



State of Vermont
Office of the Secretary of State

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August 25, 2020

To: Hon. Sarah Copeland-Hanzas, Chair, House Government Operations Committee

From: S. Lauren Hibbert, Director, Office of Professional Regulation

Re: S.220: Massage therapists, bodyworkers and touch professionals provisions

S.220 requires the **registration** of massage therapists, bodyworkers, and touch professionals in Vermont. Before providing massage, touch, or energy work where a client removes street clothing and has an expectation of privacy, the practitioner must be registered with OPR.

Individual Registration: A massage therapist, bodyworker, or touch professional must

- *Disclose* the following to each *new* client before the *first* treatment
 - Their training
 - Actions that constitute unprofessional conduct
 - Method of filing a complaint
 - Method of making a consumer inquiry
- Conspicuously *display* their registration in *any* establishment in which they are practicing

Establishments: Businesses must designate a registered massage therapist, bodyworker, or touch professional to be responsible for ensuring the establishment is in compliance with laws. OPR can *inspect* establishments when a complaint has been filed.

Enforcement: Unprofessional conduct includes standards in 3 V.S.A. § 129a and additional standards to protect against sexual misconduct.

- Registration is attached to OPR's established investigative and disciplinary processes.
- Practicing without registration or authorization is a violation actionable administratively or in court.
- Complainants are immunized from suit for good-faith reports of misconduct.
- Registrants found to have engaged in unprofessional conduct may have their registrations suspended, revoked, or restricted.

Based on reports conducted in 2010, 2016, and 2020, OPR concludes that registration is the optimal approach to regulating massage therapists, bodyworkers. In a heterogeneous fields such as massage and body work, registration is the right solution because it allows a wide but very lightweight regulatory net, offering more and broader public protection than licensure without imposing financial barriers and excluding talented practitioners from the marketplace for having the wrong kind of training.

The Registration Model:

- **Discipline and Prohibitions on Practice:** Registration provides a mechanism through which the Office can act against massage therapists charged with engaging in unprofessional conduct, including sexual misconduct, and prohibit these individuals from continuing to practice (i.e., by revoking a registration). Notably, this is the same mechanism that would exist if the Legislature enacted a qualifications-based licensure requirement for this profession.
- **Public Notice and Voice:** Registration also provides a way for the public to determine whether a massage therapist is properly registered with the State and whether the massage therapist has been disciplined by the Office (and the reason for the discipline). This form of regulation also provides a forum for individuals who have experienced sexual misconduct by a massage therapist to submit complaints and voice their concerns about the provider.
- **Least Burdensome Form of Regulation and Avoids the Walk-Around Problem:** There is an inverse relationship between the breath of regulated activity and the specificity of its definition. In the context of massage, the least burdensome form of regulation also is the most protective. OPR has found in three separate studies that unskilled, good-faith actors almost never cause injury; they just lose clients. The protective goal in this context is to exclude bad actors—those who mean to harm and know they are acting inappropriately—not to protect consumers from good people giving mediocre massages.

To cover all practitioners whose clients are vulnerable to abuse, a regulatory program must define the regulated activity very generally. A licensing system cannot do this, because it exists to exclude persons without very specific training from the marketplace. This leads inevitably to licensing exclusions, exceptions, and grandfathering for non-conforming practitioners. Bad actors may then “walk around” oversight, evading regulation by simply adjusting the description, but not the substance, of what they do—even after losing a license to operate under a different title. Registration is preferable because it protects in the broadest possible range of private-contact settings.

By comparison to registration, licensing massage professionals is more burdensome, more intrusive, more expensive, more exclusive, and less effective at protecting clients from abuse.

- **Qualifications:** Required educational requirements impose high costs without offering additional public protection.

