

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency: Alabama Board of Massage Therapy
Rule No.: 532-X-5-.01
Rule Title: Complaints

X New _____ Amend X Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly
Harm or endanger the public health, welfare, or safety? Yes

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 

Date: October 20, 2011

(DATE FILED)
(STAMP)

Alabama Board of Massage Therapy

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Massage Therapy

RULE NO. & TITLE: 532-X-5.01 Complaints

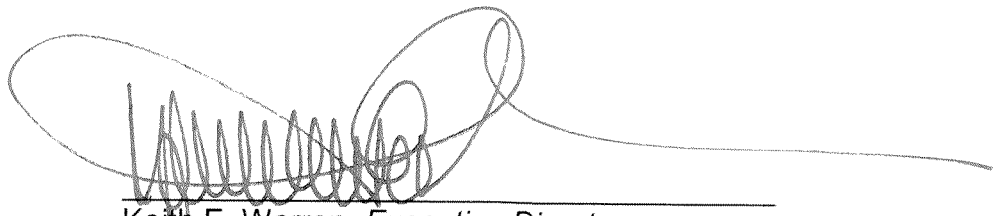
INTENDED ACTION: Repeal and New

SUBSTANCE OF PROPOSED ACTION: The Board proposes to repeal old language pertaining to complaint procedures and proposes new language pertaining to current complaint procedures.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments will be received by the Board until 4:30 p.m. on Monday, December 5, 2011. Comments should be directed to Keith E. Warren, Executive Director, at 610 S. McDonough Street, Montgomery, AL 36104 or via electronic mail at keith@warrenandco.com or via telephone at 334-269-9990.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Monday, December 5, 2011.

CONTACT PERSON AT AGENCY: Keith E. Warren
Executive Director
610 S. McDonough Street
Montgomery, AL 36104
(334) 269-9990



Keith E. Warren, Executive Director
Alabama Board of Massage Therapy

ALABAMA BOARD OF MASSAGE THERAPY
ADMINISTRATIVE CODE

CHAPTER 532-X-5
COMPLIANCE AND DISCIPLINARY ACTION

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532-X-5-.01	Complaints <u>License Suspension, Revocation Or Failure To Renew.</u>
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(1) ~~Where the Board is made aware by written allegation of the possibility of impropriety by a licensee in obtaining or maintaining licensure, or failing to obtain or timely renew licensure, or in the practice of massage therapy, or the maintenance of a massage therapy establishment, or other allegedly improper circumstance regarding massage therapy, the Board will give notice and opportunity to be heard to the licensee, registrant, establishment, or person alleged to have committed the impropriety or delinquency, pursuant to the Alabama Administrative Procedure Act. For a minor incorrect practice of massage therapy or deficiency, the licensee, registrant, establishment, or person may be given notice of the incorrect practice or deficiency and an opportunity to cure the incorrect practice or deficiency, the licensee, registrant, establishment, person may request a formal or informal hearing before the Board on an impropriety, delinquency, incorrect practice, or deficiency, without regard to whether the Board has been given notice previously of the impropriety, delinquency, incorrect practice, or deficiency may decline a hearing afforded the licensee or person by the Board. The right to decline a hearing afforded by the Board is a personal right which is to be exercised by the licensee or person and not by his attorney or other representative acting alone, and must be exercised in writing. The party requesting a hearing is responsible for obtaining the services of and payment of the cost of the court reporter's fee, if any. Any person may file a written and signed complaint regarding an allegation of impropriety by a licensee,~~

establishment or person. Complaints should be referred to a standing investigative committee consisting of a Board member, the Executive Director, the Board attorney, and the Board investigator. After consideration by the investigative committee, the Board may give notice of an administrative hearing pursuant to the Alabama Administrative Hearing Act and to Sections 34-43-11 and 34-43-15 of the Code of Alabama. If no probable cause is found, the investigative committee may dismiss the charges and prepare a statement, in writing, of the reasons for the decision. The statement shall be mailed to the accused party and the complaining party by registered or certified mail.

(2) ~~The improprieties and delinquencies set forth in the Massage Therapy statutes are examples of improprieties and delinquencies for which the Board may suspend, fine, revoke or refuse to grant or renew a license, but are not at all inclusive or exhaustive list of such improprieties and delinquencies. For a minor incorrect practice of massage therapy or deficiency, the licensee, establishment or person may be given notice of the incorrect practice or deficiency and an opportunity to cure the incorrect practice or deficiency, or the Board may enter into an informal disposition of the case by an agreed settlement or consent order.~~

(3) ~~The Board will notify the licensee (or other person afforded a hearing after written allegation) of the decision of the Board, listing the reasons for any decision adverse to the licensee or person afforded a hearing. A licensee, establishment, or person may request an informal or formal hearing before the Board, or may decline a hearing afforded to the licensee, establishment or person. The right to decline a hearing afforded by the Board is a personal right which is to be exercised by the licensee or person and not by his attorney or other representative acting alone, and must be exercised in writing. The party requesting a hearing is responsible for obtaining the services of and payment of the cost of the court reporter's fee, if any.~~

(4) ~~If, in the opinion of the Board the misconduct is a continuing civic wrong which is not amendable to action of the Board after a hearing, or harm is imminently likely to occur to the public from continuation of the misconduct is criminal, the Board may institute a civil action for an injunction with penalties and costs, and/or may present the misconduct and information to the District Attorney for the county in which the misconduct occurred for prosecution as a criminal case. The violations set forth in the Massage Therapy Board statutes,~~

Sections 34-43-1 et seq. are examples of improprieties and delinquencies, but not exhaustive list, for which the Board may suspend, fine, revoke or refuse to grant or renew a license.

(5) The Board will conduct disciplinary proceedings pursuant to the Alabama Administrative Procedures Act.

(6) The Board may institute a civil action for an injunction with penalties and costs against any person alleged to be in violation of Sections 43-43-1 et seq. The Board may present the misconduct to the local District Attorney for review and appropriate action.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §§34-43-7, 34-43-15, 34-43-17, 34-43-18.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.