

PROFESSIONS AND OCCUPATIONS: NURSING — CERTIFICATION OF MASSAGE THERAPISTS - BOARD OF NURSING.

Person must be certified by Board of Nursing to qualify as "certified massage therapist" or "massage therapist." No statutory language prohibits newspaper/telephone advertisements for massages by person who is not Board-certified. Such person would be guilty of misdemeanor should advertisement imply or claim that he is "certified massage therapist" or "massage therapist."

The Honorable Phillip Hamilton

Member, House of Delegates

December 3, 1998

Your inquiry concerns what qualifies a person as a "massage therapist" and a "certified massage therapist" under Chapter 30 of Title 54.1 of the *Code of Virginia*.¹ You ask specifically whether telephone and newspaper advertising by noncertified massage therapists violates § 54.1-3008(7).

Section 54.1-3005(12) of Chapter 30 authorizes the Board of Nursing (the "Board") to certify massage therapists and to promulgate regulations establishing certification criteria and standards of professional conduct for certified massage therapists.² Section 54.1-3000 defines "certified massage therapist" as "a person who meets the qualifications specified in this chapter and who is currently certified by the Board."³ Section 54.1-3029 establishes the statutory requirements for Board certification as a massage therapist. Section 54.1-3008 provides:

It shall be a Class 1 misdemeanor for any person to:

* * *

7. Claim to be, on and after July 1, 1997, a certified massage therapist or massage therapist or use any designation tending to imply that he is a massage therapist or certified massage therapist unless he is certified under the provisions of this chapter.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature.⁴ When the language of a statute is plain and unambiguous, it is presumed that the legislature intended what it plainly expressed, and no room is left for statutory interpretation.⁵ It is clear from the definitions in § 54.1-3000 that the term "certified massage therapist" covers only persons who have met the qualifications for Board certification under § 54.1-3029. It is also clear from the language of § 54.1-3008(7) that a person who has not satisfied the requirements for Board certification under § 54.1-3029 may not claim to be, or use any designation implying that he is, a "certified massage therapist" or a "massage therapist."

Chapter 30 does not apply to persons who give massages and are not "certified massage therapists." Neither does the chapter contain any language that would operate to prohibit any person from advertising in the newspaper or in the telephone directory, provided such person does not claim to be a "certified massage therapist" or "massage therapist" or use a designation so implying.⁶

¹Sections 54.1-3000 to 54.1-3029.

²See 18 VAC 90-50-10 to -90 (West Supp. 1998), entitled "Regulations Governing the Certification of Massage Therapists."

³Section 54.1-3000 defines "massage therapy" as "the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body."

⁴See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁵See *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941); 1997 Op. Va. Att'y Gen. 117, 118.

⁶Virginia does not regulate massage parlors generally. Localities may, however, under their general police powers, enact ordinances regulating massage parlors. See *Kisley v. City of Falls Church*, 212 Va. 693, 187 S.E.2d 168, *appeal dismissed*, 409 U.S. 907 (1972) (in absence of state statute regulating occupation of massagists and business of massage salons, local governing body may regulate activities in interest of public health or morals).