

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Alabama Board of Physical Therapy
Rule No. 700-X-3-.03(3)(b)
Rule Title: Roles & Responsibilities of Licensees

_____ 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

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 AK Horner

Date June 19, 2012

ALABAMA BOARD OF PHYSICAL THERAPY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Physical Therapy

RULE NO. & TITLE: 700-X-3-.03(3)(b) Roles & Responsibilities of Licensees

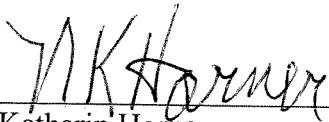
INTENDED ACTION: The Alabama Board of Physical Therapy proposes to amend the Roles and Responsibilities of Licensees rule.

SUBSTANCE OF PROPOSED ACTION: The proposed amendment to rule 700-X-3-.03(3)(b), will remove "and physical therapy technician" as being synonymous with the physical therapy assistant.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing or in person through the close of business on August 3, 2012. 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: August 3, 2012.

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Nettie Katharin Horner
Executive Director

ALABAMA BOARD OF PHYSICAL THERAPY
ADMINISTRATIVE CODE

CHAPTER 700-X-3
PROFESSIONAL CONDUCT

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700-X-3-.01 Statement Of Policy. Physical therapists and physical therapist assistants are to respect the rights and dignity of all individuals and are to be guided at all times by concern for the welfare of those patients entrusted to their care. Inherent within this charge of care for a patient is a code of conduct which includes both required and prohibitive actions.

Author: Robert L. Shoemake

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

History: Filed September 30, 1982.

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 in connection with the furnishing of physical therapy services.

(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.

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 30, 2009; effective January 4, 2010.

700-X-3-.03 Roles And Responsibilities Of Licensees.

(1) Roles and Responsibilities, Generally. Within the provision of physical therapy service there are three recognized levels of personnel: The professional physical therapist who is licensed to practice physical therapy; the physical therapist assistant who is licensed to assist the physical therapist; and the physical therapist aide/attendant who is not licensed but is usually an on-job-trained individual who provides support activities for the physical therapist and the physical therapist assistant. The physical therapist must assume primary responsibility for physical therapy care rendered by supportive personnel under his/her supervision or direction. Both direction and supervision include, when appropriate, observation of the application of physical therapy procedures, conferences related to patient progress, verbal and written reports.

(2) Definitions.

(a) **Direction** means the action of the physical therapist in delegating duties to a physical therapist assistant, maintaining close communication with the physical therapist assistant, and overseeing the physical therapist assistant's activities on a frequent regularly scheduled basis.

(b) **Supervision** means the direct onsite overseeing of the performance of assigned or delegated duties or functions.

(3) Roles and Responsibilities, Specifically.

(a) Physical Therapist. The roles and responsibilities of a person licensed by this Board to practice physical therapy in the State of Alabama generally are:

1. To interpret the practitioners' referrals.
2. To perform the initial evaluation of the referred patient.
3. To develop the treatment plan and program, including the long and short term goals.
4. To identify and document precautions, special problems, contraindications, goals, anticipated progress, and plans for reevaluation.
5. To implement and supervise that program.
6. To select and delegate the appropriate portions of the treatment plan and program.
7. To delegate only those patient care duties to supportive personnel who are qualified under the provisions of these rules to perform such duties.
8. To reevaluate the patient and adjust the treatment plan, perform the final evaluation of the patient and discharge planning.
9. To designate or establish channels of written and oral communication.
10. To maintain adequate records of the case and report to the referring source or other appropriate sources.
11. To direct no more than four licensed physical therapist assistants at one time.
12. To refuse to carry out treatment procedures that they believe to be not in the best interest of the patient.

(b) Physical Therapist Assistant, also referred to as physical therapy assistant and ~~physical therapy technician~~. The roles and responsibilities of a person licensed by this Board to practice as a physical therapist assistant in the State of Alabama generally are:

1. To practice only under the direction of a physical therapist licensed to practice in the State of Alabama.

2. To assist with but not perform patient disability evaluations.
3. To perform treatment procedures as delegated by the physical therapist but not to initiate or alter a treatment plan.
4. To supervise other supportive personnel as charged by the physical therapist.
5. To perform clerical, housekeeping, or other tasks as designated by the physical therapist.
6. To notify the physical therapist of changes in patient's status, including all untoward patient responses.
7. To discontinue immediately any treatment procedures which in their judgment appear to be harmful to the patient.
8. To refuse to carry out treatment procedures that they believe to be not in the best interest of the patient.

