

REGULATION OF THE MASSAGE THERAPY PROFESSION

LOUISIANA BOARD OF MASSAGE THERAPY



PERFORMANCE AUDIT SERVICES
ISSUED MARCH 3, 2021

**LOUISIANA LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

TEMPORARY LEGISLATIVE AUDITOR
THOMAS H. COLE, CPA, CGMA

ASSISTANT LEGISLATIVE AUDITOR
FOR STATE AUDIT SERVICES
NICOLE B. EDMONSON, CIA, CGAP, MPA

DIRECTOR OF PERFORMANCE AUDIT SERVICES
KAREN LEBLANC, CIA, CGAP, MSW

FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT
EMILY DIXON, PERFORMANCE AUDIT MANAGER,
AT 225-339-3800.

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LOUISIANA LEGISLATIVE AUDITOR

March 3, 2021

The Honorable Patrick Page Cortez,
President of the Senate
The Honorable Clay Schexnayder,
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our performance audit of the Louisiana Board of Massage Therapy (LBMT). The purpose of this audit was to evaluate LBMT's regulation of the massage therapy profession to ensure compliance with the Louisiana Massage Therapists and Massage Establishments Act.

Overall, we found that LBMT needs to improve its regulation of the massage therapy profession to ensure compliance with the Act and to better identify unlicensed and illicit establishments, and that changes to state law could help the Board better protect the public.

We found state law does not require LBMT to conduct background checks on massage therapists or establishment owners. Instead, state law only requires that massage therapists who apply for licensure after January 2013 submit a background check to the Board as a condition of licensure. As a result, fewer than half (1,158, or 41.6 percent) of the state's 2,784 massage therapists and none of the 628 establishment owners had submitted a background check as of April 2020.

LBMT also does not have an effective process in place that allows it to identify unlicensed massage therapists and establishments. We found 115 establishments that may have been operating without a license as of September 2020. When LBMT does identify an unlicensed business and issues a cease and desist order, it does not monitor the establishment to ensure it remains closed. LBMT also does not impose fines or penalties for establishments operating without a license, even though it is authorized by state law to do so.

In addition, while LBMT investigates complaints and inspects establishments, its monitoring process is not sufficient to ensure these businesses are not operating as sexually-oriented businesses, which would violate state law. Specifically, LBMT has not developed criteria for when complaints can be dismissed, its inspectors do not determine whether establishments are advertising or operating as sexually-oriented businesses, and the Board does

The Honorable Patrick Page Cortez,
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Speaker of the House of Representatives
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Page 2

not track inspections to know if it is meeting its goal of inspecting each establishment once every three years.

We found as well that the maximum fines levied by LBMT for non-compliance with state law are low compared to other states, and that fines are not always increased based on the severity of the violation. Additionally, LBMT has not developed guidance, policies, or procedures to help the Board make consistent and appropriate disciplinary decisions.

LBMT also could do more to help combat human trafficking by coordinating with law enforcement agencies and other stakeholders and by providing better training for Board members, staff, and inspectors on how to recognize signs of illicit activity at massage therapy establishments.

The report contains our findings, conclusions, and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana Board of Massage Therapy for its assistance during this audit.

Respectfully submitted,



Thomas H. Cole, CPA, CGMA
Temporary Legislative Auditor

THC/aa

Louisiana Legislative Auditor



Regulation of the Massage Therapy Profession Louisiana Board of Massage Therapists

March 2021

Audit Control # 40190023

Introduction

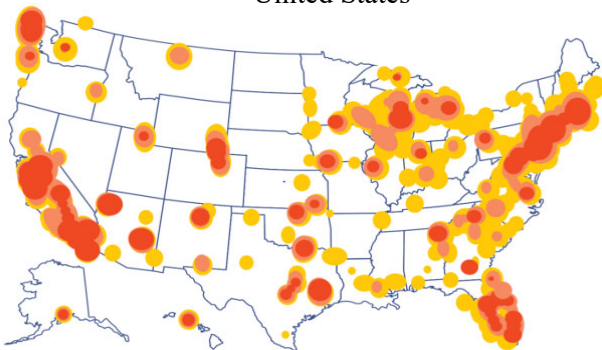
We evaluated whether the Louisiana Board of Massage Therapy (LBMT or Board) effectively regulated the massage therapy profession during fiscal years 2017 through 2019 to ensure compliance with the Louisiana Massage Therapists and Massage Establishments Act (Massage Therapy Practice Act).¹ LBMT was established in 1992 as a regulatory agency responsible for licensing all individuals and establishments that engage in the practice of massage therapy. As of April 2020, LBMT regulated 2,784 massage therapists and 628 establishments. We conducted this audit to determine whether LBMT is meeting its mission of protecting the public and integrity of the profession and whether its processes ensure that licensees comply with the Massage Therapy Practice Act. In addition, stakeholders we interviewed during our February 2020 audit on human trafficking² indicated that illicit massage therapy establishments were prevalent in Louisiana and may be involved with human trafficking.

The mission of LBMT is to protect the health, safety, and welfare of the public as well as the integrity of the profession by regulating the practice of massage therapy.

Source: www.labmt.org

Exhibit 1

Overview of Illicit Massage Businesses in the United States



Source: [Polaris Project, January 2018 report on Human Trafficking in Illicit Massage Businesses](https://www.polarisproject.org/reports/january-2018-report-on-human-trafficking-in-illicit-massage-businesses)

Massage therapy is defined as the manipulation of soft tissue for the purpose of maintaining good health and physical condition. In addition, the Mayo Clinic states that massage therapy is an effective treatment for reducing stress, pain, and muscle tension. However, the prevalence of illicit establishments that employ unlicensed individuals and/or offer sexual services threatens the integrity of the profession and public health. While law enforcement has the authority to arrest individuals involved in prostitution or human trafficking, LBMT can help combat these issues by inspecting establishments and referring potential

¹ Louisiana Revised Statutes (R.S.) 37:3551, *et seq.*

² The report can be found here:

[http://app.la.state.la.us/PublicReports.nsf/0/885D071C59808DB98625851A0058C79B/\\$FILE/0001F7CA2.pdf?OpenElement&.7773098](http://app.la.state.la.us/PublicReports.nsf/0/885D071C59808DB98625851A0058C79B/$FILE/0001F7CA2.pdf?OpenElement&.7773098)

illegal activity to law enforcement. As shown in Exhibit 1, the Polaris Project³ estimates that there are more than 9,000 illicit massage businesses in the United States, and women engaging in prostitution in these businesses may be victims of human trafficking.

According to the National Human Trafficking Hotline, illicit massage businesses frequently operate in strip malls, office buildings, and sometimes residential homes across the United States, and women in these businesses are often coerced into providing commercial sex to six to 10 men a day, seven days week.⁴ According to Polaris,⁵ the massage therapy profession has been subject to harmful stereotypes that sexualize the profession. As a result, massage therapists are regularly harassed, propositioned, and assaulted by customers.

LBMT is comprised of seven members appointed by the Governor, including five licensed massage therapists and two consumer members. LBMT has three staff members who perform administrative functions and assist with licensing, monitoring, and enforcement responsibilities, as summarized in Exhibit 2, and two contract lawyers who advise the Board and participate in investigations. LBMT also contracts with Advanced Investigative Technologies, LLC to conduct inspections.

Exhibit 2 LBMT's Regulatory Functions	
Functions	Examples of Activities to Accomplish Functions
Licensing	<ul style="list-style-type: none"> ● Review and approve initial applications for licensure, including reviewing criminal history background checks submitted by therapists applying for initial licensure ● Review and approve annual renewal applications ● Ensure that licensed therapists have completed 12 hours of continuing education before approving renewal applications
Monitoring	<ul style="list-style-type: none"> ● Investigate complaints concerning licensed and unlicensed individuals/establishments, which may indicate violations of state law ● Monitor results of criminal offenses if a complaint is received ● Perform random or complaint-initiated inspections to confirm that the site is being used for massage therapy and complies with laws and rules
Enforcement	<ul style="list-style-type: none"> ● Discipline licensees who have been found to violate the Massage Therapy Practice Act and disclose disciplinary actions on its website (https://www.labmt.org/site.php) ● Issue cease and desist orders to unlicensed therapists and massage establishments, disclose these orders on its website (https://www.labmt.org/site.php), and refer noncompliance to local law enforcement agencies
Source: Prepared by legislative auditor's staff using state law, state regulations, and information provided by LBMT.	

LBMT is funded solely through self-generated revenues. In fiscal year 2020, LBMT's total revenue of approximately \$514,208 included fees assessed for initial licenses and renewals, as well as fines from enforcement actions. The majority of LBMT's total expenses of approximately \$534,266 in fiscal year 2020 were for salaries and related benefits (\$307,827, or 57.6%) and operating expenses (\$112,481, or 21.1%). See Appendix C for a breakdown of LBMT's revenues and expenses for fiscal years 2016 through 2020.

³ Polaris is a non-profit that works to combat and prevent human trafficking.

⁴ <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/fake-massage-businesses>

⁵ [Human Trafficking in Illicit Massage Businesses; Polaris, 2018](#)

The objective of this audit was:

To evaluate LBMT's regulation of the massage therapy profession to ensure compliance with the Louisiana Massage Therapists and Massage Establishments Act.

The issues we identified are summarized on the next page and discussed in further detail throughout the remainder of the report. Appendix A contains LBMT's response to this report, and Appendix B details our scope and methodology. Appendix C summarizes LBMT's revenues, expenses, and net income for fiscal years 2016 through 2020; and Appendix D contains an example of another healthcare regulatory board's disciplinary matrix that shows how it escalates discipline based on the severity and number of violations.

Objective: To evaluate LBMT's regulation of the massage therapy profession to ensure compliance with the Louisiana Massage Therapists and Massage Establishments Act.

Overall, we found that LBMT needs to improve its regulation of the massage therapy profession to ensure compliance with the Massage Therapy Practice Act and to better identify unlicensed and illicit establishments that threaten the integrity of the profession. We also found that changes to this Act could help LBMT better meet its mission of protecting the public. Specifically, we identified the following:

- **State law does not require LBMT to conduct background checks on massage therapists or establishment owners. State law only requires that massage therapists who apply for licensure after January 2013 submit a background check to the Board. As a result, less than half (1,158, or 41.6%) of the 2,784 massage therapists and none of the 628 establishment owners were required to submit a background check as of April 2020.** Revising state law to require the Board to conduct background checks on both therapists and establishment owners would better protect the public and allow the Board to receive notifications from Louisiana State Police if any licensees are arrested after their initial background checks.
- **LBMT does not have an effective process to identify unlicensed massage therapists and establishments. As a result, we found 115 establishments that may be operating without a license as of September 2020. In addition, when LBMT identifies an unlicensed business and issues a cease and desist order, it does not monitor the establishment to ensure it remains closed.** LBMT also does not impose fines or penalties for establishments that are operating without a license, even though it is authorized by state law to do so.
- **While LBMT investigates complaints and inspects establishments, its monitoring process is not sufficient to ensure that licensed massage establishments are not operating as sexually-oriented businesses, which would violate state law.** For instance, LBMT has not developed criteria for when complaints should be dismissed, its inspectors do not determine whether establishments are advertising or operating as sexually-oriented businesses, and it does not track inspections to know if it is meeting its goal of inspecting each establishment once every three years.
- **The maximum fines levied by LBMT for noncompliance with state law are low compared to other states, and fines are not always increased based on the severity of the violation. Additionally, LBMT has not developed guidance, policies, or procedures to help the Board make consistent and appropriate disciplinary decisions. Inconsistent disciplinary actions may cause confusion for the Board, the public, and licensees, and actions that are too lenient may not deter potential offenders.** Developing a matrix similar to the one used by the

Louisiana Physical Therapy Board could help LBMT establish a graduated and equitable system of sanctions by specifying the number or severity of violations that trigger each level of sanctions.

