



In Touch

An Official Publication of the Alabama Board of Massage Therapy

Spring 2004

Alabama Board of Massage Therapy

Board Members

Chair

Tammie Friedrichs

Vice-Chair

B. Hal Richardson

Member

Donna Todd

Member

Elizabeth Doucet

Member

Judy K. White

Member

Arnold Askew

Member

Cynthia Harris

ALMTBD Staff

Executive Director

Keith E. Warren

Executive Assistant

Arwen Freeman

Administrative Assistant

Randy Barrows

Attorney

Bill Garrett

Investigator

Mike James

In Touch is an official publication of the Alabama Board of Massage Therapy. This publication is intended for a wide audience to alert licensees to matters of possible procedural, legal, legislative, and regulatory interest. It should not be relied upon, nor is intended to provide legal, insurance or accounting advice. Licensees should consult their own lawyers, insurance agents, and accountants before taking any action in response to this newsletter, as the opinions expressed herein might be completely altered by the licensees' actual facts.

The Disciplinary Process

The Alabama Legislature has entrusted the Alabama Board of Massage Therapy with the responsibility of protecting the public from "the unprofessional, improper, unlicensed, and unqualified practice of massage therapy," as described in Section 34-43-2, Code of Alabama (1975). Accordingly, the Legislature empowered the Board to suspend or revoke licenses issued by the Board, deny initial or renewal licenses to applicants, and/or impose fines or penalties on licensees who violate any provision of the Massage Therapy Act or on unlicensed individuals practicing massage therapy. An individual who allegedly violates any provision of the Act is entitled to a hearing before the Board pursuant to the procedures outlined under the Alabama Administrative Procedure Act, found at Sections 41-22-1 et seq., Code of Alabama (1975). In general, from start to finish, disciplinary actions proceed in the following manner.

Before the Board can initiate any disciplinary proceeding, a signed, written complaint must be filed with the Board – anonymous complaints are not accepted because every individual has a due process right to face his/her accuser, and a professional license is a property right that must be safeguarded by the Board. Anyone may file a written complaint, including a Board member or another licensee. The Executive Director reviews each complaint and assigns it to the Board's investigator or his designee, who conducts an investigation as directed by the Executive Director, and on some occasions, as directed by the Board's counsel. The investigation often includes, but is not limited to, interviews with the complainant, the respondent (that individual against whom the allegations have been directed), and other individuals as necessary. Upon completion of his investigation, the investigator files an investigative report with the Board office, which is reviewed by the Executive Director and Board counsel in order to make a preliminary determination as to whether there is sufficient evidence to support an allegation that a violation has occurred.

If the Executive Director and counsel require the assistance of a Board member having expertise in the practice of massage therapy to aid in the determination as to whether a violation has occurred, the Executive Director will generally appoint a Board member representing the congressional district in which the incident at issue allegedly occurred to this investigative committee.

If for some reason there is a potential conflict of interest concerning that particular Board member, that is, if that member has a personal relationship with the accused or has information or reason as to why he or she should not be involved with the investigation, the Director will appoint another Board member to serve on that committee.

Continued on page 2

Continued from Page 1

If the evidence does not support an allegation of wrongdoing, or if the complaint is otherwise resolved between the parties to the complaint, the matter will be dismissed, and the Board will take no further action. The Board notifies all complainants in writing if their complaints are closed or resolved and the Board cannot take any further action on the complaint.

In those instances in which the investigative committee believes that there is sufficient evidence to substantiate that a violation of the Board's laws, rules, and/or regulations has occurred, the Board will enumerate those charges and the essential facts and circumstances surrounding those charges in a letter to the respondent, entitled a Notice of Hearing. The Notice also apprises the respondent of the date and time set for hearing before the Board and is accompanied



by an explanation of the respondent's rights in the disciplinary process and a proposed Consent Order, which offers the respondent a settlement with the Board in lieu of a formal hearing

upon mutually acceptable terms and conditions. The respondent may accept the Board's offer of settlement and sign the Consent Order, which resolves the complaint, or he/she may refuse to sign it and proceed to a hearing. Consent Orders can include any provision that is acceptable to both parties, including requiring the respondent to pay a fine, seek remedial training, be placed on probation or suspended, or even voluntarily surrender his/her license. Consent Orders are public record. In the event that the respondent violates any terms or conditions of the Consent Order or any other provisions of the law, the Board may bring a new disciplinary action against the respondent for those purported violations.

