

Department of Health
Proposed Rules of the
Division of Health Related Boards

Chapter 1200-10-2
General Rules and Regulations Governing the Practice of Reflexology

Presented herein is an amendment and a new rule of the Department of Health, Division of Health Related Boards submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards, to promulgate the amendment and the new rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendment and new rule is published. Such petition to be effective must be filed in the office of the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee 37247-1010 and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule amendment and new rule, or submitted by a municipality which will be affected by the rule amendment and new rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

The text of the proposed amendment and new rule is as follows:

Amendment

Rule 1200-10-2-.05, Registration Renewal and Reinstatement, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Reinstatement of an Expired or Retired Registration
 - (a) Reinstatement of a registration that has expired may be accomplished upon payment of all past due renewal fees, all past due state regulatory fees, and the late renewal fee, pursuant to Rule 1200-10-2-.06.
 - (b) Reinstatement of a registration that has been retired may be accomplished upon payment of the biennial renewal fee and the biennial state regulatory fee, pursuant to Rule 1200-10-2-.06.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 63-30-110, and 63-30-112.

Rule 1200-10-2-.07, Registration Discipline and Advisory Rulings, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (7), so that as amended, the new catchline and the new paragraph (7) shall read:

1200-10-2-.07, Registration Discipline, Advisory Rulings, and Screening Panels.

- (7) Screening Panels – The screening panel process shall be governed by Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended.

Authority: T.C.A. §§ 4-5-202, 63-1-138, 63-30-111, and 63-30-112.

New Rule

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1200-10-2-.08 Advertising

1200-10-2-.08 Advertising.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning reflexology, the importance of the interests affected by the choice of a reflexologist and the foreseeable consequences of unrestricted advertising by reflexologists which is recognized to pose special possibilities for deception, require that special care be taken by reflexologists to avoid misleading the public. The reflexologist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by reflexologists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
- (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a reflexologist who is registered to practice in Tennessee.
- (b) Registrant - Any person holding a registration to practice reflexology in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.

- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted Fee - Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

(3) Advertising Fees and Services

- (a) Fixed Fees - Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
- (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the registrant's customary or usual fee charged for the service; and
 - 2. The registrant provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
- (e) Time Period of Advertised Fees.

1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any reflexologist shall constitute unethical and unprofessional conduct, and subject the registrant to disciplinary action pursuant to T.C.A. § 63-30-111.
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one registrant is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the registrant knows or should know are beyond the registrant's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality or competency of a service or treatment offered by a registrant that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the registrant can achieve.
 - (h) The communication of personal identifiable facts, data, or

information about a client without first obtaining client consent.

- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Division may require the registrant to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a registrant's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual registrant's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all registrants practicing at a particular location shall:
 - 1. Upon request provide a list of all registrants practicing at that location; and
 - 2. Maintain and conspicuously display at the registrant's office, a directory listing all registrants practicing at that

location.

- (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
- (r) After thirty (30) days of the registrant's departure, the use of the name of any registrant formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
- (s) Stating or implying that a certain registrant provides all services when any such services are performed by another registrant.
- (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

(5) Advertising Records and Responsibility

- (a) Each registrant who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed, certified, registered, or otherwise authorized professional employees acting as an agent of such firm or entity.
- (b) Any and all advertisements are presumed to have been approved by the registrant named therein.
- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the registrant for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Division or its designee.
- (d) At the time any type of advertisement is placed, the registrant must possess and rely upon information which, when produced, would

substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public communication.

- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 63-1-145, 63-30-107, 63-30-108, 63-30-111, and 63-30-112.

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Legal contact: Nicole Armstrong, Assistant General Counsel, Office of General Counsel, Twenty-Sixth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee 37247-0120, (615) 741-1611.

Contact for disk acquisition and the party who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, (615) 532-4397.

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Robbie H. Bell, Director
Division of Health Related Boards

I certify that this is an accurate and complete copy of proposed rules lawfully promulgated and adopted by the Department of Health, Division of Health Related Boards on the 11th day of August, 2005. The Secretary of State is hereby instructed that, in the absence of a petition for rulemaking hearing being filed under the conditions set out herein and in the location described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date

of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Robbie H. Bell, Director
Division of Health Related Boards

Subscribed and sworn to before me this the 11th day of August, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

The proposed rules set out herein were properly filed in the Department of State on the 1st day of June, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 27th day of October, 2006.