- **Increased coordination with law enforcement agencies and other stakeholders and training on human trafficking could help LBMT to identify and address illicit activity including human trafficking in the massage industry.** For instance, according to the Louisiana Human Trafficking Prevention Commission executive director, having a LBMT representative appointed to its advisory committee would be helpful in making meaningful recommendations related to the massage therapy profession.

These issues are explained in more detail throughout the remainder of the report, along with recommendations to assist LBMT to strengthen its regulation of the massage therapy profession.

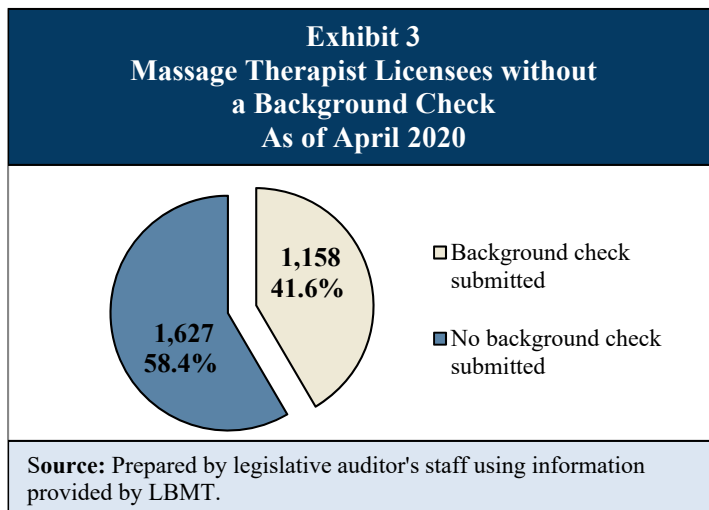
State law does not require LBMT to conduct background checks on massage therapists or establishment owners. State law only requires that massage therapists who apply for licensure after January 2013 submit a background check to the Board. As a result, less than half (1,158, or 41.6%) of the 2,784 massage therapists and none of the 628 establishment owners were required to submit a background check as of April 2020.

State law⁶ provides LBMT with the authority to license massage therapists and establishments and prohibits LBMT from granting licenses to therapists or massage establishment owners who have been convicted of certain crimes including prostitution or sexual misconduct. State law⁷ also prohibits establishments from operating as sexually-oriented businesses. Given these requirements and the prevalence of prostitution and human trafficking in the massage profession, thorough screening of massage therapists and owners of massage establishments is important. In addition, the nature of massage services involves physical touch, and many therapists provide massage therapy services within a home with little to no supervision. According to LBMT's data, at least 1,698 (61%) of the 2,784 massage therapists licensed in Louisiana as of April 2020 provide massage therapy services in their own homes or clients' homes. As a result, LBMT should ensure it examines the backgrounds of all massage therapists and establishment owners as part of the licensing process.

⁶ R.S. 37:3555 and R.S. 37:3558

⁷ R.S. 37:3558

State law does not require LBMT to conduct background checks on massage therapists or establishment owners. Instead, effective January 2013, state law⁸ granted LBMT the authority to require new massage therapist applicants to submit a background check as a condition of licensure. However, because current law only requires therapists who were licensed after January 2013 to submit background checks, less than half (1,158, or 41.6%) of the 2,784 licensees have had a background check as of April 2020, as shown in Exhibit 3. Additionally, state law does not require LBMT to obtain a background check on establishment owners. As a result, none of the 628 establishment owners licensed by LBMT as of April 2020 have been required to submit a background check.⁹



In addition to background checks, the Florida Board of Massage Therapy conducts initial inspections to ensure that the establishment will be used for massage therapy and not as a front for prostitution or human trafficking. In contrast, LBMT only requires that establishment owners complete an online form that obtains minimal information including the contact information of the establishment, tax identification number, and name of the owner. LBMT does not conduct any activities to vet establishments prior to licensing them.

Example of Failure of LBMT’s Current Self-Disclosure Process

According to a news report, an active licensee was arrested and charged with promoting prostitution, prostitution by massage, and criminal conspiracy in March 2018. This individual did not disclose this information to LBMT upon license renewal in March 2019. LBMT was not aware of the charges until we notified staff. As of December 2020, this licensee is still active, and LBMT stated that it has not received notification of a conviction. However, LBMT has not followed up to determine if this licensee has been convicted.

Source: Prepared by legislative auditor’s staff using information from LBMT files, interviews, and [local media](#).

Conducting criminal background checks on both therapists and establishment owners would enable LBMT to receive “Rap Back” notifications¹⁰ from Louisiana State Police if any of its licensees were arrested after their initial background checks. However, since state law does not require LBMT to conduct its own background checks, it has to rely on the public for complaints, or on the licensed therapist or establishment owner to self-disclose any subsequent arrests or involvement in a pending criminal trial. This process is not always reliable, as we identified a licensed individual whose arrest and criminal charges were not disclosed to the Board (see text box on the left).

⁸ R.S. 37:3558

⁹ An establishment owner may have submitted a background check to LBMT if they are a massage therapist that was licensed after January 2013, but LBMT does not track which owners are also licensed therapists.

¹⁰ The Rap Back service would allow LBMT to receive ongoing status notifications of any criminal activity on licensees with a completed criminal background check, thus eliminating the need for repeated background checks on the same licensee.

The Federation of State Massage Therapy Boards (FSMTB) recommends in its model practice act¹¹ that massage therapists be of good moral character and submit fingerprints for the purpose of state and federal background checks. Other state massage therapy boards¹² and other regulatory boards in Louisiana¹³ have the authority to conduct criminal background checks on licensees. For example, Texas implemented a background check requirement for licensees beginning in September 2019 that requires all therapists licensed before this date to comply with this mandate by September 2021. In addition, Florida’s Board of Massage Therapy requires establishment owners to submit to fingerprint-based background checks, and considers evidence of rehabilitation to determine whether to grant the establishment a license when owners have been convicted of violent crimes or repeat offenses.

Matter for Legislative Consideration 1: The legislature may wish to consider requiring LBMT to conduct state and federal criminal background checks on all massage therapists and owners of massage establishments.

LBMT does not have an effective process to identify unlicensed massage therapists and establishments. As a result, we found 115 establishments that may be operating without a license as of September 2020. In addition, when LBMT identifies an unlicensed business and issues a cease and desist order, it does not monitor the establishment to ensure it remains closed.

State law¹⁴ prohibits therapists and establishments from operating without a license or registration and requires the Board to perform inspections and investigations of persons who may be engaging in practices which violate the Massage Therapy Practice Act. However, unlike other healthcare professions, the massage therapy profession has a high risk of therapists practicing, and establishments operating, without licenses. To help identify unlicensed individuals, LBMT primarily relies on complaints from the public and from licensed therapists and sometimes identifies unlicensed activity through inspections. In November 2019, LBMT implemented a “Look for the License” campaign where it rented billboards throughout the state that urged consumers to look for licenses on LBMT’s website before getting a massage, as shown in Exhibit 4.



¹¹ [Model Massage Therapy Practice Act; FSMTB, 2014](#)

¹² This includes boards in Arkansas, Florida, Mississippi, Oregon, and Texas

¹³ Louisiana State Board of Nursing, Louisiana State Board of Dentistry, Louisiana State Board of Medical Examiners, Louisiana State Board of Chiropractic Examiners, and Louisiana Board of Pharmacy

¹⁴ R.S. 37:3556 and R.S. 37:3558

However, we identified 115 establishments that may be operating without a license because LBMT does not have sufficient processes to proactively identify unlicensed therapists and establishments.

LBMT does not always investigate or conduct inspections based on information it receives during its licensing process and from anonymous complaints alleging unlicensed activity. When applying for licensure, therapists are required to list all establishments where they currently work and establishment owners are required to list all therapists that they employ. However, LBMT does not always compare the listed therapists and establishments to its database to confirm licensure. We reviewed 39 therapist applications from fiscal year 2019 where the name of the establishment listed by the therapist did not appear to match to the name of any licensed establishment and found that 37 (94.9%) of these applications listed establishments that were not licensed. We also reviewed data for 2,316 initial and renewal establishment applications that LBMT approved during fiscal years 2017 through 2019 and identified eight (<1%) applications that listed therapists who were not licensed by LBMT. In one instance, LBMT approved an establishment application in March 2019 that listed an unlicensed therapist with a license number that did not match the individual's name. The unlicensed individual was arrested in May 2019 for allegedly sexually assaulting a client while working at the establishment.¹⁵

During fiscal years 2017 through 2019, LBMT received eight anonymous complaints alleging that therapists and establishments were operating without licenses, but did not investigate seven (87.5%) of these complaints (see example in text box on the right). Despite the complaints being anonymous, LBMT could have conducted an inspection to determine if these establishments or therapists were operating without licenses. Other states, including Texas and Mississippi, accept anonymous complaints. Anonymous complaints received by the Mississippi Board of Massage Therapy and the Texas Department of Licensing and Regulation are evaluated and may result in inspections or investigations.

Example of Anonymous Complaint

LBMT received an anonymous complaint in June 2018 that an establishment was employing unlicensed therapists. We found this establishment was also not licensed. LBMT did not inspect or issue a cease and desist order to this establishment. We called this establishment in November 2020 and found that it was still operating and offering massages on its website as of December 2020.

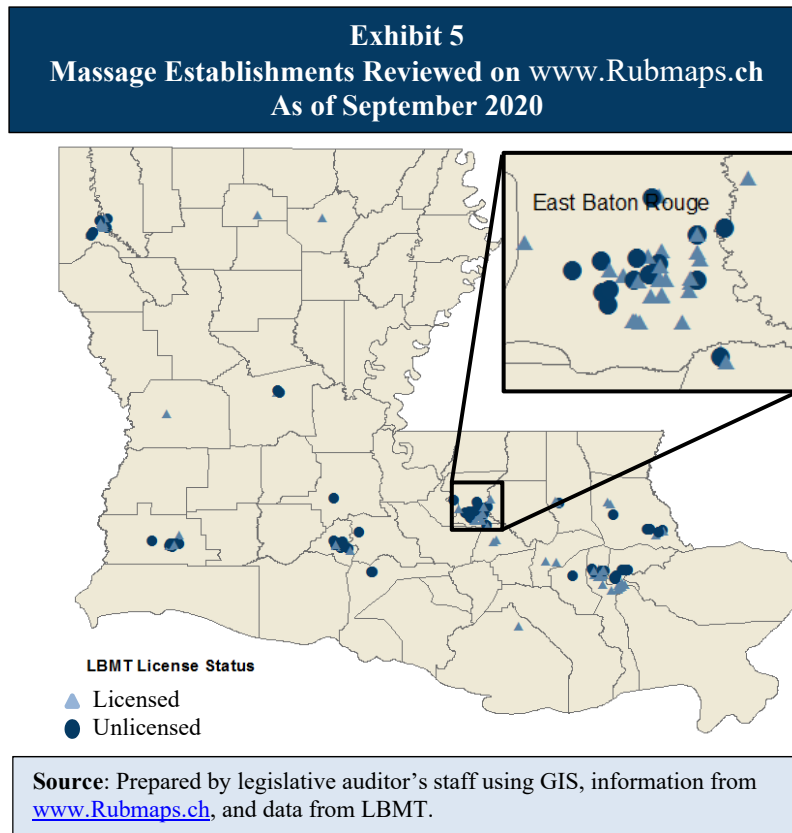
Source: LBMT complaint files

LBMT does not proactively review public websites that could help identify unlicensed establishments. These websites allow customers to share information about their experiences such as which workers provide sex acts, how much to tip, reviews of their experiences, and ratings of the physical attributes of the workers. LBMT could use this information to identify high-risk establishments that may not be licensed. For example, we reviewed www.Rubmaps.ch,¹⁶ a public review website, and found reviews listed for 154 massage establishments in Louisiana.¹⁷ Of these 154 establishments, 71 (46.1%) were unlicensed as of September 2020, as shown in Exhibit 5.