- *High Costs*: The costs for attending a professional school of massage, in 2019-2020, was between \$8,000 and \$16,000.
- *No added protection*
 - The massage therapist notorious for perpetrating sexual misconduct against Vermonters was certified by a national association that only accepts members who have “graduated from an approved massage training program, met...eligibility requirements, and agreed to abide by [the association’s] Code of Ethics.”
 - After three reports and thorough research, OPR was unable to find evidence that the improper practice of massage therapy or body or touch work may result in significant secondary injury.
- **Criminal background checks**: OPR has a process in place for review of criminal histories that is tailored and individualized and is more consistent with the state’s policy disfavoring blanket criminal background checks unless specifically authorized by the Legislature.
- **Infection control and prevention**: OPR has never received any evidence of unhygienic conditions in massage establishments over the course of 10 years and three reviews.
 - Massage establishments, like all business in Vermont, are subject to the ACCD and VDH COVID-19 regulations, which are applicable regardless of which professional regulation scheme is implemented.

Comparison of Registration and Licensure Models for Regulating Massage Therapists, Bodyworkers, and Touch Professionals

Registration	Licensure
Mandatory for all who want to practice	Same
Does not require registration for a business but does have a designated licensee for a business.	Original bill had mandatory licensure for all establishments that employ or contract with more than one massage therapist
Allows for a broad definition of “massage therapy” because the Office is not charged with verifying credentials for multiple profession types. This is a blanket requirement that all individuals engaged in touch or energy work, where the client is not in street clothes and has an expectation of privacy, must register with the Office. This standard is possible for OPR to assess and enforce.	The definition has to be limited to what could be shown through identifiable qualifications that the Office can review and confirm. This would either result in a lot of varying programs and qualifications to verify, and/or excluding from licensure people doing body, energy or touch work in forms not taught in verifiable educational programs.
Simpler licensing process because already practicing individuals would not need to pass an examination, or attend or provide evidence of attending an educational program. All individuals engaged in “x” practice would be required to register immediately.	Would require examination of already practicing individual's qualifications, possibly excluding those who are currently safely providing massage therapy services. Previous proposals included a “grandfathering provision” through a peer-review process, which will be challenging to administer and is short-term.
No specific education or experience required	Requires specific education (e.g., an accredited, professional massage therapy education program or an apprenticeship approved by the director) (Cost of school \$8,000-16,000)
No examination required	Requires passage of an exam (generally, a national exam)
Could require mandated ethics continuing education; no continued competency requirements	Other proposals require the adoption of continuing competency requirements and ethics requirements
Easy endorsement from other states (because there would be no	The Director would need to make a determination that the licensure laws in other jurisdictions are

requirement to determine substantial equivalency to other state's laws)	"substantially equivalent" to Vermont's before granting an endorsement
S. 220 allows the Director to inspect if there is a complaint	The Director must conduct inspections to ensure compliance with hygiene rules
S. 220 does not mandate establishments comply with infection-control, cleanliness and sanitation rules	Previous proposal required compliance with infection-control, cleanliness and sanitation rules promulgated by OPR in consultation with the Department of Health
S. 220 requires registrants to disclose to new clients on the first visit qualifications and experience, unprofessional conduct rules, how to file a complaint, and how to find information about registrations	Same
S. 220 requires the conspicuous posting of massage therapists' registration in a business	Same
S. 220 provides protection against civil lawsuits for individuals who file a complaint against a massage therapist (OPR would support including this in the registration program or in Title 3 for all professions.)	Same
S. 220 incorporates unprofessional conduct standards from Title 3 and adds new ones related to sexual misconduct (in Title 26)	Same
OPR would have the ability to investigate, prosecute and remove people from the practice	Same
OPR would have a licensee/business look-up including public discipline information	Same
Applicants would be asked about previous criminal convictions and actions taken against their licenses in other states, which are then verified by OPR. Any inconsistencies between what an applicant reports and what is found in verification	Previous proposal required a criminal background check for applicants

would lead to a disciplinary investigation.	
Would be an “easier” licensing program to administer and, therefore, OPR could take on this work with only 2 positions.	A licensing program that requires OPR to inspect every business before we licensed them would require OPR to add at least 2 FTEs and possibly a part-time inspector for the purposes of initially licensing the profession.
Could have a faster effective date – particularly with the addition of a delayed effective date for the unlicensed practice section in 3 to apply to this profession.	A quick effective date would be very challenging to comply with, particularly with inspection and qualification review.