

SB0042S01 compared with SB0042

~~{deleted text}~~ shows text that was in SB0042 but was deleted in SB0042S01.

inserted text shows text that was not in SB0042 but was inserted into SB0042S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

MASSAGE THERAPY PRACTICE ACT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Candice B. Pierucci

LONG TITLE

~~{Committee Note:~~

~~—————The Business and Labor Interim Committee recommended this bill.~~

~~—————Legislative Vote: 10 voting for 3 voting against 7 absent~~

~~{General Description:~~

This bill amends the Massage Therapy Practice Act.

Highlighted Provisions:

This bill:

- ▶ creates and amends definitions;
- ▶ creates a license classification for a massage assistant and a massage assistant in-training;
- ▶ establishes the qualifications and scope of practice for a massage assistant and a massage assistant in-training;

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- ▶ amends massage therapist examination and background check requirements;
- ▶ addresses supervision of a massage apprentice, massage assistant, and massage assistant in-training;
- ▶ requires certain signage and disclosures when a massage assistant or massage assistant in-training provides a massage service;
- ▶ clarifies consent requirements for certain massage services; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-47b-102, as last amended by Laws of Utah 2012, Chapter 34

58-47b-301, as last amended by Laws of Utah 2013, Chapter 278

58-47b-302, as last amended by Laws of Utah 2020, Chapter 339

58-47b-303, as enacted by Laws of Utah 1996, Chapter 76

58-47b-304, as last amended by Laws of Utah 2021, Chapter 403

58-47b-305, as last amended by Laws of Utah 1998, Chapter 159

58-47b-501, as last amended by Laws of Utah 2018, Chapter 318

58-47b-502, as last amended by Laws of Utah 1998, Chapter 159

ENACTS:

58-47b-302.1, Utah Code Annotated 1953

58-47b-306, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-47b-102** is amended to read:

58-47b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Board of Massage Therapy created in Section 58-47b-201.
- (2) "Breast" means the female mammary gland and does not include the muscles,

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connective tissue, or other soft tissue of the upper chest.

(3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the muscular system.

(4) "Massage apprentice" means an individual licensed under this chapter as a massage apprentice [~~to work under the direct supervision of a licensed massage therapist~~].

(5) "Massage assistant" means an individual licensed under this chapter as a massage assistant.

(6) "Massage assistant in-training" means an individual licensed under this chapter as a massage assistant in-training.

~~(5)~~ (7) "Massage therapist" means an individual licensed under this chapter as a massage therapist.

(8) "Massage therapy supervisor" means:

(a) a massage therapist who has at least three years of experience as a massage therapist and has engaged in the lawful practice of massage therapy for at least 3,000 hours;

(b) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;

(c) a physician licensed under Chapter 67, Utah Medical Practice Act;

(d) an osteopathic physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

(e) an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act; or

(f) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act.

(9) "Practice of limited massage therapy" means:

(a) the systematic manual manipulation of the soft tissue of the body for a purpose described in Subsection (10)(b);

(b) seated chair massage;

(c) the use of body wraps;

(d) aromatherapy;

(e) reflexology; or

(f) in connection with an activity described in this Subsection (9) the use of:

(i) the hands;

(ii) a towel;

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(iii) a stone;

(iv) a shell;

(v) a bamboo stick; or

(vi) an herbal ball compress.

~~[(6)]~~ (10) "Practice of massage therapy" means:

(a) the examination, assessment, and evaluation of the soft tissue structures of the body for the purpose of devising a treatment plan to promote homeostasis;

(b) the systematic manual or mechanical manipulation of the soft tissue of the body for ~~[the purpose of: (i)]~~ the purpose of promoting the therapeutic health and well-being of a client~~;~~ ~~(ii)~~, enhancing the circulation of the blood and lymph~~;~~ ~~(iii)~~, relaxing and lengthening muscles~~;~~ ~~(iv)~~, relieving pain~~;~~ ~~(v)~~, restoring metabolic balance~~;~~ ~~(vi)~~, or achieving homeostasis~~;~~ ~~or~~, or for any other purpose;