¹⁵ According to LBMT files, the therapist was terminated by the establishment owner after he was arrested.

¹⁶ <https://www.Rubmaps.ch>

¹⁷ This information is solely based on third party reviews from www.Rubmaps.ch.



LBMT does not have a process to monitor establishments that have previously been issued cease and desist orders to ensure they are no longer operating. When LBMT receives a complaint that an establishment or therapist is operating without a license it can issue a cease and desist order.¹⁸ If establishments do not comply with these orders the Board's policy is to refer them to law enforcement. During fiscal years 2017 through 2019, LBMT issued 73 cease and desist orders to establishments that were operating without licenses. Of these 73 orders, 28 (38.4%) resulted in establishments coming into compliance by applying for licensure. However, LBMT does not have a process to ensure the remaining 45 (61.6%) establishments closed their businesses or stopped offering massage services. We contacted these 45 establishments and found that at least three (6.7%) were still offering massage services in October 2020 (see example in text box on the right). LBMT should develop procedures to ensure establishments with cease and desist orders are no

Example of Non-Compliance with Cease and Desist Order

LBMT issued a second cease and desist order to a beauty salon in February 2018 after receiving a complaint alleging unlicensed practice from a potential customer. After issuing the order, the establishment owner called LBMT and stated that she removed the term "massage" from all advertisements and LBMT closed the investigation. However, we found that before LBMT closed the investigation, a customer posted on the establishment's Facebook page that they had just received a full body massage. When we contacted the salon in July 2020, this establishment was still offering massages despite not have a license.

Source: LBMT's cease and desist files and establishment's Facebook page.

¹⁸ LBMT issues cease and desist orders to therapists and establishments that are practicing or operating without a license. This document notifies these individuals to cease providing or advertising massage therapy services.

longer operating. For example, LBMT could anonymously call establishments; research the establishments' Facebook pages, national review boards such as www.Rubmaps.ch, or other online advertisements; or conduct inspections to ensure that these establishments cease operation. According to LBMT, it would need more than three staff members to monitor for unlicensed activity.

In addition, LBMT does not impose fines or penalties for establishments that are operating without a license, even though state law¹⁹ gives them the authority to do so. According to LBMT, it does not impose fines and penalties because it prefers to work with establishments to bring them into compliance with state licensing requirements. Other states issue penalties to individuals who operate without a license. For example, in Texas, operating without a license is considered a Class B violation that results in penalties between \$1,000 and \$2,500. In addition, Florida created an Unlicensed Activity (ULA) program for all regulatory boards that works in conjunction with law enforcement and the state attorneys' offices. ULA investigations, if substantiated, result in subjects arrested by law enforcement, issued a fine, or issued a cease and desist agreement. Imposing fines for establishments that operate without a license would also help LBMT generate additional revenue to hire more staff to increase its monitoring activities.

Recommendation 1: LBMT should develop a process to identify unlicensed activity that includes reviewing all licensing applications, investigating anonymous complaints that allege unlicensed activity, and reviewing public websites such as www.Rubmaps.ch.

Summary of Management's Response: LBMT disagrees with this recommendation and stated that it currently has a process to identify unlicensed activity that involves the Board receiving complaints from the public and licensed therapists. The Board stated that it feels it would be difficult to set up a procedure to identify unlicensed therapists and establishments when no complaint has been filed. It would also require numerous staff hours to regularly check internet sites for inappropriate listings and the Board does not have manpower to undertake such activity. See Appendix A for LBMT's full response.

LLA Additional Comments: As a regulatory agency, LBMT is responsible for protecting the health, safety, and welfare of the public as well as the integrity of the profession. By relying on the public to report unlicensed activity, LBMT may not be effectively regulating the practice of massage therapy and meeting its statutory obligations.

Recommendation 2: LBMT should develop a process for continuous monitoring of establishments that have been issued cease and desist orders to ensure they either stop operating or obtain a license.

¹⁹ R.S. 37:3555(A)(2)

Summary of Management’s Response: LBMT disagrees with this recommendation and stated that it does have a process in place to monitor establishments that have been issued cease and desist orders. This process involves the Board usually notifying a complaining party when a cease and desist has been issued and requesting that the Board be notified if the business is still in operation. However, the Board agrees that a system should be developed to do periodic monitoring (rather than “continuous” of establishments that have been issued a cease and desist notice to determine if there has been compliance with the notice. The Board will consider implementing a procedure to have a routine follow-up inquiry made to determine if the business/individual has complied with the cease and desist notice. See Appendix A for LBMT’s full response.

LLA Additional Comments: As a regulatory agency, LBMT is responsible for protecting the health, safety, and welfare of the public as well as the integrity of the profession. By “usually” notifying complaining parties when cease and desist orders are issued and relying on the complainant to notify the Board of continued operation, LBMT may not be effectively regulating the practice of massage therapy and meeting its statutory obligations.

Recommendation 3: LBMT should impose fines and penalties on establishments that continue to operate without licenses.

Summary of Management’s Response: LBMT disagrees with this recommendation and stated that it does not believe it has the legal authority to impose fines and penalties on unlicensed individuals. To issue a fine, the Board would have to take several steps including conducting an administrative hearing, and enforcement of any fine imposed would also be an issue. However, the Board is working on a procedure where it could flag the name of a business or person that continues practicing without a license after receiving a cease and desist notice and address whether a fine is appropriate if the person later applies for a license. However, even if the Board believed it had the legal authority to do so, attempting to fine persons practicing without a license would be a time consuming and expensive process with no legal method to collect any fine imposed. See Appendix A for LBMT’s full response.

LLA Additional Comments: R.S. 37:3555(A)(2) gives LBMT the authority to “investigate persons who may be engaging in practices which violate provisions of this Chapter and impose fines and penalties.” As a regulatory agency, LBMT is responsible for protecting the health, safety, and welfare of the public as well as the integrity of the profession. By not penalizing establishments that continue to operate without licenses, LBMT may not be effectively regulating the massage therapy profession and protecting the public.

While LBMT investigates complaints and inspects establishments, its monitoring process is not sufficient to ensure that licensed massage establishments are not operating as sexually-oriented businesses, which would violate state law.

LBMT is authorized by state law²⁰ to perform inspections and investigate complaints of individuals who violate the Massage Therapy Practice Act, including establishments that operate as sexually-oriented businesses. However, we found that LBMT needs to ensure that it does not dismiss valid complaints, that it identifies sexually-oriented businesses during inspections, and that it tracks inspections to ensure it meets its internal goal of inspecting all establishments every three years.

LBMT has not developed criteria for when complaints should be dismissed. During fiscal years 2017 through 2019, LBMT received and resolved 140 complaints containing 193 allegations including sexual misconduct, operating without a license, and operating a sexually-oriented business, as shown in Exhibit 6. Of these 140 complaints, 36 (25.7%) resulted in disciplinary action or were given a cease and desist order. The remaining 104 (74.3%) complaints were dismissed or the investigation was closed without further action.

Exhibit 6 Allegations Received by LBMT, by Type Fiscal Years 2017 through 2019		
Allegation Type	No.	%
Unlicensed Therapist/Establishment	63	32.6%
Sexual Misconduct	33	17.1%
Sexually-Oriented Business	30	15.5%
Signs of Human Trafficking	17	8.8%
Sexually-Suggestive Advertisement	15	7.7%
Sanitary Issues	5	2.6%
Other (i.e. Unprofessional Conduct, Scope of Practice, Customer Service, etc.)	30	15.5%
Total	193*	100%
*Some complaints contained multiple allegations Source: Prepared by legislative auditor's staff using LBMT's data.		

National State Auditors Association (NSAA) best practices recommend that regulatory boards²¹ set guidelines regarding which complaints should be investigated and which should be dismissed. Currently, LBMT's decision to dismiss complaints resides with an investigation committee that is comprised of one Board member, one attorney, and one staff member. However, the Board has not established criteria for when cases should be dismissed and it does not review the decisions of the investigation committee. We reviewed 27 of the 140 complaints LBMT received during fiscal years 2017 through 2019 and summarized examples of the dismissed allegations in Exhibit 7.

²⁰ R.S. 37:3555 and R.S. 37:3558

²¹ [Carrying Out a State Regulatory Program; A NSAA Best Practice Document, 2004](#)

Exhibit 7 Examples of Allegations Dismissed by LBMT Fiscal Years 2017 through 2019	
Allegation	Examples of Dismissed Allegations
Sexual Misconduct	LBMT initially dismissed three complaints received in July and September 2017 that alleged a therapist sexually harassed or molested three different clients because the clients and therapist had conflicting accounts of the incidents. While LBMT did issue a disciplinary action when the fourth allegation was received in November 2017, it dismissed three subsequent complaints and did not escalate the therapist's disciplinary action.
Sexually-Oriented Business	LBMT received a complaint in July 2018 from a district attorney who was involved in an establishment raid and observed that the establishment was being used as a residence and had multiple new and used condoms on site. LBMT dismissed this complaint after the inspection identified no violations, but documented in internal notes that "inspectors could not search closets, desk drawers, storage areas, or open envelopes" and "if legal authorities felt that prostitution was occurring, the issue would be pursued by those individuals." This establishment is still licensed by LBMT as of October 2020.
Sexually-Suggestive Advertisement	LBMT received a complaint in December 2018 alleging an establishment was advertising sexual services. This establishment was not licensed so LBMT issued a cease and desist order in December 2018, but it did not address the allegation of sexual advertising because it stated that it has limited ability to check online websites. Furthermore, LBMT relicensed the establishment in February 2019 and in April 2019 an inspector found that the therapist working did not have a license and could not speak English, both of which are required by state law. Additionally, the inspector noted that the therapist was not clothed in appropriate attire and there was no health data collected.
Source: Prepared by legislative auditor's staff using LBMT's data and complaint case files.	