(c) Physical Therapy Aide, Attendant, or other Designated Physical Therapy Supportive Personnel excluding the Physical Therapist Assistant. The roles and responsibilities of unlicensed personnel in physical therapy are:

1. To perform assigned duties under the direct on-site supervision of the physical therapist or physical therapist assistant.
2. To prepare patients and area for physical therapy treatment.
3. To assist patients in dressing, removing clothing, and applying or removing assistive or supporting devices.
4. To support or stabilize patients to assist the physical therapist or physical therapist assistant.
5. To transport patients.
6. To transfer or assist in transfer of patients when appropriate.
7. To perform housekeeping duties.
8. To perform clerical or reception duties when directed by the physical therapist.

9. To assist in performance of routine treatment procedures as delegated and directly supervised (onsite) by the physical therapist or physical therapist assistant:
- a. The aide may only perform activities that do not require the clinical decision making of the physical therapist or physical therapist assistant.
10. To perform designated tasks with the following restrictions:
- a. The PT or PTA supervising the aide must reassess the patient at the beginning of each treatment session to determine what treatment procedures are appropriate for that treatment session.
 - b. If modality treatments are to be provided, the PT or PTA supervising the aide must designate the exact location to be treated, the length of treatment, and the parameters of the modality being used.
 - c. The aide may not perform any hands-on treatment, including, but not limited to, manual resistance exercise, passive range of motion, soft tissue mobilization or joint mobilization. This does not prohibit an aide from assisting licensed personnel in handling a patient when more than one person is needed.
 - d. If exercise is to be provided, the licensee supervising the aide must be in direct line of sight.
11. An aide may perform restorative care on patients discharged from physical therapy.

Author: Robert L. Shoemake; Andy Gustafson, Ron Bass, Mitzi Tuttle Watson, Jay Segal, John Cormier, Vince Molyneux, Eric Dekle, Mary Jolley;

Statutory Authority: Code of Ala. 1975, §§34-24-191, 34-24-193.

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 May 6, 1996; effective June 10, 1996. **Amended:** Filed April 30, 2010; effective June 5, 2010. **Amended:** Filed June 19, 2012;

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 nonmedical publications and participation in seminars, lectures, and civic programs designed to educate the public to the services offered by the profession.

Authors: Robert L. Shoemake, Beth Curry Dozier, Herbert R. Caillouet, Cathy T. Sanford, Sonja Farrell, Olivia J. Box

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.

700-X-3-.05 **Display Of License.**

(a) Each physical therapist and physical therapist assistant shall at all times display conspicuously before the public in his/her primary place of employment the license issued by this Board.

(b) Licensees shall be identified as a physical therapist or physical therapist assistant in a legible manner to individuals that come in contact with them during the provision of physical therapy services. The appropriate credentials, Physical Therapist or Physical Therapist assistant, or the appropriate abbreviations, PT or PTA, shall be displayed on their person via proper identification. Non-licensed physical therapy support personnel shall be identified as a physical therapy aide in a legible manner to individuals that come in contact with them while working under the supervision of a PT/PTA. Primary identification as a physical therapy aide may be followed by other license credentials or certifications. Proper identification includes, but is not limited to, embroidery, clip-ons, paper nametags, name badges, or other appropriate means. This rule shall be effective as of January 1, 2011.

(c) There shall at all times be prominently displayed in the place of business of each licensee under this Act a sign containing the name, mailing address, and telephone number of this Board.

Authors: Donald L. Hiltz, Anne H. Harrison, Herbert R. Caillouet, Danny Sutter, Bernard Harris; Andy Gustafson, Jay Segal, John Cormier, Eric Dekle, Vince Molyneux, Mitzi Tuttle, Ron Bass. **Statutory Authority:** Code of Ala. 1975, §34-24-193.
History: Filed September 30, 1982. **Amended:** Filed November 29, 1989. **Amended:** Filed February 6, 1997; effective March 17, 1997. **Amended:** Filed October 20, 2010; effective December 3, 2010.

700-X-3-.06 **Failure To Comply With Statute, Rule, Or Order.**

The Board finds and declares that the failure of any applicant, licensee, or former licensee to substantially comply with the provisions of any statute related to the practice of physical therapy or any lawful Board rule or order constitutes unbecoming conduct, in violation of Code of Ala. 1975, §34-24-217(7).

Author: Robert L. Shoemake

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

History: Filed September 30, 1982.