Hearings are held in the Board office at regularly scheduled, public meetings. An administrative law judge (ALJ) presides over the hearings and makes evidentiary rulings during the course of the proceedings, and all testimony is taken under oath and on the record by a court reporter. If the respondent fails to appear without first notifying the Board that he/she will be unable to be present and his/her reasons therefore, the hearing may proceed in his/her absence. The complainant is also required to appear at this hearing and provide testimony regarding his/her original, written complaint. The Board's council acts as the prosecuting attorney on behalf of the Board, and the Board members sit to consider all of the testi-

mony presented. Every respondent has the right to be represented by an attorney and to examine and cross-examine witnesses. At the conclusion of the hearing, the ALJ will take the matter under advisement and prepare a recommendation as to the proposed findings, any disciplinary action that should be taken, or a finding that the respondent is not guilty of the violations with which he has been charged. The Board may then adopt the ALJ's recommendation as its final order, modify it, or reject it in its entirety. A majority of the currently appointed Board members must vote to accept, reject, or modify the judge's recommendation. Board members who serve on the investigative committee for a particular matter are not allowed to participate in either the deliberations or the final vote concerning that matter, and any other Board members who have conflicts due to a personal interest in or knowledge of the subject matter involved are also precluded from participating in the Board's discussions or its final vote.

The respondent receives a copy of the Board's final order by personal service or certified mail. Should he/she wish to appeal, the respondent may file an appeal with the circuit court of Montgomery County within thirty days of the date of the final order. Except for rare instances, the appeal is confined to a review of the record, and there is not a new trial or proceeding. The Board's final order is also a public document, and the Board may publish the findings contained in its final and consent orders in a legal notice in a newspaper of general circulation, in its newsletter, and/or on the Board's website. Disciplinary actions against licensees are also reported to licensing boards in other states and to national, accrediting agencies and may result in disciplinary action against the licensee in other states if he/she fails to report that any disciplinary action has been taken against him/her in any state.

Disciplinary actions are serious matters that may directly affect an individual's ability to practice his chosen profession and earn a livelihood. Should you ever have any questions regarding the legality of any aspect of the practice of massage therapy, please feel free to call the Board office or consult with an attorney of your own choosing, and thank you for your continued observance of the laws, rules, and regulations regarding the practice of your profession in the State of Alabama

Dana Billingsley

The Sunset Review and Surveys Results

Recently the Alabama Board of Massage Therapy was required to go before the Sunset Committee of the State legislature. The job of this committee was to evaluate the purpose and competency of the Board and determine whether it is a viable and necessary entity. Prior to the meeting surveys were sent to a number of therapists, schools, as well as, the Board members themselves. The survey was designed to determine how the Board was performing and to question if licensure for massage was necessary for protecting the



public as mandated. The survey asked such questions as: what do you consider the most important issues before

the Board, how do you feel the Board is performing, what areas do you feel the Board needs to address, etc. The survey also provided spaces for "other comments," to encourage comments and issues not brought up by the survey.

For the most part the survey revealed that therapists feel the law for licensure does protect the public and that the Board is fundamentally performing its task. There were areas of shortcomings identified and these were what the Sunset Committee was most concerned about and asked the Board how it intended to deal with them. These shortcomings primarily included a slow return of correspondence by the board and a lack of return of phone calls by the board office. To correct these problems

Warren and Company, Inc., who manages and administrates the Boards affairs, intends to employ another office hand as well as updating its phone system. Fortunately there were no surprises about the Boards value and competency; which means we're accomplishing the primary tasks set as our objective to protect the public, and we need to improve interfacing with the public.

However, what did surprise me from reviewing the survey results, was what many therapists think the board is responsible for that, in fact, it is not. For example, a large percentage of recipients said the Board should do more to secure third party payments from health insurance companies. Others feel that the Board is not doing enough to educate the public about the advantages of massage. In actuality, the Board has no jurisdiction over these areas at all. The purpose of the Board as mandated by the law is to protect the health, safety and welfare of the public by ensuring that licensed massage therapists, schools, and instructors meet the prescribed standards of education, competency and practice.