According to LBMT, it leaves allegations of human trafficking and prostitution "to the professionals" such as local law enforcement and the Federal Bureau of Investigation. LBMT also stated that it is hard to identify what is considered sexual advertisement, because it is too subjective. However, LBMT is required by state law²² to investigate licensees who may have violated the Massage Therapy Practice Act. State law²³ also prohibits establishments from operating as sexually-oriented businesses and requires advertisement for massage therapy to avoid appealing to the "prurient interest."²⁴

²² R.S. 37:3555

²³ R.S. 37:3558 and R.S. 37:3564

²⁴ Prurient interest is defined as marked by or arousing an immoderate or unwholesome interest or desire especially marked by, arousing, or appealing to sexual desire.

LBMT does not require its contracted inspectors to determine whether establishments are operating as sexually-oriented businesses. LBMT contracts with Advanced Investigative Technologies, LLC to conduct inspections.²⁵ The purpose of these inspections is to confirm that the massage establishment site is being used for massage therapy and complies with the laws and rules governing the establishment's operation, facilities, personnel, safety, and sanitary requirements. Exhibit 8 summarizes violations identified during the 221 inspections conducted in calendar year 2019.

Exhibit 8 Violations Identified by Inspections Calendar Year 2019		
Violation Type	No.	%
Advertisement does not include license number	48	29.6%
License not properly displayed	43	26.5%
Status change	31	19.1%
Unlicensed/Expired therapist or establishment license	20	12.3%
No records kept	17	10.5%
Other	3	1.9%
Total	162	100.0%
Source: Prepared by legislative auditor's staff using LBMT's internal inspection violation spreadsheet.		

However, LBMT does not require inspectors to determine whether establishments are operating as sexually-oriented businesses. As a result, we found that LBMT did not identify any of the 221 establishments inspected in calendar year 2019 as sexually-oriented, despite such reviews on www.Rubmaps.ch. For example, one establishment currently licensed by LBMT had 56 reviews on www.Rubmaps.ch from February 2015 to November 2020. During this same time LBMT conducted an inspection but did not identify any illicit activity. According to LBMT, it does not use websites such as www.Rubmaps.ch because establishments do not have control over what is posted on these websites and there are so many of these websites it would be hard to know which ones to search. While LBMT cannot solely rely on what clients post on websites, LBMT could use this information to initiate an inspection that may identify sexually-oriented establishments. LBMT also stated that it is hard to identify illicit activity in establishments that it licenses because it does not have the statutory authority to conduct undercover operations or search areas such as drawers or closets during inspections. However, there is no statute that definitively prohibits LBMT from having full access to premises during establishment inspections.²⁶

Other states that regulate massage establishments have developed ways to identify human trafficking. In Texas, inspectors look for signs of prostitution and human trafficking such as therapists living in the establishments, doors with locks on both sides, and employees not being free to come and go as they wish. If signs of prostitution or human trafficking are found, inspectors report them to their enforcement division, the Human Trafficking hotline, and Texas' Anti-Human Trafficking Unit that works with law enforcement. In Oregon, investigators have the ability to go undercover to determine if prostitution is occurring. Additionally, Florida state law requires massage establishments to post human trafficking awareness signs that include the National Human Trafficking Resource Center's phone number at massage establishments.²⁷

²⁵ In fiscal year 2020, the maximum amount of this contract was \$40,000, but the actual amount paid by LBMT is dependent on the number of inspections completed.

²⁶ It appears that as long as the inspections are reasonable, LBMT's regulatory authority should prevail.

²⁷ This includes massage establishments that are not owned by a person that is licensed through the Florida Department of Health.

Louisiana state law²⁸ only requires posting of these signs at massage parlors that have been found to be a public nuisance for prostitution.

While LBMT has established an internal goal of inspecting each establishment once every three years, it does not use a risk-based approach to select establishments for inspection and does not track completed inspections to know if it is meeting this goal.

During calendar years 2015 through 2019, LBMT scheduled 916 inspections that its contractor was required to conduct. According to LBMT, it selects establishments to inspect based on groupings in cities or areas, or based upon complaints, and then provides the contractor with this list. However, without tracking which establishments the contractor actually inspects, LBMT cannot ensure it meets its goal of inspecting each establishment once every three years. We reviewed the lists provided to the contractor and found that 69 (22.1%) of the 312 establishments active during fiscal years 2016 through 2019 had not been selected for inspection during that same four-year period.

LBMT also does not use a risk-based approach to schedule inspections. As discussed previously, LBMT could broaden its inspection population to include establishments that were the subject of anonymous complaints, listed on illicit websites, and named in media articles to identify establishments that may be operating as sexually-oriented businesses. For example, according to a March 2018 news article, an individual who was listed as the owner of three establishments as of April 2020 was arrested for pandering and promoting prostitution. The article alleges that this owner was the leader of illegal operations where women were transported from South Korea, China, and Thailand for \$40,000 and forced to work their debts off within one year. As of December 2020, this individual still owns three establishments, and LBMT stated that it has not received notification of a conviction. However, the Board has not followed up with local law enforcement to determine if this licensee has been convicted. According to LBMT, it does not use a risk-based approach to schedule inspections based on arrests or anonymous complaints because it may result in the Board being sued for discrimination if the risk-based approach disproportionately impacts racial minorities. Using a risk-based approach to select and prioritize the inspections would help LBMT potentially identify more violations and better protect the public.

Recommendation 4: LBMT should establish written criteria for when complaints should be dismissed.

Summary of Management's Response: LBMT disagrees with this recommendation and stated that the Board does not believe that written criteria addressing when complaints can be dismissed would be practicable or efficient. Such written criteria may not be legally binding on the Board and would possibly take away the Board's discretion to act on a case-by-case basis. See Appendix A for LBMT's full response.

²⁸ RS 15:541.1

LLA Additional Comments: Developing criteria regarding which complaints should be investigated and which should be dismissed is considered a best practice for regulatory agencies and would help ensure that complaints are treated consistently.

Recommendation 5: LBMT should develop a process that requires inspectors to evaluate certain criteria that would help the Board determine whether establishments are operating as sexually-oriented businesses.

Summary of Management's Response: LBMT agrees with this recommendation and stated that it would be helpful if the contract inspectors were trained on signs of human trafficking and will discuss implementation of such training with its contractors. However, the Board inspectors are limited on what they can do to determine if a business is operating as a sexually-oriented establishment. The Board does not have the authority to conduct undercover operations or execute a search warrant, and legislative action would be needed for the Board to have such authority. See Appendix A for LBMT's full response.

Recommendation 6: LBMT should develop criteria for selecting establishments to inspect and how often establishments are inspected and incorporate risk factors such as information received from anonymous complaints, its licensing process, media articles alleging arrests, and websites that indicate sexually-oriented businesses when prioritizing inspections.

Summary of Management's Response: LBMT disagrees with this recommendation and stated that depending on the nature of the complaint, the Board may investigate the matter. The Board rules are very specific and that in most cases, only convictions can be used for disciplinary purposes. See Appendix A for LBMT's full response.

LLA Additional Comments: Our recommendation is to use risk factors as a basis for selecting establishments to inspect, not for directly imposing disciplinary actions.

Recommendation 7: LBMT should track completed inspections so that it can monitor the performance of the inspection contractor and ensure that inspections are being completed in accordance with its goal.

Summary of Management's Response: LBMT agrees with this recommendation and stated that the current computer system used by the Board does not have the ability to track when an inspection has been made and a manual check is the only current method to determine how often a particular establishment has been inspected. The Board staff is currently working with its technical contractors to see if a tracking system can be programmed into the current system. See Appendix A for LBMT's full response.

The maximum fines levied by LBMT for noncompliance with state law are low compared to other states, and fines are not always increased based on the severity of the violation. Additionally, LBMT has not developed guidance, policies, or procedures that would help the Board make consistent and appropriate disciplinary decisions. Inconsistent disciplinary actions may cause confusion for the Board, the public, and licensees, and actions that are too lenient may not deter potential offenders.

State law²⁹ gives LBMT the authority to discipline its licensees, including license suspension and revocation, issuing fines, or refusing to issue or renew a license. Inspection violations, such as the 162 violations outlined in Exhibit 8, are addressed through fines ranging from \$50 to \$750 per inspection. Other violations, such as those resulting from complaints, are addressed through formal disciplinary actions and are posted on LBMT's website. During fiscal years 2017 through 2020, LBMT issued 10 formal disciplinary actions as summarized in Exhibit 9.

Exhibit 9 Disciplinary Actions Issued Fiscal Years 2017 through 2020		
Disciplinary Action	No.	%
Probation/Suspension*	4	40.0%
Refused to Renew*	3	30.0%
License Revoked	3	30.0%
Total	10	100%
*May also include fines		
Source: Prepared by legislative auditor's staff using information from LBMT.		

The maximum fines levied by LBMT for noncompliance with state law are low compared to those of other states we surveyed, and fines are not always increased based on the severity of the violation. In calendar year 2019, LBMT assessed \$18,600 in inspection fines to establishment owners and \$1,000 to a therapist for violating the Massage Therapy Practice Act. LBMT has not increased its inspection fees since the schedule was created in November 2013. Exhibit 10 compares Louisiana's fines to other states.

²⁹ R.S. 37:3563

Exhibit 10	
Fines Schedule Comparison	
State	Fine Range
Louisiana	Administrative - \$50 per violation, maximum \$750 per inspection Disciplinary Actions - \$100 to \$1,000
Texas	\$500 to \$5,000 depending on the severity of the violation
Tennessee	\$1 to \$1,000 depending on severity of the violation
Oregon	\$500 for first violation and \$1,000 for each violation afterwards
Florida	\$100 to \$10,000 depending on the severity of the violation
Source: Prepared by legislative auditor's staff using information from LBMT and other state laws, regulations, and interviews.	

LBMT does not always increase its fines based on the severity of the violation. For example, LBMT assessed \$150 to an establishment that did not include its license number in its advertisements and \$150 to an establishment that hired unlicensed therapists. However, in Florida, an establishment would be fined \$1,000 for employing an unlicensed therapist. NSAA best practices recommend that regulatory boards establish penalties that increase based on the number and severity of the violation. If LBMT increased the maximum fine amount to be in line with other states and increased fines for more serious violations, it could use this additional revenue to better monitor for illicit activity.

In addition, LBMT has not developed guidance for the Board to help ensure it follows a consistent, objective approach when formally disciplining massage therapists. While the exact circumstances of two cases are never the same, we found instances where LBMT issued different disciplinary actions to licensees for similar allegations. For example, the Board received complaints against two therapists alleging sexual misconduct. One therapist accused of sexual misconduct involving two clients received a one-year suspension, \$1,000 fine, and six-month probation; another therapist accused of sexual misconduct involving eight clients received a 90-day suspension and \$1,000 fine. We also found that LBMT did not allow one licensee to renew their license for six months after being arrested for human trafficking and pleading guilty to money laundering through prostitution by massage, but revoked another's when they pled guilty to prostitution.

NSAA best practices for state regulatory boards³⁰ recommend that regulatory agencies establish a graduated and equitable system of sanctions and specify the number or severity of violations that should trigger each level of sanction. For instance, the Louisiana Physical Therapy Board uses a disciplinary matrix that considers several factors including the potential harm to the patient, if the action was an unintentional error, if the licensee acted with recklessness, etc. See Exhibit D for excerpts from this disciplinary matrix example.

