam.

Reciprocity is available to any practitioner originally licensed in another state or territory so long as he: (1) possesses a valid license, and (2) has educational and examination qualifications equal to those required of entry-level native applicants. The law requires that schools of massage therapy obtain a license from the Oklahoma Board of Private Vocational Schools.

Burden

License applicants face onerous education and examination requirements. At least 500 hours of massage therapy schooling is required. The only program available in Oklahoma City lasts 30 weeks (50 weeks if night classes are taken) and costs over \$12,000.⁵ Applicants must also take a nationally recognized exam, such as the Massage and Bodywork Licensing Exam (MBLEx). Each attempt at the MBLEx costs \$195. Thirty-two percent of Oklahomans must take the exam multiple times.⁶

If both requirements are actually necessary--whether to weed out incompetent practitioners or to combat human trafficking--then it is puzzling that the law's grandfather clause would license an applicant who has *only met one requirement or the other*. Under the grandfather provision, an applicant with no more qual-

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ification than a good test score could obtain a license *even if she has never given a massage in her life.*

Should Oklahoma License Massage Therapists?

The 1889 Institute has published *Policy Maker's Guide to Proposed and Existing Professional Licensing Laws*. It argues that licensing an occupation, x, is justified if and only if.

1. Practicing x presents a real and probable risk of harm to the general public or patrons.
2. A failure of civil law or the market makes it difficult for patrons to obtain information, educate themselves, and judge whether x's practitioners are competent.

Does massage therapy present a probable risk of real harm to the public or patrons if practitioners fail to act properly?

No. Massage therapy poses no real danger (physical or otherwise) at all to anyone. No hazardous chemicals, sharp objects, or unsanitary conditions are present to threaten a patron's health. At worst, practitioners may suffer fatigue due to prolonged standing, or patrons may experience soreness. A thorough internet search for more serious injury found that, *in extraordinarily rare cases*, massage therapy can induce injuries such as rhabdomyolysis (rapid muscle breakdown) or a stroke. *However, the chances are virtually zero.*^{7,8} These extreme cases are not at all preventable by licensing. The extreme cases are caused by undetectable and extremely rare physical conditions (e.g. plaque buildup in the arteries in the neck), not by negligence or incompetence on the part of the practitioner.

The only other possible justification for massage therapist licensure is concern about human trafficking. A recent study estimates that almost 14 percent of the industry's annual revenue nationwide is linked to human trafficking. Is that fact alone a sufficient reason to license the industry in Oklahoma?

Also no. Licensure can no more protect vulnerable practitioners against patrons than it can protect patrons against practitioners. By the Board's own admission, it is neither authorized nor equipped to police human trafficking.⁹ The most it can do to

discipline a bad actor is revoke her license, thereby rendering any continued practice on her part illegal. However, anyone soliciting sex is *already acting illegally*. The idea that traffickers would be more reluctant to break licensing laws than anti-trafficking laws is counterintuitive. The National Human Trafficking Hotline averaged a slightly *lower* volume of Oklahoma-related calls in 2016-2018 than in it did in 2013-2014, well before the Act passed.¹⁰ Hotel-/motel-based venues remain the top venues for trafficking in Oklahoma.¹¹ One impact of the Act is clear; the number of massage therapists in Oklahoma dropped from 440 in 2015 to 360 in 2018 (an 18 percent decrease).¹²

Does a civil law or market failure impede patrons from accurately judging the competency of practitioners?

No. Patrons should know immediately whether they have received satisfactory service. Dissatisfied customers suffer only minor pecuniary losses, and they can easily reveal their experiences to others in person or via online tools (e.g. Yelp or Facebook). Practitioners can easily advertise their abilities and provide endorsements from satisfied customers. Normal civil law can provide recourse for victims of severe malpractice (whatever that may be).

Conclusion

There is no public-interest justification for licensing massage therapists. The Act should be repealed immediately. At the least, the Board should be allowed to expire.

If legislators insist on regulating the industry somehow to address trafficking, they should consider less burdensome, more effective alternatives to occupational licensing, such as immediate-access health inspections. Another alternative is voluntary, private certification. One such proposal has been outlined by the 1889 Institute.¹³ At the very least, the licensing requirements should be amended to be less onerous. For example, applicants could be required to simply pass an exam of their hands-on skills, perhaps also complete a supervised internship, but nothing more, given that formal education requirements are never justified.

End Notes

1 Interview with Byron Schlomach, 7/5/2019. His recollection is based on a conversation with former Senator Anastasia Pittman, a co-sponsor of the bill that licensed massage therapists.

See also: "SB 687 'Massage Therapy Practice Act,'" AMTA, Oklahoma Chapter, <http://ok.wp.amtamassage.org/2715-2/>.

2 See: <https://polarisproject.org/>.

3 The annual frequency of reports to the Human Trafficking Hotline concerning suspicious activity in Oklahoma has fluctuated erratically.

See: "Human Trafficking in Illicit Massage Businesses," Polaris, <https://polarisproject.org/sites/default/files/Executive%20Summary%20-%20Human%20Trafficking%20in%20Illicit%20Massage%20Businesses.pdf>.

4 Data from the Bureau of Labor Statistics, https://www.bls.gov/oes/current/oes_ok.htm.

5 "Massage Therapy-Day Program," Central Oklahoma College, <https://centraloc.edu/wp-content/uploads/2019/06/Massage-Day.pdf>.

Massage Therapy-Night Program," Central Oklahoma College, <https://centraloc.edu/wp-content/uploads/2019/06/Massage-Night.pdf>.

6 "MBLEx and Licensure FAQ," Federation of State Massage Therapy Boards, <https://www.fsmtb.org/mblex/mblex-and-licensure-faq/#MBLExQ5>.
Massage Therapy Advisory Board meeting minutes for November 1, 2018, https://www.ok.gov/cosmo/Board_Meetings/Minutes/index.html.

7 "Can a Massage Cause a Stroke?" Harvard Medical School, https://www.health.harvard.edu/newsletter_article/ask-the-doctor-can-a-massage-cause-a-stroke.

8 "Fever with Acute Renal Failure Due to Body Massage-Induced Rhabdomyolysis," Nephrology Dialysis Transplantation, <https://academic.oup.com/ndt/article/21/1/233/1819000>.

9 Brianna Bailey, "Do Massage Parlor Regulations Go Far Enough?" The Oklahoman, <https://www.oklahoman.com/article/5555169/do-new-massage-parlor-regulations-go-far-enough>.

10 "Oklahoma," National Human Trafficking Hotline, <https://humantraffickinghotline.org/state/oklahoma>.

11 "Human Trafficking," Oklahoma Commission on the Status of Women, https://www.ok.gov/ocsw/Community_Conversations/Human_Trafficking/index.html.

12 Data from the Bureau of Labor Statistics, https://www.bls.gov/oes/current/oes_ok.htm.

13 A Win-Win for Consumers and Professionals Alike: An Alternative to Occupational Licensing, 1889 Institute, https://img1.wsimg.com/blobby/go/8a89c4f1-3714-49e5-866b-3f6930172647/downloads/1d0kmu3dp_669551.pdf.