~~[(vii) other purposes;]~~

(c) the use of the hands or a mechanical or electrical apparatus in connection with this Subsection ~~[(6)]~~ (10);

(d) the use of rehabilitative procedures involving the soft tissue of the body;

(e) range of motion or movements without spinal adjustment as set forth in Section 58-73-102;

(f) ~~[(viii)]~~ the use of oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and cabinet baths;

(g) manual traction and stretching exercise;

(h) correction of muscular distortion by treatment of the soft tissues of the body;

(i) counseling, education, and other advisory services to reduce the incidence and severity of physical disability, movement dysfunction, and pain;

(j) ~~[similar or related]~~ activities and modality techniques similar or related to the activities and techniques described in this Subsection (10);

(k) ~~[the]~~ a practice described in this Subsection ~~[(6)]~~ (10) on an animal to the extent permitted by:

(i) Subsection 58-28-307(12);

(ii) the provisions of this chapter; and

(iii) division rule made in accordance with Title 63G, Chapter 3, Utah Administrative

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Rulemaking Act; or

(1) providing, offering, or advertising a paid service using the term massage or a derivative of the word massage, regardless of whether the service includes physical contact.

~~[(7)]~~ (11) "Soft tissue" means the muscles and related connective tissue.

~~[(8)]~~ (12) "Unlawful conduct" ~~[is-as]~~ means the same as that term is defined in Sections 58-1-501 and 58-47b-501.

~~[(9)]~~ (13) "Unprofessional conduct" ~~[is-as]~~ means the same as that term is defined in Sections 58-1-501 and 58-47b-502 and as may be further defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 2. Section **58-47b-301** is amended to read:

58-47b-301. Licensure required.

(1) An individual shall hold a license issued under this chapter in order to engage in the practice of massage therapy or the practice of limited massage therapy, except as specifically provided in Section 58-1-307 or 58-47b-304.

(2) An individual shall have a license in order to:

(a) represent ~~[himself]~~ oneself as a massage therapist ~~[or]~~, massage apprentice, massage assistant, or massage assistant in-training;

(b) represent ~~[himself]~~ oneself as providing a service that is within the practice of massage therapy or the practice of limited massage therapy or use the word massage or any other word to describe ~~[such]~~ the services; or

(c) charge or receive a fee or any consideration for providing a service that is within the practice of massage therapy or the practice of limited massage therapy.

Section 3. Section **58-47b-302** is amended to read:

58-47b-302. License classifications -- Qualifications for licensure.

(1) The division shall issue licenses under this chapter in the classifications of:

(a) massage therapist; ~~[and]~~

(b) massage apprentice~~[-];~~

(c) massage assistant; and

(d) massage assistant in-training.

(2) ~~[Each]~~ An applicant for licensure as a massage therapist shall:

(a) submit an application in a form prescribed by the division;

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(b) pay a fee determined by the department under Section 63J-1-504;

(c) be 18 years [~~of age~~] old or older;

(d) have either:

(i) (A) graduated from a school of massage having a curriculum [~~which~~] that meets standards established by division rule made in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(B) completed equivalent education and training in compliance with division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(ii) completed a massage apprenticeship program consisting of a minimum of 1,000 hours of supervised training over a minimum of 12 months and in accordance with standards established by [~~the~~] division [~~by~~] rule made in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(e) pass [~~examinations~~];

(i) the Federation of State Massage Therapy Boards Massage and Bodywork Licensing Examination; or

(ii) any other examination established by [~~rule by the division~~] division rule made in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) [~~Each~~] An applicant for licensure as a massage apprentice shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be 18 years [~~of age~~] old or older;

(d) provide satisfactory evidence to the division that the [~~individual~~] applicant will practice as a massage apprentice only under the direct supervision of a licensed massage therapist in good standing [~~and who has~~] who, for at least 6,000 hours, has engaged in the lawful practice of massage therapy as a licensed massage therapist [~~for not less than 6,000 hours~~]; and

(e) [~~successfully complete~~] pass an examination as required by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) An applicant for licensure as a massage assistant shall:

(~~f~~a)i) submit an application in a form prescribed by the division;