Recommendation 8: LBMT should evaluate its fine schedule compared to those of other states to determine whether increases are needed and ensure fines increase based on the severity of the violation.

Summary of Management's Response: LBMT disagrees with this recommendation and stated that in addition to protecting the public, the Board also has

³⁰ [Carrying Out a State Regulatory Program; A NSAA Best Practice Document, 2004](#)

the goal of servicing the members it regulates. The Board also recently voted to allow for a decreased penalty for certain violations that were discovered “in house” rather than through an inspection or based on a complaint. The Board feels that it is important that it not be viewed as treating licensees as a source of income by seeking to extract as much money as possible from the persons/businesses it regulates. Many individual therapists are self-employed and if excessive fines are issued, it could put the person out of business or force them to go “underground” to continue to learn a living. See Appendix A for LBMT’s full response.

LLA Additional Comments: LBMT is responsible for regulating the practice of massage therapy and protecting the public. If fines do not correspond to the severity of violations, they may not be sufficient to deter future noncompliance.

Recommendation 9: LBMT should develop guidance to help ensure it follows a consistent, objective approach when disciplining therapists and that these decisions are appropriate and properly protect the public from unprofessional, improper, and unqualified licensees as required by state law.

Summary of Management’s Response: LBMT disagrees with this recommendation and stated that in the past it had a reputation for showing favoritism to certain massage businesses. When the current director was appointed, one of the main concerns was to be uniform and consistent in the administration of disciplinary matters and the imposition of fines. For that reason, the Board developed a fine schedule to be uniform in disciplinary matters. See Appendix A for LBMT’s full response.

LLA Additional Comments: As a regulatory agency, LBMT is responsible for protecting the health, safety, and welfare of the public as well as the integrity of the profession. Imposing fines is only one way that LBMT disciplines therapists and regulates the profession, so having a fine schedule does not ensure that the Board consistently disciplines therapists. The Board also has the authority to suspend and revoke licenses, or place the licensee on probation. Guidance should include all disciplinary actions.

Increased coordination with law enforcement agencies and other stakeholders and training on human trafficking could help LBMT to identify and address illicit activity including human trafficking in the massage industry.

According to the Federation of State Massage Therapy Boards (Federation), human trafficking is prevalent in the massage therapy profession and its impact on the profession is sizable.³¹ According to LBMT, human trafficking should be left to law enforcement because the Board has limited authority as a regulatory entity. While state law does not authorize LBMT to

³¹ [FSMTB Human Trafficking Taskforce Report, 2017](#)

take criminal action, the Board does receive complaints and conducts inspections which put it in a unique position to identify signs of potential illicit activity such as human trafficking and refer such instances to law enforcement. LBMT also has the authority to issue cease and desist orders to unlicensed establishments, and to revoke sexually-oriented massage establishments' licenses. Additionally, identifying and addressing illicit activities aligns with the Board's mission of protecting the public and protecting the integrity of the profession. To combat human trafficking the Federation recommends that state massage therapy board members and staff be trained in human trafficking and develop an active and ongoing working relationship with local and state law enforcement and other governmental agencies.³²

LBMT should seek updated training for its Board members, staff, and contracted inspectors to identify and address illicit activity, including human trafficking.

While LBMT staff and Board members did receive human trafficking training from the Federal Bureau of Investigation in August 2017, ongoing training is important because new staff have been hired and new Board members have been appointed since the training. Training relating to the signs of human trafficking (see text box on the right), relevant state and federal laws, pending regulations, and current initiatives aimed to end or help victims of human trafficking could help LBMT Board members and staff be able to better identify, address, and refer cases of human trafficking.

Examples of Potential Signs of Human Trafficking

- Therapists living in the establishment or with coworkers
- Therapists who recently moved into the country
- Therapists are not free to come and go as they wish
- Therapists are paying room and board to manager
- Secured facility with cameras and/or doors with locks on both sides
- Facility has darkened covered windows
- Facility serves primarily or exclusively male clientele and charge receipts show abnormally generous tips

Source: Prepared by legislative auditor's staff using information from [Human Trafficking in Illicit Massage Businesses; Polaris, 2018](#) and interviews with other state massage therapy boards.

In addition, LBMT does not require inspectors to receive any training specific to the massage therapy profession, including training related to identifying signs of human trafficking. It is important that inspectors receive training on this topic because they are contracted by LBMT to physically examine massage businesses. Other states' massage therapy boards provide training to their inspectors. For example, Texas field inspectors receive four to six weeks of classroom and field training that incorporates the signs of prostitution and human trafficking before they are partnered with experienced massage therapy inspectors.

Increased coordination with human trafficking stakeholders is needed to better address human trafficking. According to the Federation, the tactics used by human traffickers are continuously changing. As a result, it is imperative that stakeholders communicate and work together outside their own entities in order to protect the public and combat the negative effects on the massage profession as a whole. This includes establishing an active and ongoing working relationship with local and state law enforcement officials. According to LBMT, one of its current Board members is an investigator with a district attorney's office, it endeavors to maintain a relationship with law enforcement, and has worked with several law enforcement and district attorney offices in the past. In addition, LBMT states that it contacts law enforcement if

³² [FSMTB Human Trafficking Taskforce Report, 2017](#)

inspectors observe signs of human trafficking or if establishments fail to comply with cease and desist orders. However, one law enforcement agency in Louisiana stated that it would be beneficial for it to meet with the Board so that it can better understand the Massage Therapy Practice Act and what LBMT can do to help with closing establishments that are involved with prostitution.

According to the Federation,³³ participating as a stakeholder on federal, state, or local human trafficking task forces would ensure that the problems impacting the profession are shared widely and brought forward, and it would increase awareness in important ways. Effective June 2017, Louisiana law³⁴ created the Louisiana Human Trafficking Prevention Commission (LHTPC)³⁵ tasked with making recommendations with respect to human trafficking prevention and intervention. According to the LHTPC executive director, having a LBMT representative appointed to its advisory committee would be helpful in making meaningful recommendations related to the massage therapy profession.

Recommendation 10: LBMT should seek training opportunities for Board members, its staff, and contracted inspectors on identifying the signs of human trafficking.

Summary of Management's Response: LBMT agrees with this recommendation and stated that it would be helpful if the contract inspectors were trained on signs of human trafficking and will discuss implementation of such training with its contractors. While the Board members and staff do not take part in on-site inspections, the Board is open to taking steps to promote awareness of human trafficking, including welcoming further training and presentations to Board members and staff on this topic. See Appendix A for LBMT's full response.

Recommendation 11: LBMT should continue to improve its coordination with law enforcement agencies and other stakeholders to better identify and address illicit activity including human trafficking in the massage industry.

Summary of Management's Response: LBMT agrees with this recommendation and stated that it has agreed to meet with any law enforcement agencies to discuss the Board rules and statutes and how those can be used by authorities to inspect and issue citations to establishments engaged in illegal activity. See Appendix A for LBMT's full response.

Matter for Legislative Consideration 2: The legislature may wish to consider amending R.S. 46:2168 to include a member of the massage therapy industry on the Human Trafficking Prevention Commission advisory committee.

³³ [FSMTB Human Trafficking Taskforce Report, 2017](#)

³⁴ R.S. 46:2165

³⁵ The purpose of the Commission is to assist state and local leaders in developing and coordinating human trafficking prevention programs, to identify gaps in prevention and intervention services, to conduct a continuing comprehensive review of all existing public and private human trafficking programs, to increase coordination among public and private programs to strengthen prevention and intervention services, and ultimately, to make recommendations with respect to human trafficking prevention and intervention.

APPENDIX A: MANAGEMENT'S RESPONSE

Louisiana Board of Massage Therapy
State of Louisiana

JOHN BEL EDWARDS
GOVERNOR



March 1, 2021

Daryl G. Purpera, CPA, CFE
Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804

Re: Performance Audit Services Issued to Louisiana Board of Massage Services

Dear Mr. Purpera:

The stated objective of the performance audit conducted by the Louisiana Legislative Auditor was to determine if the Louisiana Board of Massage Therapy (LBMT or Board) is meeting its mission of protecting the public and its processes ensure that licensees comply with the Louisiana Massage Therapists and Establishment Act. The LBMT believes that it has established regulatory processes that comply with Louisiana State Law and conform to best practices. The Board's response to the findings and recommendations presented in the Auditor's report are set forth below.

The report makes numerous references to human trafficking and illicit activity. Such issues are criminal in nature and are best addressed by law enforcement. The prosecution of these issues is reserved by the Louisiana Constitution to local District Attorneys. La. Const. Art. 5, § 26. The Board believes such issues are best handled by law enforcement through the proper legal channels and are not enforceable by the Board.

While the Board disagrees as a matter of law and practicality with many of the issues raised in the report, the Board remains committed to improving its performance wherever possible. The Board strives to be uniform, consistent, and compliant with the law, in achieving its mission.

The report directs much attention to the fact that the LBMT is not required under the current law to conduct background checks on all massage therapists or establishment owners and concludes its evaluation of that issue with the following:

“Matter for Legislative Consideration 1: The legislature may wish to consider requiring LBMT to conduct state and federal criminal background checks on all massage therapists and owners of massage establishments”.

Although this recommendation is not directed to the LBMT, if adopted it would impact the Board and merits consideration of the following issues:

2645 O'Neal Lane, Bldg. C, Ste E ♣ Baton Rouge, LA 70816
Phone (225) 756-3488 ♣ Fax (225) 756-3493
email: admin@labmt.org ♣ website: www.labmt.org

Comment: State law does not require background checks on therapists except at time of initial application. Applicants for an establishment license are not required to submit to a criminal background check. At the time the law was amended to require background checks, the legislature apparently felt it was an inappropriate action to make the provision retroactive to all therapists who had been previously licensed, some of whom having been licensed for many years.

Any therapist who applies for an establishment license may have had a background check as part of obtaining a therapist license if they were licensed after 2013. Currently when there is a new application, the therapist pays for the background check. If follow-up checks are required for all renewal applications, the cost would have to be borne by the therapist or the Board. Also, the person being checked needs to consent to a background check before it is allowed (FCRA). A therapist filing for a renewal is required to report on the application form if they have any pending criminal charges or convictions. Failure to report a pending criminal matter or conviction would merit disciplinary action for falsifying the application.

Many establishment license applications are from persons/entities that are engaged in other business activities such as hair salons, nail salons, gyms, fitness centers, etc. The person applying for the establishment license is often not a therapist. The law requires that all persons hired by an establishment to provide massage services must be a licensed therapist, which means that the person has undergone an initial background check if they have been licensed since 2013. While there are provisions in the statutes that set forth the requirements for a massage therapist license (R.S. 37§3556) there are currently no similar requirements for a massage establishment license which are governed by R.S. 37§3558. A massage establishment applicant does not have to be an individual but can be a corporation, LLC or other legal entity. If the law is revised to require a background check on any individual or business entity seeking an establishment license, the legislature would also have to define the criteria that would be applicable to deny the establishment license based upon the criminal background history. It should also be noted that many states do not require businesses employing massage therapists to be licensed as establishments.

The report also references that the background checks would enable the Board to receive “Rap Back” reports from the La. State Police if a prior applicant should have a subsequent arrest. A determination would also have to be made as to how costs of the retroactive and Rap Back reports would be appropriated as currently there is a \$26.00 charge for an initial background report.