The education of the public and the acquisition of third party payment are topics, among others, that are of extreme interest to most massage therapists. To accomplish progress in these areas, however, it is up to the body of therapists as a whole to be involved. As much as the Board might like to pursue these areas, they are not within its mandate. These are the tasks of the therapist themselves, assisted with the help of their associations. Currently, I know of several loosely organized attempts

to address these areas, not including the efforts of many individuals.

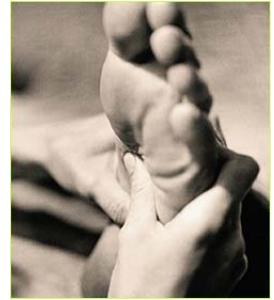
Another complaint of survey respondents suggested that the Board was charging too much money for licensure and was only about making a profit for itself. To answer this I only have to point to the ten thousand-plus dollar expense it has cost investigating and prosecuting just a few cases over the last year. The fees for licensure barely cover the expenses required to oversee and regulate the number of offenses that are currently being investigated. This brings up another complaint by many respondents; that the board allows too many therapists to practice without a license. Unfortunately, the Board cannot act on any information without a formal complaint. However, from observation, I've noticed that many people want the Board to take legal action, but are unwilling to file a formal complaint. Please, if you have any awareness of inappropriate or illegal activities fill out a consumer complaint form and send it to the Board office.

As a result of going before the Sunset Committee the Board learned a lot about what therapists feel the Board needs to do to improve. As a Board member I can assure you that we are committed to correcting our shortcomings and providing the best services to the massage community. In return, I think it is also essential that the massage community recognize its areas of responsibility in the profession and work with the Board to make our profession as healthy and functional as possible.

Arnold Askew,

Establishment Inspections

The Board has implemented massage therapy establishment inspections throughout the State. As you will find in the Administrative Code 532-X-3-.04, there are requirements that a massage therapy establishment must comply with at all times. The outlined requirements are being checked during these inspections as well as checking for properly licensed massage therapist and to ensure the establishment has a massage therapy establishment license as well. The Board Investigator has conducted approximately 30 of these inspections which have proven very effective. I would like to extend my appreciation for the cooperation and assistance that the investigator has received during these inspections. Should you have any questions or comments, do not hesitate to contact the Board office.



Greetings, Alabama LMT's,

Are YOU really interested in massage therapy advancing to a higher level of recognition & respect? Are YOU doing all that YOU can do to enhance the public knowledge of massage therapy? Are YOU concerned about unlicensed, unethical people performing "massage" for pay? If you answered YES to these then:

- YOU are taking quality CEU seminar, not for the hours, but to raise your level of knowledge and enhance your skills.
- YOU are taking every opportunity to demonstrate your skills & speak to interested groups about the new laws & benefits of professional massage therapy.
- YOU are alerting this Board, with the use of the complaint form, when you know of establishments or people "massaging" for pay without the proper education or license. Performing massage for pay without a license is an offense of the State law with a fine of up to \$10,000. It should be offensive to YOU as a legitimate licensed massage therapist because of the deceit of the public & the negative light that shines on YOU because of this unethical, unlicensed group of non-professionals. Without YOU being involved we ALL stand to lose!



I welcome all feedback & comments and look forward to serving you as a Board member. My email address is: HALRICHARDSON@MSN.COM

B. Hal Richardson
Board Member

Disciplinary Action

Case # 01-039

Respondent: Lisa M. Gillem

Date: December 4, 2001

Allegation: Ms. Gillem violated Ala. Code Sections 34-43-11(b), 34-43-8(b) and 34-43-15(a) (5) (1997) and Administrative Code Rule 532-X-5-.03 (1) (c) by employing an unlicensed massage therapist at Oasis Spa in Madison, Alabama to provide massage therapy services; by permitting the performance of sexual acts on said premises in the course of practicing massage therapy; and by violating or aiding and abetting in the violation of the Massage Therapy Act by said acts, having been duly licensed by the Board.

Board Action: Ms. Gillem entered into a Consent Order with the Board regarding the alleged violations. Pursuant to said consent order, Ms. Gillem was fined \$3,500 for these violations and she has voluntarily relinquished her massage therapy establishment license and her personal massage therapist license. The fine has been paid in full, and both licenses are in the possession of the Board.