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~~(fb)ii~~ pay a fee determined by the department in accordance with Section 63J-1-504;

~~(fc)iii~~ be 18 years old or older;

~~(fd)iv~~ subject to Subsection (4)(b), complete at least ~~150~~300 hours of education and training approved by division rule made accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~, while:~~

~~— (i) enrolled in a massage school; or~~

~~— (ii) (A) licensed as a massage assistant in-training; and~~

~~— (B) under the direct supervision of a massage therapist in good standing who, for at least 6,000 hours, has engaged in the lawful practice of massage therapy;~~

~~— (e) complete at least 150 hours of education and training approved by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, while:~~

~~— (i) licensed as a massage assistant in-training; and~~

~~— (ii) under the indirect supervision of a massage therapy supervisor;~~

~~(f);~~

(v) provide satisfactory evidence to the division that the applicant will practice as a massage assistant only under the indirect supervision of a massage therapy supervisor; and

(fg)vi pass an examination as required by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The 300-hour education and training requirement described in Subsection (4)(a) shall include:

(i) at least 150 hours of education and training while the applicant is:

(A) enrolled in massage school; or

(B) licensed as a massage assistant in-training and under the direct supervision of a massage therapist in good standing who, for at least 6,000 hours, has engaged in the lawful practice of massage therapy; and

(ii) at least 150 hours of education and training while the applicant is:

(A) enrolled in massage school; or

(B) licensed as a massage assistant in-training and under the indirect supervision of a massage therapist in good standing who, for at least 6,000 hours, has engaged in the lawful practice of massage therapy.

(5) An applicant for licensure as a massage assistant in-training shall:

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(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department in accordance with Section 63J-1-504;

(c) be 18 years old or older; and

(d) provide satisfactory evidence to the division that the applicant will practice as a massage assistant in-training under the supervision of a massage therapist for a period of no more than six months ~~{to satisfy}~~ **for the purpose of satisfying** the requirements described in Subsections (4)~~(f-d)a)(f-ii)iv)~~ and ~~(f-c)b)~~ for licensure as a massage assistant.

(6) (a) A massage therapist may supervise at one time:

(i) up to six individuals licensed as {a} massage {apprentice or} apprentices; and

(ii) up to six individuals licensed as massage ~~{assistant}~~ **assistants** in-training.

(b) A massage therapy supervisor may supervise at one time up to six individuals licensed as a massage assistant.

~~[(4)(a) Any] (7) A new massage therapist [or], massage apprentice, massage assistant, or massage assistant in-training applicant shall submit [fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.] to and pass a criminal background check in accordance with Section 58-47b-302.1 and any requirements established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~[(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each new massage therapist or apprentice applicant through the national criminal history system (NCIC) or any successor system.]~~

~~[(c) The cost of the background check and the fingerprinting shall be borne by the applicant.]~~

~~[(5)(a) Any new massage therapist or massage apprentice license issued under this section shall be conditional, pending completion of the criminal background check. If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.]~~

~~[(b) Any person whose conditional license has been revoked under Subsection (5) (a) shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be~~

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~~conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

~~[(6) An applicant who successfully completes a fingerprint background check under Subsection (4) may not be required by any other state or local government body to submit to a second fingerprint background check as a condition of lawfully practicing massage therapy in this state.]~~

Section 4. Section **58-47b-302.1** is enacted to read:

58-47b-302.1. Criminal background check.

(1) An applicant for licensure under this chapter who requires a criminal background check shall:

(a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(b) consent to a fingerprint background check conducted by the Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(2) The division shall:

(a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108 and the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;

(b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and

(c) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.

(3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:

(a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;

(b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and

(c) provide the results from the state, regional, and nationwide criminal history background checks to the division.

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(4) For purposes of conducting a criminal background check required under this section, the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(5) The division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.

(6) (a) A new license issued under this chapter is conditional pending completion of the criminal background check.

(b) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check required in Subsection 58-47b-302(7) demonstrates the applicant has failed to accurately disclose a criminal history, the license is immediately and automatically revoked upon notice to the licensee by the division.