Finding 1: LBMT does not have an effective process to identify unlicensed massage therapists and establishments. As a result, we found 115 establishments that may be operating without a license as of September 2020. In addition, when LBMT identifies an unlicensed business and issues a cease and desist order, it does not monitor the establishment to ensure it remains closed.

Recommendation 1: LBMT should develop a process to identify unlicensed activity that includes reviewing all license applications, investigating anonymous complaints that allege unlicensed activity, and review public websites such as www.Rubmaps.ch.

Comment: The Board currently has a process to identify unlicensed activity. That process involves the Board receiving complaints from the public and licensed therapists. After receipt, the

complaint is evaluated by the Board and handled as the Board deems necessary. The Board feels it would be difficult to set up a procedure to identify unlicensed therapists and establishments when no complaint has been filed. It would require a process to routinely check various locations or websites to obtain names or identify suspected businesses. Under its current procedure, when the Board gets a complaint about a website posting, the complaining party is requested to send a screen shot of the posting being referenced rather than the Board office conducting a random search for improper posting on the site. In addition, a decision would have to be made as to websites to be checked and what criteria would be used to determine which businesses to investigate. In many cases a therapist or business does not control what is posted on a website but may still be subjected to inspection or other action because someone posted something about them. It would also require numerous staff hours to regularly check internet sites for inappropriate listings and the Board, consisting of the Director and two staff members, does not have manpower to undertake such activity. In addition, in order to avoid claims of discrimination, the Board would have to treat all website listings in the same fashion, which could involve hundreds of investigations.

Recommendation 2: LBMT should develop a process for continuous monitoring of establishments that have been issued cease and desist orders to ensure they either stop operating or obtain licensure.

Comment: The Board does have a process in place to monitor establishments that have been issued cease and desist orders. The Board will usually notify a complaining party when a cease and desist has been issued and no application for licensure is then filed. The notice will usually request that the Board be notified if the business is still in operation. Often the complaining party is an adjoining business that can easily determine if the establishment is still in operation. While extensive follow-up inquiries or inspections are not always conducted, the Board office does endeavor to check whether a business served with a cease and desist notice is still in operation. The cease and desist notice is posted on the board website which will sometimes lead to others reporting that the business is still operating. If it is found that the business is still operating, the matter is referred to the appropriate police authorities for a criminal investigation.

The Board agrees that a system should be developed to do periodic (rather than “continuous”) monitoring of establishments that have been issued a cease and desist notice to determine if there has been compliance with the notice. The Board will consider implementing a procedure to have a routine follow-up inquiry made to determine if the business/individual has complied with the cease and desist notice.

Recommendation 3: LBMT should impose fines and penalties on establishments that continue to operate without licenses.

Comment: On page 10 of the report, it states that “LBMT does not impose fines or penalties for establishments that are operating without a license, even though state law, R.S. 37:3555(A)(2), gives them the authority to do so”. This is an inaccurate statement, in that the Board does not believe it has the legal authority to impose fines and penalties on unlicensed individuals and establishments, as more fully detailed in Attachment “A.” It is questionable as to what actions the Board can take against an unlicensed establishment. The Board has considered this issue in the past and the general consensus is the Board is limited in actions it can take against someone who

is not licensed or an applicant for licensure. To issue a fine, the Board would have to take several steps including conducting an administrative hearing. Enforcement of any fine imposed would also be an issue. The Board maintains that specific legislative action would be needed in order for the Board to prosecute unlicensed individuals and establishments.

The Board is working on a procedure where it could flag the name of a business or person that continues practicing without a license after receiving a Cease & Desist Notice and address whether a fine is appropriate if the person later applies for a license. However, even if the Board believed it had the legal authority to do so, attempting to fine persons practicing without a license would be a time consuming and expensive process with no legal method to collect any fine imposed.

Finding 2: While LBMT investigates complaints and investigates establishments, its monitoring process is not sufficient to ensure that licensed massage establishments are not operating as sexually-oriented businesses, which would violate state law.

Recommendation 4: LBMT should establish written criteria for when complaints can be dismissed:

Comment: The Board has a procedure for dealing with complaints and all complaints are reviewed by the Board staff, special counsel and the Board's Complaint Investigative Officer ("CIO"). Complaints cover a wide variety of issues and the Board does not believe that written criteria addressing when complaints can be dismissed would be practicable or efficient. Such written criteria may not be legally binding on the Board and would possibly take away the Board's discretion to act on a case-by-case basis. Each complaint is evaluated based on its own particular facts and mitigating circumstances are factored in when deciding what action should be taken. Many complaints deal with issues that the Board is not authorized to address such as claims of poor service, failure to honor coupons, using improper massage techniques or suffering an injury during a massage session. The Board cannot generally address claims of injury because it would involve obtaining expert testimony, review of medical records, etc. In such situations the Board will advise the complaining party that the matter needs to be addressed in a civil suit. The person is also advised to notify the Board office if the civil litigation finds that the therapist engaged in improper conduct. The Board also receives complaints about work place issues which are also outside of its jurisdiction. Whenever the Board receives a complaint and determines that action is not warranted, the complaining party is provided written notice explaining the reason for the Board's decision.

Recommendation 5: LBMT should develop a process that requires inspectors to evaluate certain criteria that would help the Board determine whether establishments are operating as sexually-oriented businesses.

Comment: The Board inspectors are limited on what they can do to determine if a business is operating as sexually oriented establishment. The Board does not have the authority to conduct undercover operations or execute a search warrant. Those activities are better suited for police authorities who have experience in those areas and the authority to request search warrants. The

Board maintains that legislative action would be needed for the Board to have such authority. Please also see the response to Recommendation #10 which addresses similar issues.

Recommendation 6: LBMT should develop criteria for selecting establishments to inspect and how often establishments are inspected and incorporate risk factors such as information received from anonymous complaints, its licensing process, media articles alleging arrests, and websites that indicate sexually-oriented businesses when prioritizing inspections.

Comment: The Board is careful to follow due process in its complaint procedure. Due process requires that a party against whom a complaint is filed be given notice of the complaint and afforded the opportunity to submit a response. If the complaint is anonymous, in many cases it is impossible to provide the therapist or establishment with the information needed to file a response. In addition, before disciplinary action can be imposed, the therapist/establishment must be afforded the opportunity for a hearing. In certain cases, if the complaint involves testimony at the hearing, the complaining party may need to be identified and agree to testify. Often the complaining party does not consent to those conditions. In addition, many of the complaints received by the Board deal with quality of service issues which the Board cannot address.

Depending on the nature of the complaint, the Board may investigate the matter. If the complaint merely states that a massage business is unlicensed, the Board office will check if the business has a license. Such an investigation does not involve identifying the complaining party or giving the business a chance to respond.

Acting on arrests – Federal law prohibits using arrests as a basis for adverse employment actions (which would apply to licensing or disciplinary issues). “Media articles alleging arrests” would fall into that same category. It has been determined that certain ethnic groups are more likely to be arrested than others and using arrests to make employment or licensing decisions is discriminatory. There are certain exceptions if the arrest has a direct relationship to the job the person is performing. For example, a teacher arrested for child pornography can be suspended based on an arrest pending a final resolution of the charges. The Board rules are very specific that in most cases only convictions can be used for disciplinary purposes.

Recommendation 7: LBMT should track completed inspections so that it can monitor the performance of the inspection contractor and ensure that inspections are being completed in accordance with its policy.

Comment: The Board receives a copy of the inspection reports from the contractor. A determination is then made whether a fine or other sanction is appropriate. The current computer system used by the Board does not have the ability to track when an inspection has been made and a manual check is the only current method to determine how often a particular establishment has been inspected. The Board staff is currently working with its technical contractors to see if a tracking system can be programed into the current system.

Finding 3: The maximum fines levied by LBMT for non-compliance with state law are low compared to other states and fines are not always increased based on the severity of the violation. Additionally, LBMT has not developed guidance, policies, or procedures that

would help the Board make consistent and appropriate disciplinary decision. Inconsistent disciplinary actions may cause confusion for the Board, the public; and licensees, and actions that are too lenient may not defer potential offenders.

Recommendation 8: LBMT should evaluate its fine schedule compared to those of other states to determine whether increases are needed and ensure fines increase based on the severity of the violation.

Comment: In addition to protecting the public, the Board also has the goal of servicing the members it regulates. Many of the matters which can result in a fine are procedural issues and the Board felt it was unfair to impose substantial fines for such violations. Many times, a newly licensed therapist or establishment may not fully understand all the rules that apply to the practice and the Board did not believe that its first action with a newly licensed business or therapist should be the imposition of a significant fine or penalty. That was one of the reasons that the Board adopted a policy that if a business seeks licensure after issuance of a cease and desist for practicing without a license, the Board does not seek to impose a fine for the prior violation. That position changes if the person/business is issued a cease and desist order but then is found to continue to violate the law.

The Board also recently voted to allow for a decrease penalty for certain violations that were discovered “in house” rather than through an inspection or based on a complaint. It was felt that there should be an option for a lesser fine if it was a technical minor violation. The Board feels that it is important that it not be viewed as treating licensees as a source of income by seeking to extract as much money as possible from the persons/businesses it regulates. Many individual therapists are self-employed and if excessive fines are issued, it could put the person out of business or force them to go “underground” to continue to earn a living.

Recommendation 9: LBMT should develop guidance to help ensure it follows a consistent, objective approach when disciplining therapists and that these decisions are appropriate and properly protect the public from unprofessional, improper, and unqualified licensees as required by law.

Comment: The Board disagrees with the auditor’s conclusion that it is inconsistent in how it deals with violations. In the past the LBMT had a reputation for showing favoritism to certain massage businesses. When the current director was appointed, one of the main concerns was to be uniform and consistent in the administration of disciplinary matters and the imposition of fine. For that reason, the Board developed a fine schedule to be uniform in disciplinary matters.

Finding 4: Increased coordination with law enforcement agencies and other stakeholders and training on human trafficking could help LBMT to identify and address illicit activity including human trafficking in the massage industry.

Recommendation 10: LBMT should seek training opportunities for board members, its staff and contracted inspectors on identifying signs of human trafficking.

Comment: The issues of evaluating factors that might indicate human trafficking is not something that the Board members or its staff can act upon. The Board staff and the Board members do not become involved in on-site inspections and are not positioned to observe signs of trafficking that might be evident during an inspection. Board members appointed by the governor include five who are licensed massage therapists and may also be establishment owners. The Board members who are therapists or establishment owners have limited ability to provide input on whether another business is involved with human trafficking. Other than the CIO, Board members are not made aware of the specifics of complaints because they will be called upon to preside over and render a decision if the matter is presented to the full Board during an administrative disciplinary hearing. The Board and staff have had presentations from the FBI on signs of trafficking and if an inspection reveals potential signs the Board was instructed to report the matter to the FBI or local authorities for investigation. The Board agrees that it would be helpful if the contract inspectors were trained on signs of human trafficking and will discuss implementation of such training with its contractors. While the Board members and staff do not take part in on-site inspections, the Board is open to taking steps to promote awareness of human trafficking, including welcoming further training and presentations to Board members and staff on this topic.

Recommendation 11: LBMT should continue to improve its coordination with law enforcement agencies and other stakeholders to better identify and address illicit activity including human trafficking in the massage industry.