Case # 02-002

Respondent: Jeffrey S. Britan

Date: May 21, 2002

Allegation: Mr. Britan violated Ala. Code Section 34-43-15(a)(3) (1997) and Administrative Code Rules 532-X-3-.04(5)(l), 532-X-5-.03(1)(d), and 532-X-7-.01(1)(l) by engaging in unprofessional conduct likely to endanger the public, health, safety, and welfare at the Great Looks Hair Center in Millbrook, Alabama by massaging the breasts of female clients and failing to follow proper draping procedures at all times during massage of female clients.

Board Action: Following an administrative hearing on the Board's charges, Mr. Britan's Massage Therapist license was revoked by the Board. Mr. Britan has surrendered his license, and it is now in the possession of the Board.

Case #02-009

Respondent: Jeffrey S. Britan

Date: September 13, 2002

Allegation: Mr. Britan violated Ala. Code Sections 34-43-4(3) and 34-43-8(a) (1997) and Administrative Code Rule 532-X-5-.03(1)(h) by practicing massage therapy at the Great Looks Hair Center in Millbrook, Alabama with a revoked license or without a valid massage therapy license issued by this Board.

Board Action: Mr. Britan entered into a Consent Order with this Board in which he admitted to the practice of massage therapy with a revoked license but the confusion over the effective date of the revocation. Mr. Britan was assessed a fine of \$1,000 for said violation.

Case #02-020

Respondent: Melvin E. Knoblett

Date: August 22, 2003

Allegation: Mr. Knoblett violated Ala. Code Sections 34-43-15(a)(3) and Administrative Code Rules 532-X-3-.04(5)(i), 532-X-5-.03(1)(d), and 532-X-7-.01(1)(i) by improperly massaging areas of female clients and failing to follow proper draping procedures at all times during massage of female clients.

Board Action: Following administrative hearings on the Board's charges, Mr. Knoblett's massage therapist license was revoked and also assessed a \$10,000 civil penalty. Mr. Knoblett's license is in possession of the Board however, the fine remains unpaid. The Respondent has appealed the Board's decision to the Montgomery County Circuit Court.

It has been a while since we have communicated with you via newsletter and I would like to extend my apologies for not generating a newsletter sooner. The Board has been quite busy with administrative hearings and the outcome of some of those hearings needed to be reported, hence the delay.

As you can tell by some of the updates in this publication, the Board is determined to ensure licensing by the establishment inspections. We are hoping that this will assist you and the public by making sure unlicensed therapists become licensed without having to exhaust the complaint and administrative action procedures. However, do not hesitate to contact the Board if you are unsure if someone is practicing without a license. We will always be glad to verify a license for you over the telephone. You can also send a complaint if you are very sure and we will send out the Board Investigator to further solve the problem.

The Board successfully completed its

first Sunset Review during 2003 and the Sunset Legislation has successfully passed the Legislature this week to continue the Board for four more years. The Board and staff were complimented for its efforts for implementing the massage therapy law and the Sunset Committee was quite impressed with the disciplinary action the Board had enforced at that point. So rest assured, your Board is working for you and the public of the State of Alabama.

I have expanded the staff at Warren & Co., Inc. to further assist the Massage Therapy Board. Ms. Arwen Freeman has been the Executive Assistant for this Board for several years now however, I have also added Mr. Randy Barrows as an Administrative Assistant as well to assist myself and Ms. Freeman. So you can always reach Mr. Barrows if myself or Ms. Freeman are not available.

I am sure that you have been informed that a temporary license is no longer available. There were too

many problems the Board had to deal with to continue issuing this license. However, the Board has established a new meeting schedule to expeditiously approve applications. The Board has a regular scheduled Board meeting quarterly to handle regular business and applications. The Board also holds four additional meetings in between these meetings in Birmingham just to approve applications that have been received. So out of 8 meetings a year this should not eliminate a new massage therapist for practicing for more than a week or two.

Please do not hesitate to contact me should you ever have any questions or comments. You can contact me quickly at keith@warrenandco.com or ALMTBD@aol.com or via telephone at 334-269-9990, ext. 212.

Sincerely,

Keith E. Warren
Executive Director

WE'RE ON THE WEB!
www.almtbd.state.al.us

Alabama Board of Massage Therapy
610 South McDonough Street
Phone: 334.269.9990
Fax: 334.263.6115
Email: ALMTBD@aol.com
Website: www.almtbd.state.al.us

An Official Publication of the Alabama Board of Massage Therapy



Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5