

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control \_\_\_\_\_ Department or Agency Alabama Board of Physical Therapy  
Rule No. 700-X-3-.04(3)(n) and (4)(b)  
Rule Title: Advertising

\_\_\_\_\_ 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?

N/A

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

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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.

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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

02/20/2013

MK Hammer

**ALABAMA BOARD OF PHYSICAL THERAPY**

**NOTICE OF INTENDED ACTION**

AGENCY NAME: Alabama Board of Physical Therapy

RULE NO. & TITLE: 700-X-3-.04 Advertising

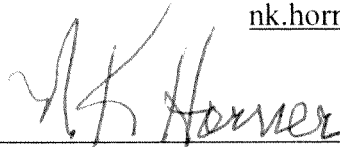
INTENDED ACTION: Amend existing rule.

SUBSTANCE OF PROPOSED ACTION: The proposed amendment to 700-X-3-.04 will delete the current (3)(n) re: gratuitous service or discounts; (4)(b) amends listings in published directories.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing or in person through the close of business on March 27, 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: April 4, 2013.

CONTACT PERSON AT AGENCY: Nettie Katharin Horner  
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Nettie Katharin Horner  
Executive Director

700-X-3-.04      Advertising.

(1)            Statement of Policy. It is the policy of the Board that advertising by licensed practitioners of physical therapy should be regulated in order to fulfill the duty of the State of Alabama to protect the health, safety, and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the State of Alabama, as construed by the United States Supreme Court and the Alabama Supreme Court. To that end, the Board permits the dissemination of legitimate information to the public concerning physical therapy and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading, and confusing advertising.

(2)            Definition. As used in this rule the term **advertising** means any communication whatsoever, disseminated by any means whatsoever, to or before the public.

(3)            Certain Advertising Prohibited. Any licensee who disseminates or causes to be disseminated or knowingly allows to be disseminated any advertising which is in any way fraudulent or false, or which has the capacity or tendency to deceive, mislead, or confuse the recipient in any manner, shall be deemed in violation of Code of Ala. 1975, §34-24-217(10), and pursuant to that section shall, upon conviction, have his or her license suspended or revoked by the Board. Any advertisement or advertising shall be deemed by the Board to be fraudulent, false, deceptive, misleading, or confusing if the Board determines that the advertising displays any of the following characteristics:

(a)            The advertising contains a misrepresentation of any fact or facts.

(b)            The advertising has the capacity or tendency to mislead, deceive, or confuse any potential recipient when because of its contents or in the context in which it is presented, it fails to disclose relevant or material facts, or makes only a partial disclosure of relevant or material facts.

(c) The advertising contains any claim or claims which foster confusion or deception, even though such claims may elude specific proof of their falsity.

(d) The advertising makes claims or conveys the impression of professional superiority or other superior attributes which cannot be substantiated by the licensee who shall have the burden of proof.

(e) The advertising contains laudatory or flamboyant claims or statements about any individual licensee, group or groups of licensees.

(f) The advertising has the capacity or tendency to create false or unjustified expectations of beneficial treatment or successful cures.

(g) The advertising guarantees the results of any services.

(h) The advertising contains representations relating to the quality of physical therapy services offered which cannot be substantiated by the licensee, who shall have the burden of proof.

(i) Some portion of the advertising or the advertising when taken as a whole is likely to appeal to a lay person's fears, ignorance, or anxieties regarding his state of health or his physical or mental well-being.

(j) Some portion of the advertising or the advertising when taken as a whole is likely to intimidate or exert undue pressure on the recipient.

(k) The advertising constitutes an invasion into the field of practice of other health practitioners when the licensee is not licensed to practice such profession.

(l) The advertising concerns a transaction that is in itself illegal.

(m) The advertising gives the impression that there is a general solution to individual problems. The information given to the public should emphasize that individual problems cannot be treated without individualized evaluation and treatment.

(n) ~~The advertising offers gratuitous services or discounts in connection with professional services.~~

~~(o)~~ Licensees are not to compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context that it is a paid advertisement.

(4) The following shall be deemed appropriate means of informing the public of the availability of professional services:

(a) Informational advertising not contrary to the foregoing prohibitions.

(b) Listings in directories published by third parties which are open to all qualified members of the profession practicing in the geographic area covered by the directories. ~~The listings shall be of the same size and type face and~~ may include such factual material as name, address, telephone number, office days and hours, and approved area(s) of specialty. ~~Such listings shall not include promotional statements or additional material designed to solicit patients or clients.~~

(c) Endeavoring to educate the public to an awareness of the physical therapy profession.

(d) Preparation of articles for non-medical publications and participation in seminars, lectures, and civic programs designed to educate the public to the services offered by the profession.

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**Statutory Authority:** Code of Ala. 1975, §§34-24-193, 34-24-217.

**History:** Filed September 30, 1982. **Amended:** Filed December 14, 2001; effective January 18, 2002. **Amended:** Filed: February 20, 2013.