Comment: The Board currently coordinates with law enforcement to the extent possible and is willing to improve this coordination in any way. The Board has agreed to meet with any law enforcement agencies to discuss the Board rules and statutes and how those can be used by authorities to inspect and issue citations to establishments engaged in illegal activity. Such a meeting was held several years ago with the EBR Parish District Attorney's office. A current LBMT member is an investigator with EBR Parish District Attorney's office and provides information as to referrals to law enforcement in various parishes or cities. The Board staff has never refused to cooperate with any law enforcement agency and is willing to schedule in person meeting or telephone conference at mutually convenient times. The Board has also encountered several situations where initial arrests for illegal sexual activity are reduced to a misdemeanor charge unrelated to sexual misconduct. Since the Board disciplinary action is limited by statute to convictions, an arrest for sexual misconduct cannot be a basis for Board action when the charges are reduced to non-sexual misdemeanors.

Matter for Legislative Consideration 2: The legislature may wish to consider amending R.S. 46:2168 to include a member of the massage therapy industry on the Human Trafficking Prevention Commission advisory committee.

Comment: The Board does not disagree with this suggestion for legislative consideration. There are a number of Massage Therapy associations that might be interested in suggesting an appointee to the committee.

The LBMT appreciates the opportunity to respond to the finding and recommendations contained in the Auditor's report. While the Board may not agree with all of the findings and recommendations in the report, it recognizes that both the Auditor's office and the LBMT have a

common goal of protecting the public and complying with the Louisiana Massage Therapists and Establishment Act. The full Board was only able to meet once after receiving the auditor's report and will not have an opportunity for a subsequent review before the report is made public but is open to further reviewing opportunities in the future. Before the restrictions imposed by COVID-19, the Board had appointed a committee to evaluate and suggest amendments to its Administrative Rules and procedures. That committee will be asked to evaluate whether the amendment procedure would be an acceptable method to review and implement some of the recommendations contained in the auditor's report.

Louisiana Board of Massage Therapy

Rhonda McManus, Executive Director

CC: Sallye A. Raymond, Chairman LBMT

Attachment "A":

Analysis of Whether the Board may assess a fine against individuals practicing
massage therapy without a license

The statutes La. R.S. 37:3551, et seq. set forth the powers and duties of the Board. R.S. 37:3565 "A" provides that a violation of the provisions of the Chapter is a "misdemeanor" and "any person, including the owner or operator of a massage establishment, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned for not more than six month or both". The Board has no legal authority to conduct a criminal trial or convict a person of a violation; therefore, any criminal charges and trial must be before a criminal court. Clearly the Board cannot take actions under the criminal provisions of R.S. 37:3565. Therefore, that section is not an avenue to take against someone practicing without a license.

R.S. 37:3566 provides that in addition to the potential criminal sanctions, the Board can seek an injunction in civil court seeking to enjoin any person from violating or continuing to violate the provisions of the statutes. If the injunction is issued, the "court" may impose a penalty of fifty dollars a day for each violation and may also award attorney fees and court costs. Again, this penalty must be imposed by a "court" and cannot simply be assessed by the board. Past experience has shown that the expense of pursuing an injunction can be expensive and often the persons involved do not have any incentive to pay a judgment and just pack up and open under a different name. It is more efficient and less expensive for the Board to enlist the aid of law enforcement to shut down illegal operations.

The issue becomes a little less clear in other sections of the statutes. R.S. 37:3555 defines the powers and duties of the Board. Section A (1) provides: "Among its functions, the board promulgates rules and regulations, issues and renews professional and establishment licenses . . . inspects, investigates, and disciplines licensees, including both individuals and establishments, who violate the law, and impose fines and penalties". A strict reading of this section seems to imply that the Board power is limited to actions against "licensees" and not against a member of the general public who may be in violation of the Chapter. Actions against a non-licensee may be limited to the criminal sanctions and civil injunction remedies addressed above.

R.S. 37:3555 (A)(2) adds to the confusion because it states that the Board shall: "Perform inspections and investigate persons who may be engaging in practices which violate provisions of this Chapter and impose fines and penalties". It is unclear if the term "persons" is referencing only "licensees" as is used in the earlier provision, but if it is limited in that capacity, it would seem to be a duplication of what is contained in 3555 (A)(1). Even if the Board can issue a fine to a non-licensee, there is no provision in the law that would allow for the collection of such fine without going through a court proceeding.

The Board Rules also contain several references to enforcement actions by the board. Chapter 27: Inspections: Part A provides: “The board may make periodic inspections of all massage establishments, including licensed and/or unlicensed massage establishments”. The chapter makes no references to actions the Board may take based on the inspections.

Chapter 53: Misconduct and Negligence in the Practice of Massage Therapy – Provides: (A) The following acts shall constitute misconduct in the practice of massage therapy or incorrect practice of massage for which disciplinary penalties may be imposed: . . . (15). Engaging in the practice of massage therapy without a current massage license. There is no reference to what “disciplinary penalties” would apply.

Chapter 54: Disciplinary Actions – Section 5501 (A) states: “When the board finds that an applicant or licensee whom it regulates has committed any of the prohibited acts set forth in the statutes or rules, the board may impose appropriate penalties within the ranges recommended in the following guidelines”. There is then a list of possible penalties, including an administrative fine not to exceed \$1,000 for each count or separate offense”. This section again uses the term “applicant or licensee” and does just state “person”.

Chapter 61: Hearings - This chapter addresses formal disciplinary hearing and provides that the hearing may be held “after the involved licensee and/or applicant is given at least 30-day notice by registered or certified mail.” The notice is sent to the address that the licensee or applicant has on file with the Board office. Again, there is no reference to a hearing or notice for someone other than a licensee or applicant. It is clear that no penalty can be imposed unless the person (licensee/applicant) is given notice and the opportunity for a hearing.

While it could be argued that R.S. 37:3555 (A)(2) which gives the Board the power to “Perform inspections and investigate persons who may be engaging in practices which violate provisions of this Chapter and impose fines and penalties” would allow the Board to impose a fine against an individual practicing without a license, in order to do so, the notice and opportunity for a hearing would have to be provided. Even if the hearing notice was given and a fine imposed, there is no way to enforce the penalty without getting a court involved. It would seem to be a lot of wasted time and effort to hold a hearing and assess a penalty when the person the Board is seeking to penalize may never seek a therapist license.

Due to the uncertainty about whether the statutes and rules discussed above can be used against an individual and the steps needed before a penalty could be imposed, it would be a more logical and efficient approach to flag the person’s name and address the penalty issue if the person becomes an applicant. By taking that approach, the Board has contact information for the applicant and the person has some incentive to try and resolve the matter if they want to obtain a license. That is the approach that the Board has taken in some cases involving unlicensed individuals.



Louisiana Legislative Auditor
Performance Audit Services

Checklist for Audit Recommendations

Agency: Louisiana Board of Massage Therapy

Audit Title: Regulation of the Massage Therapy Profession

Audit Report Number: 40190023

Instructions to Audited Agency: Please fill in the information below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

<p>Finding 1: LBMT does not have an effective process to identify unlicensed massage therapists and establishments. As a result, we found 115 establishments that may be operating without a license as of September 2020. In addition, when LBMT identifies an unlicensed business and issues a cease and desist order, it does not monitor the establishment to ensure it remains closed.</p>
<p><i>Recommendation 1: LBMT should develop a process to identify unlicensed activity that includes reviewing all licensing applications, investigating anonymous complaints that allege unlicensed activity, and reviewing public websites such as www.Rubmaps.ch.</i></p>
<p>Does Agency Agree with Recommendation? <input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree *</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title:</i> Rhonda McManus, Executive Director</p>
<p><i>Address:</i> 2645 O'Neal Lane, Bldg. C, Ste. E</p>
<p><i>City, State, Zip:</i> Baton Rouge, LA 70816</p>
<p><i>Phone Number:</i> 225.756.3488</p>
<p><i>Email:</i> rhonda@labmt.org</p>
<p>*Please see full response in reference to this recommendation.</p>
<p><i>Recommendation 2: LBMT should develop a process for continuous monitoring of establishments that have been issued cease and desist orders to ensure they either stop operating or obtain licensure.</i></p>
<p>Does Agency Agree with Recommendation? <input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree *</p>
<p>Agency Contact Responsible for Recommendation:</p>
<p><i>Name/Title:</i> Rhonda McManus, Executive Director</p>
<p><i>Address:</i> 2645 O'Neal Lane, Bldg. C, Ste. E</p>
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<p><i>Phone Number:</i> 225.756.3488</p>
<p><i>Email:</i> rhonda@labmt.org</p>

*Please see full response in reference to this recommendation.	
<i>Recommendation 3: LBMT should impose fines and penalties on establishments that continue to operate without licenses.</i>	
Does Agency Agree with Recommendation?	<input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree *
Agency Contact Responsible for Recommendation:	
<i>Name/Title: Rhonda McManus, Executive Director</i>	
<i>Address: 2645 O'Neal Lane, Bldg. C, Ste. E</i>	
<i>City, State, Zip: Baton Rouge, LA 70816</i>	
<i>Phone Number: 225.756.3488</i>	
<i>Email: rhonda@labmt.org</i>	

*Please see full response in reference to this recommendation.

Finding 2: While LBMT investigates complaints and inspects establishments, its monitoring process is not sufficient to ensure that licensed massage establishments are not operating as sexually-oriented businesses, which would violate state law	
<i>Recommendation 4: LBMT should establish written criteria for when complaints can be dismissed.</i>	
Does Agency Agree with Recommendation?	<input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree *
Agency Contact Responsible for Recommendation:	
<i>Name/Title: Rhonda McManus, Executive Director</i>	
<i>Address: 2645 O'Neal Lane, Bldg. C, Ste. E</i>	
<i>City, State, Zip: Baton Rouge, LA 70816</i>	
<i>Phone Number: 225.756.3488</i>	
<i>Email: rhonda@labmt.org</i>	
*Please see full response in reference to this recommendation.	
<i>Recommendation 5: LBMT should develop a process that requires inspectors to evaluate certain criteria that would help the Board determine whether establishments are operating as sexually-oriented businesses.</i>	
Does Agency Agree with Recommendation?	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:	
<i>Name/Title: Rhonda McManus, Executive Director</i>	
<i>Address: 2645 O'Neal Lane, Bldg. C, Ste. E</i>	
<i>City, State, Zip: Baton Rouge, LA 70816</i>	
<i>Phone Number: 225.756.3488</i>	
<i>Email: rhonda@labmt.org</i>	
<i>Recommendation 6: LBMT should develop criteria for selecting establishments to inspect and how often establishments are inspected and incorporate risk factors such as information received from anonymous complaints, its licensing process, media articles alleging arrests, and websites that indicate sexually-oriented businesses when prioritizing inspections.</i>	
Does Agency Agree with Recommendation?	<input type="checkbox"/> Agree <input checked="" type="checkbox"/> Disagree*
Agency Contact Responsible for Recommendation:	

<i>Name/Title:</i> Rhonda McManus, Executive Director
<i>Address:</i> 2645 O'Neal Lane, Bldg. C, Ste. E
<i>City, State, Zip:</i> Baton Rouge, LA 70816
<i>Phone Number:</i> 225.756.3488
<i>Email:</i> rhonda@labmt.org
*Please see full response in reference to this recommendation.
<i>Recommendation 7: LBMT should track completed inspections so that it can monitor the performance of the inspection contractor and ensure that inspections are being completed in accordance with its policy.</i>
Does Agency Agree with Recommendation? <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Rhonda McManus, Executive Director
<i>Address:</i> 2645 O'Neal Lane, Bldg. C, Ste. E
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Finding 3: The maximum fines levied by LBMT for noncompliance with state law are low compared to other states and fines are not always increased based on the severity of the violation. Additionally, LBMT has not developed guidance, policies, or procedures that would help the Board make consistent and appropriate disciplinary decisions. Inconsistent disciplinary actions may cause confusion for the Board, the public, and licensees, and actions that are too lenient may not deter potential offenders.

