

APA-1
11/96

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control _____ Department or Agency: Alabama Board of Massage Therapy

Rule No.: 532-X-5-.03

Rule Title: Prohibited Acts

_____ New Amend _____ 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-.03 Prohibited Acts

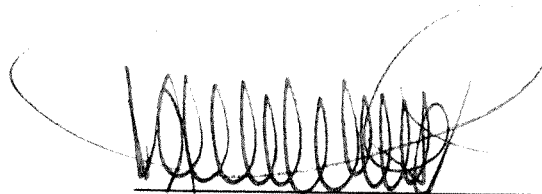
INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The Board proposes to remove language pertaining to temporary permits which are no longer issued by the Board.

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

Prohibited Acts.

(1) The following acts shall constitute misconduct in the practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard pursuant to the procedure in the Alabama Administrative Procedures Act:

(a) conviction, adjudication, or a finding of guilt in any jurisdiction of a crime, which directly relates to the practice of massage therapy or to the ability to practice massage therapy. A plea of nolo contendere may be taken into consideration by the Board.

(b) false, deceptive or misleading advertising.

(c) aiding, assisting, procuring, or advertising any unlicensed person to practice massage therapy contrary to the rules and regulations of the Board or the Massage Therapy statutes.

(d) engaging in or attempting to or offering to engage a client in sexual activity, including but not limited to genital contact, within a client-massage therapist relationship.

(e) making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(f) practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.

(g) delegating professional responsibilities to a person when the licensee delegating the responsibility knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those responsibilities. This shall not include acts of an enrolled student ~~with a temporary permit~~ being supervised by a licensed massage therapist or massage therapy instructor. ~~The acts of the supervised student acting under a temporary permit shall be treated as the acts of the supervising massage therapist or massage therapy instructor.~~

(h) acting, as a massage therapist or operating a massage therapy establishment while unlicensed or with a revoked or suspended license.

(i) teaching massage therapy as a massage therapy instructor while unlicensed, unless teaching continuing education as a visiting massage therapy instructor exempt under the statutes.

(j) refusing to allow the designated Board member(s) or investigator to inspect massage therapy premises or establishment during regular business hours.

(k) practicing massage therapy at a site which is not exempt or licensed as a massage therapy establishment, unless the massage therapy is done on-site or out-call at a location under the control of the client, or is done at an educational or trade site for demonstration purposes.

(l) failing to maintain professional and liability insurance in the practice of massage therapy, or failing to maintain liability insurance in the operation of a massage therapy establishment.

(m) failing to attend and/or provide evidence of attendance at 16 hours of approved continuing education course work in the twenty-four (24) months preceding the date renewal of licensure is due.

(2) The following acts shall constitute incorrect practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard in an informal or a formal hearing pursuant to the procedure in the Alabama Administrative Procedures Act, or after notice of deficiency and opportunity to cure the deficiency:

failing to perform a statutory or legal or rule-based obligation based upon a licensee in the practice of massage therapy.

failing to practice massage therapy with reasonable skill and safety to clients as a result of illness; use of alcohol, drugs, narcotics, chemicals, or other mind-altering substance; mental or physical condition.

(a) failing to practice massage therapy with that level of care, skill and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar circumstances and conditions.

(b) failing to maintain premises, supplies, and equipment of the massage therapy establishment in a clean and sanitary condition.

(c) failing to include the licensee's license or registration number in an advertisement, for the first infraction. A second or subsequent infraction may be considered to be misconduct as false, misleading or deceptive advertising.

Author: Keith E. Warren

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

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