(c) A person whose conditional license is revoked under Subsection (6)(b) is entitled to a postrevocation hearing to challenge the revocation.

(d) The division shall conduct a postrevocation hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(7) An applicant who successfully completes a background check under this section may not be required by any other state or local government body to submit to a second background check as a condition of lawfully engaging in the practice of massage therapy or the practice of limited massage therapy in this state.

Section 5. Section **58-47b-303** is amended to read:

58-47b-303. Term of license -- Expiration -- Renewal.

(1) (a) [~~Each~~] Except as provided in Subsection (3), the division shall issue a license [~~issued~~] under this chapter [~~shall be issued~~] in accordance with a two-year renewal cycle established by [~~rule~~] division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) [~~Each~~] Subject to Subsection (3), a license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

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(3) A massage assistant in-training license expires six months after the day on which the division issues the massage assistant in-training license.

Section 6. Section **58-47b-304** is amended to read:

58-47b-304. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the practice of massage therapy [~~as defined under this chapter,~~] or the practice of limited massage therapy, subject to the stated circumstances and limitations, without being licensed[~~, but may not represent themselves as a massage therapist or massage apprentice;~~] under this chapter:

- (a) a physician or surgeon licensed under Chapter 67, Utah Medical Practice Act;
- (b) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act;
- (c) a nurse licensed under Chapter 31b, Nurse Practice Act, or under Chapter 44a, Nurse Midwife Practice Act;
- (d) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;
- (e) a physical therapist assistant licensed under Chapter 24b, Physical Therapy Practice Act, while under the general supervision of a physical therapist;
- (f) an osteopathic physician or surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;
- (g) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;
- (h) a hospital staff member employed by a hospital, who practices massage as part of the staff member's responsibilities;
- (i) an athletic trainer licensed under Chapter 40a, Athletic Trainer Licensing Act;
- (j) a student in training enrolled in a massage therapy school approved by the division;
- (k) a naturopathic physician licensed under Chapter 71, Naturopathic Physician Practice Act;
- (l) (i) an occupational therapist licensed under Chapter 42a, Occupational Therapy Practice Act; and
- (ii) an occupational therapy assistant licensed under Chapter 42a, Occupational Therapy Practice Act, while under the general supervision of an occupational therapist;
- (m) an individual performing gratuitous massage; and

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(n) an individual:

(i) certified by or through, and in good standing with, an industry organization that is recognized by the division and that represents a profession with established standards and ethics:

(A) who is certified to practice reflexology and whose practice is limited to the scope of practice of reflexology;

(B) who is certified to practice a type of zone therapy, including foot zone therapy, and whose practice is limited to the scope of practice for which the individual is certified;

(C) who is certified to practice ortho-bionomy and whose practice is limited to the scope of practice of ortho-bionomy;

(D) who is certified to practice bowerwork and whose practice is limited to the scope of practice of bowerwork; or

(E) who is certified to practice a type of brain integration and whose practice is limited to the scope of practice for which the individual is certified;

(ii) whose clients remain fully clothed from the shoulders to the knees; and

(iii) whose clients do not receive gratuitous massage from the individual.

(2) An individual described in Subsection (1) may not represent oneself as a massage therapist, massage apprentice, massage assistant, or massage assistant in-training.

(3) This chapter may not be construed to:

(a) authorize any individual licensed under this chapter to engage in any manner in the practice of medicine as defined by the laws of this state[-];

~~[(3) This chapter may not be construed to:]~~

~~[(a)]~~ (b) require insurance coverage or reimbursement for massage therapy or limited massage therapy from third party payors; or

~~[(b)]~~ (c) prevent an insurance carrier from offering coverage for massage therapy or limited massage therapy.

Section 7. Section **58-47b-305** is amended to read:

58-47b-305. State and local jurisdiction.

(1) (a) The division is the only agency authorized to license individuals to ~~[practice]~~ engage in the practice of massage therapy or the practice of limited massage therapy within the state or any of ~~[its]~~ the state's political subdivisions.

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(b) This chapter does not prevent any political subdivision of the state from enacting:

(i) ordinances governing the operation of establishments offering massages; or

(ii) ordinances regulating the practice of massage therapy or the practice of limited massage therapy, if the ordinances are not less stringent than this chapter.