Recommendation 8: LBMT should evaluate its fine schedule compared to those of other states to determine whether increases are needed and ensure fines increase based on the severity of the violation.

Does Agency Agree with Recommendation? Agree Disagree *

Agency Contact Responsible for Recommendation:

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*Please see full response in reference to this recommendation.

Recommendation 9: LBMT should develop guidance to help ensure it follows a consistent, objective approach when disciplining therapists and that these decisions are appropriate and properly protect the public from unprofessional, improper, and unqualified licensees as required by law.

Does Agency Agree with Recommendation? Agree Disagree *

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*Please see full response in reference to this recommendation.

Finding 4: Increased coordination with law enforcement agencies and other stakeholders and training on human trafficking could help LBMT to identify and address illicit activity including human trafficking in the massage industry.

Recommendation 10: LBMT should seek training opportunities for board members, its staff, and contracted inspectors on identifying the signs of human trafficking.

Does Agency Agree with Recommendation? Agree Disagree

Agency Contact Responsible for Recommendation:

Name/Title: Rhonda McManus, Executive Director

Address: 2645 O'Neal Lane, Bldg. C, Ste. E

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Recommendation 11: LBMT should continue to improve its coordination with law enforcement agencies and other stakeholders to better identify and address illicit activity including human trafficking in the massage industry.

Does Agency Agree with Recommendation? Agree Disagree

Agency Contact Responsible for Recommendation:

Name/Title: Rhonda McManus, Executive Director

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APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana Board of Massage Therapy. We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit primarily covered fiscal years 2017 through 2019. Our audit objective was:

To evaluate LBMT’s regulation of the massage therapy profession to ensure compliance with the Louisiana Massage Therapists and Massage Establishments Act

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed applicable federal and state laws and regulations, including the Louisiana Massage Therapists and Massage Establishments Act.
- Obtained and reviewed LBMT’s licensing, complaint and inspections forms and its Self-Evaluation Report submitted to the Governor.
- Researched best practices, including guidance from the Federation of State Massage Therapy Boards, National State Auditors Association, other Louisiana regulatory boards, and other states’ massage therapy boards.
- Interviewed agency staff to gain an understanding of the Board’s licensing, complaint, inspections and enforcement processes.
- Interviewed stakeholders including the Louisiana branch of the American Massage Therapy Association and law enforcement agencies.
- Obtained and analyzed licensing data from LBMT’s data system from fiscal years 2017 through 2019 to determine the number of current therapists that were licensed before January 2013 and therefore did not have a background check. We also used this data to determine the current number of establishments that LBMT licenses.
- Reviewed www.Rubmaps.ch to identify massage establishments listed in Louisiana and then compared these establishments to licensing data to determine which establishments were licensed.

- Obtained and analyzed cease and desist data from fiscal years 2017 through 2019 to determine the number of establishments that came into compliance by obtaining licenses. Then contacted the remaining establishment to determine if they were still operating.
- Obtained and analyzed complaints received from LBMT's data system for fiscal years 2017 through 2019 and selected 27 of the 140 complaints for review based on the severity of the allegation, the allegation type, and year to identify examples of dismissed allegations and to determine the number and type of complaints LBMT receives.
- Obtained and analyzed various spreadsheets LBMT sent to its contractor for inspections from calendar year 2015 through 2020 to identify establishments that were not scheduled for inspections.
- Obtained and summarized LBMT's internal spreadsheet that lists violations identified during inspections for calendar year 2019.
- Obtained and reviewed Board orders to determine the number and type of enforcement actions issued by LBMT during fiscal years 2017 through 2020. Reviewed files associated with a selection of Board orders to identify examples of inconsistent enforcement actions.
- Communicated to LBMT and provided in writing additional findings that were not included in the report.

APPENDIX C: LBMT REVENUES, EXPENDITURES, AND NET INCOME/LOSS FISCAL YEARS 2016-2020

Category		2016	2017	2018	2019	2020	Total	% of Total
Revenues	Licenses	\$524,173	\$460,994	\$477,077	\$465,273	\$413,737	\$2,341,254	87.23%
	Enforcement Actions	58,487	50,930	54,450	52,750	10,475	227,092	8.46%
	Other Revenue	1,362	5,334	1,873	17,003	89,996	115,568	4.31%
	Total Revenue	\$584,022	\$517,258	\$533,400	\$535,026	\$514,208	\$2,683,914	100.00%
Expenses	Salaries and Related Benefits	\$262,373	\$250,220	\$257,840	\$288,003	\$307,827	\$1,366,263	55.70%
	Operating Expenses	153,796	87,285	62,404	79,886	112,481	495,852	20.21%
	Professional Services	77,153	99,313	128,633	157,646	109,903	572,648	23.34%
	Acquisitions and Major Repairs	754	6,547	2,905	3,968	4,055	18,229	0.74%
	Total Expenses	\$494,076	\$443,365	\$451,782	\$529,503	\$534,266	\$2,452,992	100.00%
Net Income/Loss		\$89,946	\$73,893	\$81,618	\$5,523	\$-20,058	\$230,922	

Source: Prepared by legislative auditor's staff using information by LBMT and from the Division of Administration's Board and Commission's website.

APPENDIX D: LOUISIANA PHYSICAL THERAPY BOARD DISCIPLINARY MATRIX

The Louisiana Physical Therapy Board (LPTB) adopted a disciplinary matrix according to the Federation of State Boards of Physical Therapy's disciplinary guidelines. Excerpts from LPTB's matrix below show how the it escalates discipline based on the severity and number of violations. A matrix such as this could assist LBMT in issuing consistent and appropriate enforcement actions as recommended by best practices.

Steps to Use Disciplinary Guidelines

Step 1: Determine Grounds for Disciplinary Action

- Determine the "Color" Category
 - ◆ An offense of failing to act
 - ◆ An offense of action – potential for harm is expected to be primarily financial or ethical
 - ◆ An offense of action- potential for harm is expected to be related to clinical issue
 - ◆ An offense of action – implications or consequences of licensee action potentially extend beyond limits of the clinic

Step 2: Determine if type I, type II, or type III infraction

- Determine what best applies to this case

Step 3: Determine if isolated event or multiple events

- Can be multiple events of same grounds in one investigation
- Can be prior disciplinary actions for same grounds

Step 4: Use matrix to determine the applicable classes of punitive and/or remedial actions

Step 5: Assign punitive and/or remedial actions

Step 6: Identify any mitigating/aggravating factors

Step 7: Modify punitive and/or remedial actions within the class (if applicable) Step 8: Repeat with any additional ground

for disciplinary action

- Repeat Steps 1-7 if additional violations or grounds for action exist.

Step 9: Determine final punitive and/or remedial actions to be taken. Report to NPDB/ELDD

- Use Basis for Action codes suggested

Infraction Types

Use the factors below to determine where the licensee’s action fit best.

Type I Factors to Consider- all may not apply	Type II Factors to Consider- all may not apply	Type III Factors to Consider- all may not apply
<ul style="list-style-type: none"> •Unintentional error •Licensee believes acting in patient's best interest; no self-serving intent •Honest mistake •Safety not compromised •Little to no intended risk 	<ul style="list-style-type: none"> •Poor judgement demonstrated •Acting in licensee's own best interest •Conscious awareness act is improper •Faulty decision-making is evident •Potentially unsafe choice •Risk believed to be insignificant or justified 	<ul style="list-style-type: none"> •Harmful intent with or without direct harm to the patient including but not limited to: financial, emotional, physical •Acted with recklessness •Disregard for interest of patient or others •Dangerous or unsafe choice •Decision with conscious disregard of substantial and unjustifiable risk to the patient, others, or licensee

Guidelines Matrix

	Type I		Type II		Type III	
	Isolated	Multiple	Isolated	Multiple	Isolated	Multiple
	An offense of failing to act An offense of action - potential for harm is expected to be primarily financial or ethical An offense of action - potential for harm is expected to be related to clinical issue An offense of action – implications or consequences of licensee action potentially extend beyond limits of the practice setting	1 & A	1 & B	1 & A	2 & A	2 & A
	1 & A	2 & A	2 & B	3 & B	3 & B	3 & C
	1 & B	2 & B	2 & C	3 & C	3 & C	4 & C
	2 & C	2 & C	3 & B	3 & C	3 & C	4 & C

*Cost of investigation and administration of violations may be assessed in any/all cases

Isolated- means one incident occurring one time

Multiple- means more than one incident of the same violation (either same patient or different patients)

Classes of Punitive & Remedial Actions

Punitive Actions		Remedial Actions	
Class 1	Letter of concern	Class A	Educational Counseling → Continuing Competence Activity
Class 2	Letter of Concern → Denial of License	Class B	Continuing Competence Activity → Supervised Clinical Practice
Class 3	Restricted License → Revocation	Class C	Continuing Competence Activity → RPTP
Class 4	Suspension → Revocation		

Punitive & Remedial Actions Ranked in Severity (low to high)	
Punitive	Remedial
Letter of Concern	Educational Counseling
Reprimand	Continuing competence activity
Restricted License	Essay/EBAS
Probation	Monitoring
Suspension	Examinations/Assessments
Denial of a license	Supervised clinical practice
Voluntary surrender	Examination of fitness to practice
Summary suspension	Treatment program
Revocation	RPTP

Mitigating and Aggravating Factors

*Aggravating and mitigating circumstances are specific to the individual case, but factors that may influence Board decisions can include such things as (not all-inclusive list):

Mitigating:

Licensee implemented remedial measures on their own- from knowledge of infraction up to prior to Board action

Personal circumstances

Remorse

Self-reporting- prior to a complaint

Voluntary admission of misconduct-post complaint

Lack of previous disciplinary action

Professional standing and recommendations from employers and others

Isolated incident

Aggravating:

Age and vulnerability of the patient

Obstruction

Personal circumstances

Total number of offenses

Time Span over which offenses occurred

Using license to take advantage of patient/public

History of previous violations of the practice act or rules of the board

Evidence of current or prior criminal charges or convictions

Degree of danger to public health, welfare and safety

Scope or magnitude of violations

*Note that multiple events, recidivism, and harm to the patient are somewhat accounted for in the matrix

Mitigating and Aggravating Factors should be considered and influence the assessment of the remediation or disciplinary action. The Board may consider the mitigating and aggravating factors and determine whether or not these should influence the severity of the remediation or disciplinary action.

Application of mitigating/aggravating factors: Influences the severity of the action (within Class 1-4 and Class A-C) or number of actions applied; the class does not change.