

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Alabama Board of Physical Therapy
Rule No. 700-X-3-.02
Rule Title: Unbecoming Conduct/Conduct Detrimental To The Best Interest Of The Public Prohibited

_____ New Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? _____ NO _____

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? _____ YES _____

Is there another, less restrictive method of regulation available that could adequately protect the public? _____ NO _____

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? _____ NO _____

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? _____ NO _____

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? _____ YES _____

Does the proposed rule have an economic impact? _____ NO _____

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Glenn A. Davis
Date OCTOBER 24, 2013

ALABAMA BOARD OF PHYSICAL THERAPY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Physical Therapy

RULE NO. & TITLE: 700-X-3-.02 Unbecoming Conduct/Conduct Detrimental To The Best Interest Of The Public Prohibited

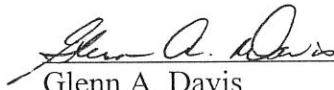
INTENDED ACTION: The Alabama Board of Physical Therapy proposes to amend the Unbecoming Conduct/Conduct Detrimental to the Best Interest of the Public Prohibited - Certain Conduct Specifically Prohibited rule.

SUBSTANCE OF PROPOSED ACTION: The proposed amendment to rule 700-X-3-.02 will clarify conduct specifically prohibited by licensees pertaining to the distribution of unearned valuables.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing or in person through the close of business on December 6, 2013. Those wishing to present views in person should contact the Board of Physical Therapy at 334/242-4064.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: December 6, 2013.

CONTACT PERSON AT AGENCY: Glenn A. Davis
Executive Director
Board of Physical Therapy
100 North Union Street, Suite 724
Montgomery, AL 36130-5040
(334) 242-4064
glenn.davis@pt.alabama.gov



Glenn A. Davis
Executive Director

**700-X-3-.02 Unbecoming Conduct/Conduct Detrimental To
The Best Interest Of The Public Prohibited.**

(1) Definition. "Unbecoming Conduct" is defined as incompetent, illegal, unethical, unprofessional, or dishonorable conduct which violates those standards which have become accepted as obligations reasonably necessary for the protection of the public interest and for professional accountability.

(2) Certain Conduct Specifically Prohibited. While the statements of conduct apply universally, the application or interpretations are usually based on specific individual circumstances. The determination as to what constitutes unbecoming conduct shall be solely within the judgment of the Board of Physical Therapy. The Board finds that and declares that unbecoming conduct shall include, but not be limited to, the following either singularly, in part, or in combination:

(a) Willful or grossly negligent failure to comply substantially with provisions of federal, state, or local laws, rules or regulations governing the practice of the profession.

(b) Abandoning or neglecting a patient or client under and in need of immediate professional care without making reasonable arrangements for the continuation of such care.

(c) Willfully harassing, abusing, or intimidating a patient, co-worker, student, volunteer, or any individual either physically or verbally.

(d) Exercising undue influence on the patient or client including the promotion of the sale of services, goods, or appliances in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party.

(e) Restricting the patient's freedom of choice in selecting the source of physical therapy services.

(f) Suggesting to a patient referred by one practitioner that the patient seek the services of another practitioner without first consulting the referring practitioner.

(g) Guaranteeing that satisfaction or a cure will result from the performance of professional services.

(h) Administering excessive tests or treatment; use of treatment procedures or equipment not warranted by the condition of the patient.

(i) Claiming or using any secret or special method of treatment which the licensee refuses to divulge to the Board.

(j) Claiming professional superiority or special professional abilities, attainments, methods, or resources, with the exception that a specialist qualified or certified by an agency recognized for such purpose by the Board may indicate a specialty that has been recognized as such by the Board. No specialties are currently recognized by the Board.

(k) Using the word "doctor" in offering to perform professional services without also indicating the discipline in which the licensee holds a doctorate.

(l) Soliciting patients by direct mail or other forms of contact except that notification by advertising regulations as identified elsewhere in these rules and regulations permits.

(m) Accepting and undertaking the performance of responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform, or performing without adequate supervision or direction, services which the licensee is authorized to perform only under the supervision or direction of licensed persons.

(n) Delegating responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by education, by experience, or by licensure to perform them.

(o) Failing to exercise appropriate supervision or direction over persons who are authorized to practice only under the supervision or direction of the licensed professional.

(p) Willfully refusing to be responsive to and mutually supportive of colleagues and associates.

(q) Failing to maintain appropriate records which accurately reflect the evaluation and treatment for each patient. Unless otherwise provided by law, all patient records must be retained for at least six years.

(r) Revealing personally identifiable facts, data, or information obtained in a practitioner capacity without the prior consent of the patient or client, except as authorized or required by law.

(s) Failing to make available to a patient, or, upon a patient's request, to another licensed health care practitioner consistent with that practitioner's authorized scope of practice, copies of reports, test records, or evaluations relating to the patient, or failing to complete forms or reports required for the reimbursement of a patient by a third party. Reasonable fees may be charged for such copies, forms, or reports. A practitioner may, however, withhold information from a patient if, in the reasonable exercise of professional judgment, the practitioner believes release of such information would adversely affect the patient's health.

(t) Endorsing equipment to the patient and the lay public if any remuneration is received in return for such endorsement.

(u) Participating in any arrangements in which patients are exploited due to referring practitioners enhancing their personal incomes as a result of referring for, delegating, prescribing, or recommending physical therapy services.

(v) Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity with a referral source in connection with the furnishing of physical therapy services. Such conduct shall include but not be limited to the following:

1. Paying a referral source to refer patients.

2. Paying a referral source compensation as a medical director when the payment is not usual and customary for the time required to perform the duties of the medical director.

3. Providing staff to a referral source without receiving compensation from the referral source consistent with fair market value for the labor provided.

(w) Abandoning a professional employment by a group practice, hospital, clinic, or other health care facility, without reasonable notice and under circumstances which seriously impair the provisions of professional care to patients or clients.

(x) Forming a business, partnership, corporation, or other entity does not exempt the individual physical therapist, whether employer, partner, or stockholder, either individually or collectively, from the obligation of promoting and maintaining ethical principles.

(y) Failing to report alleged or known unethical, incompetent, illegal, unprofessional, or dishonorable conduct.

(z) Any other conduct which constitutes unbecoming conduct as defined in section (1) of this rule or as otherwise specifically provided in these rules.

(aa) Engages in sexual misconduct. Sexual misconduct, for the purpose of this section, includes the following:

1. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.

2. Making sexual advances, requesting sexual favors, and engaging in other verbal conduct or physical contact of a sexual nature with patients, clients or co-workers.

3. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(bb) Charging unreasonable or fraudulent fees for services performed or not performed.

(cc) Interfering with, or refusing to cooperate in, an investigation or disciplinary proceeding by willful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any legal action.

Authors: Donald L. Hiltz, Anne H. Harrison, Herbert R. Caillouet, Cathy T. Sanford, Bernard Harris, Andy Gustafson, John Cormier, Jay Segal, Ron Bass, Sonja Enfinger, Mitzi Tuttle, Vince Molyneux, Eric Dekle, Mary Jolley, Wiley Christian

Statutory Authority: Code of Ala. 1975, §§3-24-191; 3-24-193.

History: Filed September 30, 1982. **Amended:** Filed: September 9, 1993; effective October 14, 1993. **Amended:** Filed December 5, 1995; effective January 9, 1996.

Amended: Filed July 8, 1997; effective August 12, 1997.

Amended: Filed November 18, 2009; effective December 23, 2009. **Amended:** Filed October 24, 2013; effective December 6, 2013.