(2) This chapter does not prohibit any political subdivision of the state from prosecuting [~~unlicensed individuals~~]:

(a) an unlicensed individual who is engaged in the practice of massage therapy [or from prosecuting licensed individuals who are] or the practice of limited massage therapy; or

(b) a licensed individual who is engaged in unlawful conduct.

Section 8. Section **58-47b-306** is enacted to read:

58-47b-306. Required signage and disclosures.

(1) As used in this section, "massage establishment" means an establishment in which an individual lawfully engages in the practice of massage therapy or the practice of limited massage therapy.

(2) If a massage assistant or massage assistant in-training engages in the practice of limited massage therapy at a massage establishment, the massage establishment shall prominently display to the public a sign that indicates certain massage services offered at the massage establishment are performed by a massage assistant or a massage assistant in-training.

(3) If an individual requests a massage service that is performed by a massage assistant or a massage assistant in-training, the licensee performing or the massage therapy supervisor supervising the massage service shall ensure that the individual is notified before scheduling or agreeing to the massage service that the massage service is performed by a massage assistant or massage assistant in-training.

Section 9. Section **58-47b-501** is amended to read:

58-47b-501. Unlawful conduct.

(1) "Unlawful conduct" includes:

~~(1)~~ (a) practicing, engaging in, or attempting to practice or engage in the practice of massage therapy without holding a current license as a massage therapist or a massage apprentice under this chapter;

~~(2)~~ (b) advertising or representing [~~himself as practicing~~] oneself as engaging in the practice of massage therapy when not licensed to do so; [~~and~~]

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(c) practicing, engaging in, or attempting to practice or engage in the practice of limited massage therapy without holding a current license as a massage therapist, massage apprentice, massage assistant, or massage assistant in-training under this chapter;

(d) advertising or representing oneself as engaging in the practice of limited massage therapy when not licensed to do so; and

~~[(3)]~~ (e) massaging, touching, or applying any instrument or device by a licensee in the course of [practicing or] engaging in the practice of massage therapy or the practice of limited massage therapy to the:

~~[(a)]~~ (i) genitals;

~~[(b)]~~ (ii) anus; or

~~[(c)]~~ (iii) except as provided in Subsection (2), breasts of a female patron[; except when a female patron].

(2) (a) Subsection (1)(e)(iii) does not apply if a female patron:

~~{(a)} requests breast massage, as may be further defined by division rule[; { } made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;} and {~~
~~—— (b) } signs a written consent { } form, which must also include { } form before the procedure is performed that includes} the signature of a parent or legal guardian if the patron is a { } minor, authorizing the procedure and outlining the reason for it before the procedure is performed.;~~ {minor and authorizes and outlines the reason for the procedure} made in

accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) subject to Subsection (2)(b), signs a written consent form before each time the procedure is performed.

(b) If the female patron is a minor, the female patron's parent or legal guardian shall sign the written consent form described in Subsection (2)(a).

Section 10. Section **58-47b-502** is amended to read:

58-47b-502. Unprofessional conduct.

"Unprofessional conduct" includes the following and may be further defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(1) maintaining, operating, or assisting in the establishment or operation of any place of business for the purpose of performing the practice of massage therapy or the practice of limited massage therapy without first obtaining a business license, if a license is required;

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- (2) failing to comply with any applicable ordinances relating to the regulation of massage establishment;
- (3) failing to comply with all applicable state and local health or sanitation codes;
- (4) failing to properly supervise [~~an apprentice~~] a massage apprentice, massage assistant, or massage assistant in-training;
- (5) failing to maintain mechanical or electrical equipment in a safe operating condition;
- (6) failing to adequately monitor patrons utilizing steam rooms, dry heat cabinets, or water baths;
- (7) prescribing or administering medicine or drugs;
- (8) engaging in any act or practice in a professional capacity that is outside of the practice of massage therapy or the practice of limited massage therapy; and
- (9) engaging in any act or practice in a professional capacity for which the licensee is not competent to perform through training or experience.