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Honorable Keith E. Warren
Executive Director
Alabama Board of Massage Therapy
610 South McDonough Street
Montgomery, Alabama 36104

Massage Therapy Board – Licenses and Permits – Postsecondary Education, Department of– Private Schools

A school licensed by the Alabama Board of Massage Therapy is not required to obtain a private school license pursuant to section 16-46-3 of the Code of Alabama.

Dear Mr. Warren:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is a school licensed by the Alabama Board of Massage Therapy ("Board") required to obtain a private school license pursuant to section 16-46-3 of the Code of Alabama?

FACTS AND ANALYSIS

Section 16-46-1, *et seq.*, of the Code of Alabama requires licensing of all private schools by the Alabama Department of Postsecondary Education ("Post-secondary"), except as provided otherwise within that chapter. "School" is defined in section 16-46-1(2) as "[a]ny person, group of people, institution, establishment, agency or organization offering or administering a plan, course, or program of instruction whether conducted in person, by mail, or by any other method." ALA. CODE § 16-46-1(2) (2001). Subsection (3) defines "private

school" as "[o]peration of either profit or nonprofit entity as opposed to publicly owned or operated schools." ALA. CODE § 16-46-1(3) (2001).

Section 16-46-3 of the Code provides a list of exemptions for certain schools and includes "[p]rograms of study regulated by other state boards, commissions, or agencies ***requiring school licensure and/or performance bonding***, except where the appropriate regulatory agency requires a license under this chapter." ALA. CODE § 16-46-3(8) (2001) (emphasis added).

Massage therapy schools are licensed or approved by the Board pursuant to the authority given to the Board in section 34-43-20 of the Code of Alabama. The Board does not require a massage therapy school to provide performance bonding. Section 34-43-20 states as follows:

> (a) To be approved by the board, a massage therapy school shall meet the following requirements:
>
> (1) File a completed application prescribed by the board with the board and pay a registration fee as specified in Section 34-43-14.
>
> (2) Provide documentation of a curriculum which includes a minimum number of required hours of instruction in the subjects required pursuant to Section 34-43-9.
>
> (3) Register annually with the board by filing a renewal form accompanied with the renewal fee pursuant to Section 34-43-14, and submit a current curriculum and a list of instructors.
>
> (b) Every instructor teaching course work titled massage therapy at a board approved school located in Alabama shall be licensed in Alabama as a massage therapist and registered as a massage therapy instructor. Instructors who are not teaching massage therapy do not need to be registered. Any adjunct instructors shall be dually licensed in the state where they reside, be nationally certified, or both.

> (c) The board shall register as a massage therapy instructor any applicant who meets all of the following requirements:
>
> > (1) Is currently licensed as a massage therapist in Alabama.
> >
> > (2) Has filed a completed application prescribed by the board and paid a one-time application fee pursuant to Section 34-43-14.
> >
> > (3) Documents two years of experience in the practice of massage therapy. The documentation may be considered by the board on a case-by-case basis.

ALA. CODE § 34-43-20 (2002).

Thus, the issue is whether section 16-46-3(8) requires that a massage therapy school be both licensed by the Board and provide performance bonding. This requires an analysis of the term "and/or" as used in the phrase "requiring school licensure and/or performance bonding." Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

The term "and/or" is "used as a function word to indicate that words are to be taken together or individually. <men and/or women means men ***and*** women or men ***or*** women>." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 80 (2002). *See*, *SAIF Corp. v. Donahue-Birran*, 195 Or. App. 173, 96 P. 3d 1282 (2004) (finding that terms joined by "and/or" can be taken together or as alternatives, or stated more comfortably, taken as "X or Y or both," but in many contexts the term just means "or").

Given these definitions, a private school is not required to be licensed by Postsecondary if the programs of study are regulated by other state boards, commissions, or agencies and the board or agency requires both "***school licensure and performance bonding***" or if the board or agency requires either one of these: school licensure ***or*** performance bonding. Thus, if a board requires only performance bonding, the school is not required to be licensed by Postsecondary or, if a board requires only licensure, the school is not required to be licensed by Postsecondary. In this case, the Board requires school licensure but not

performance bonding. Accordingly, it is the opinion of this Office that a massage therapy school that is licensed by the Board of Massage Therapy is not required to be licensed by Postsecondary.

CONCLUSION

A school licensed by the Alabama Board of Massage Therapy is not required to obtain a private school license pursuant to section 16-46-3 of the Code of Alabama.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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