



## Florida Laws and Rules Two (2) Hour CEU Course

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In the not too distant past, I served as chair of the Florida Board of Acupuncture's Probable Cause Panel which judged whether cases brought before the Board had sufficient merit to warrant prosecution. This Board functions much the same way as the Florida Board of Massage. What struck me most about those acupuncture licensees whose cases were brought before us was their lack of knowledge about Chapters 456, 457, and 64B1, Florida Administrative Code, which governed their conduct as Licensed Acupuncturists and also spelled out their rights. I suspect that the same is true for those massage therapists licensed under Chapter 480 and regulated under Chapter 64B7.

For sure, some of the accused probably knew that they were clearly in violation of the law and broke the law anyways. I'm not concerned about that group, and this course won't be of much help to them.

But others were only in violation because they had misunderstood or had not been aware of some aspect of the laws and rules. Then there was another surprisingly large group of accused who, perhaps out of an undue fear of the prosecutorial powers of the State, volunteered to plead guilty to complaints, even though they had done nothing wrong! If they had known what their rights were under the law, they should have instead asked for the Board to absolve them of any wrongdoing. Fortunately, the probable cause process provides for professional licensed acupuncturists and massage therapists to serve on the Probable Cause Panels, and in the case of acupuncturists, such cases of clear innocence were routinely judged in the defendant's favor, despite the sometimes misguided arguments of the lawyers of the Department of Health.

Nevertheless, I would often leave such meetings thinking, "If only these people had read their laws and rules. So much trouble and expense could have been avoided."

This course intends to empower you by getting you to read and understand Chapters 456, 480, and 64 B7 of the Florida Administrative Code, all of which govern your conduct in the massage profession. We have provided you with the most up to date set of laws and rules available. They are yours to keep.

Please note that the Florida Legislature and the Board of Massage are continually updating and changing these laws and rules. It is your responsibility to keep abreast of these changes and to govern yourself accordingly. The State of Florida, its Department of Health, and the Board of Massage will not, repeat, will not, routinely inform you of such changes by sending you a letter when they occur. They assume correctly that it is your individual responsibility under Florida law to remain knowledgeable about these laws and rules.

To that end, I have included the latest version of the Board of Massage's Florida Laws and Rules on my [www.hkacup.com](http://www.hkacup.com) website.

You are welcome to read all the laws and rules which we have sent you as part of this course to answer the ten (10) questions on the exam sheet. However, you will find it easier just to read the summary I have provided. Select your answers from the summary

or from the entire body of the Laws and Rules of Chapters 456, 480, and 64B7 if you prefer.

## **Summary of FL Massage Laws and Rules for 2 Hour Course**

### **480.033 Definitions.--**As used in this act:

- (1) "Board" means the Board of Massage Therapy.
- (2) "Department" means the Department of Health.
- (3) "Massage" means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.
- (4) "Massage therapist" means a person licensed as required by this act, who administers massage for compensation.
- (5) "Apprentice" means a person approved by the board to study massage under the instruction of a licensed massage therapist.
- (6) "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.
- (7) "Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage.
- (8) "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage or to operate an establishment.
- (9) "Board-approved massage school" means a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state.

### **480.046 Grounds for Disciplinary Action by the Board.--**

- (1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):
  - (a) Attempting to procure a license to practice massage by bribery or fraudulent misrepresentation.
  - (b) Having a license to practice massage revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
  - (c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.
  - (d) False, deceptive, or misleading advertising.

- (e) Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.

#### **480.035 Board of Massage Therapy.--**

- (1) The Board of Massage Therapy is created within the department. The board shall consist of seven members, who shall be appointed by the Governor and whose function it shall be to carry out the provisions of this act.
- (2) Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments will be subject to confirmation by the Senate.
- (3) The Governor may at any time fill vacancies on the board for the remainder of unexpired terms. Each member of the board shall hold over after the expiration of her or his term until her or his successor has been duly appointed and qualified. No board member shall serve more than two terms, whether full or partial.
- (4) The board shall, in the month of January, elect from its number a chair and a vice chair.

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  - (d) False, deceptive, or misleading advertising.
  - (e) Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of this chapter or to a rule of the department or the board.
  - (f) Making deceptive, untrue, or fraudulent representations in the practice of massage.
  - (g) Being unable to practice massage with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the

department shall have, upon probable cause, authority to compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, shall constitute an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage with reasonable skill and safety to clients.

- (h) Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.
- (i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform.
- (j) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform.
- (k) Violating a lawful order of the board or department previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.
- (l) Refusing to permit the department to inspect the business premises of the licensee during regular business hours.
- (m) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.
- (n) Practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the board, may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.

### **64B7-26.010 Sexual Activity Prohibited.**

- (1) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- (2) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
- (3) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.
- (4) As used in this rule, "sexual activity" means any direct or indirect physical contact by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this

subsection, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred. Nothing herein shall be interpreted to prohibit a licensed massage therapist, duly qualified under Rule 64B7-31.001, F.A.C., from practicing colonic irrigation.

### **64B7-29.001 Definitions.**

- (1) “Apprentice” means a person meeting the qualifications stated in Rule 64B7-29.002, F.A.C., studying massage under the “direct supervision” of a “sponsoring massage therapist”.
- (2) “Sponsoring massage therapist” means a licensed massage therapist whose record with the Department indicates compliance with Chapters 456 and 480, F.S., and the rules promulgated thereunder. Further, a “sponsoring massage therapist” must have been engaged in the actual practice of massage for at least three (3) years prior to his “sponsorship”.
- (3) “Sponsorship” means the willingness of a “sponsoring massage therapist” to assume the responsibility for the “direct supervision” of only one apprentice by execution of the Sponsor’s Apprentice Application.
- (4) “Direct supervision” means the control, direction, instruction, and regulation of an apprentice at a “qualified massage establishment” during the working hours of the establishment.
- (5) “Qualified massage establishment” means a licensed massage establishment which, in addition to meeting the requirements of Chapter 64B7-26, F.A.C., is equipped with the following:
  - (a) Tables.
  - (b) Linen and storage areas.
  - (c) Colonic equipment (required if colonic irrigation is taught).
  - (d) Sterilization equipment if non-disposable colonic attachments are utilized.
  - (e) Hydro-therapy equipment, which must include cold packs and hot packs. Such equipment shall be that which is generally acceptable in the massage profession.
  - (f) Textbooks and teaching materials on the following subjects:
    1. Physiology,
    2. Anatomy,
    3. Theory of Massage,
    4. Hydro-therapy,
    5. Statutes and Rules on Massage Practice,
    6. Colonic Irrigation (if colonic equipment is present).