



Associated Bodywork & Massage Professionals

25188 Genesee Trail Rd, Ste 200
Golden, CO 80401
800-458-2267
fax 800-667-8260
www.abmp.com

June 30, 2015

Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Submitted VIA email

Re: [Review of Log of Filings \(Permanent Rules\) for rules filed between May 21, 2015 and June 22, 2015](#)
[Completed forms for Submission for Permanent Rule](#)
Board of Massage and Bodywork Therapy (May)

Dear Commission Members,

Associated Bodywork & Massage Professionals (ABMP) is a professional association for massage and bodywork therapists. We have been serving the profession since 1987 through practice support, public education, and legislative advocacy. There are more than 80,000 ABMP members nationwide, including more than 1800 in North Carolina.

I am contacting you because the Board of Massage and Bodywork Therapy (BMBT) has a [Submission for Permanent Rule](#) and is scheduled on the Rules Review Commission's July 16, 2015 agenda. My intention is to call your attention to the Submission because I believe the Board of Massage and Bodywork Therapy (BMBT) is operating outside its authority by submitting the rules since they are not authorized in statute to regulate or license massage establishments.

Submitted Rules:

21 NCAC 30-1001 Definitions.

The BMBT is attempting to add four new definitions that relate to the BMBT regulating massage establishments (businesses). However, the North Carolina Massage Therapy Practice Act does not authorize the BMBT to regulate or license establishments.

21 NCAC 30.1002 – NCAC 30.1015

The submitted rules all relate to the BMBT regulating and licensing massage establishments. However, the North Carolina Massage Therapy Practice Act does not authorize the BMBT to regulate or license establishments.

The BMBT cites the following sections of the Act as providing them with the legislative authority to license establishments:

§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

§ 90-621. Declaration of purpose.

The purpose of this Article is to ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services. This purpose is achieved by establishing education and testing standards that ensure competency in the practice of massage and bodywork therapy. Mandatory licensure of those engaged in the practice of massage and bodywork therapy assures the public that each individual has satisfactorily met the standards of the profession and continues to meet both the ethical and competency goals of the profession.

However, massage businesses and establishments are not addressed in the “Declaration of purpose” and are barely mentioned in § 90-626 (9). In fact, massage businesses and/or establishments are not mentioned again in the entire North Carolina Massage Therapy Practice Act.

In stark contrast, the BMBT does approve massage and bodywork schools - and is explicitly authorized to do so under § 90-631 in statute:

§ 90-631. Massage and bodywork therapy schools.

§ 90-631.1. Massage and bodywork therapy school approval required.

§ 90-631.2. Authority to establish fees for massage and bodywork therapy school approval.

§ 90-631.3. Grounds for suspension, revocation, or refusal of massage and bodywork therapy school approval; notice and hearing; judicial review.

If the legislature intended to give the BMBT the authority to license and approve establishments, they would have included a section clearly establishing the authority for BMBT to do so. The Board of Massage and Bodywork Therapy (BMBT) is operating outside its authority by submitting rules requiring massage establishments to become licensed.

Throughout the country only nine states attempt to regulate and license massage businesses. Those that do, have similar statutory language authorizing them to do so.

- In every state the regulatory body has had to have explicit authority granted by the legislature to expand their scope of authority to include the regulation of massage businesses and establishments.
- In every state the enabling legislation includes (or adds) definitions of certain terms applicable to massage establishment licensing in statute, definitions are not simply added in Rule as the BMBT is attempting to do.
- In every state the enabling legislation authorizes the regulatory body to charge a fee specifically to license businesses.

The North Carolina Massage Therapy Practice Act does not include statutory language granting the BMBT authority to regulate massage establishments, nor does the Act define massage establishment or authorize the board to establish a fee for this particular license category. All other states that regulate massage establishments do.

Alabama statute: <http://law.onecle.com/alabama/professions-and-businesses/chapter43.html>

Authorizes the licensing of establishments in Section 34-43-11, defines “establishment”, and authorizes a fee for establishment approval in Section 34-43-14.

Florida statute: <http://floridasmassagetherapy.gov/resources/>

Defines “massage establishment” in Section 480.033, authorizes the Florida Board of Massage Therapy to adopt rules for massage establishment licensing in Section 480.043, and to set fees for massage establishment licensing in Section 480.044.

Hawaii statute: http://cca.hawaii.gov/pvl/boards/massage/statute_rules/

Defines “establishment” in §16-84-2, authorizes licensing of establishments in §16-84-6, authorizes rules and regulations, including fees, in §16-84-15.

Louisiana statute: <https://www.labmt.org/site.php>

Defines “massage establishment” in §3552, §3558 relates only to massage establishment licensing and §3562 authorizes fees.

Missouri statute: <http://pr.mo.gov/massage-statutes.asp>

Defines “massage business” in Section 324.240, requires a massage business license and authorizes a fee in Sections 324.247 and 324.250 respectively.

Nebraska statute: http://dhhs.ne.gov/publichealth/Pages/crl_statutes_statutes.aspx

Defines “massage establishment” in Section 38-1707, requires a massage establishment license in Section 38-1709, and authorizes the collection of fees in Section 38-1713.

Oregon statute: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors687.html

Added the definition of “massage facility” in Section 687.011, and authorizes the licensing of facilities and charge a fee in section 687.059

Tennessee statute: <http://www.lexisnexis.com/hottopics/tncode/>

Defines “massage establishment” in Section 63-18-102, is authorized to require a license of massage establishments in Section 63-18-104, and is authorized to promulgate rules and fees regarding massage establishments in Section 63-18-111.

Texas statute: <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.455.htm>

Defines “massage establishment” in Sec. 455.001, authorizes the Department of Health to adopt rules for massage establishment licensing, including fees, in Sec. 455.052, authority to grant a license in Sec. 455.151.

Please also consider that the North Carolina Massage Therapy Practice Act was originally signed into law by Governor James B. Hunt on November 6, 1998, and was amended in 2003 and 2005 and 2008. At no time was the authority of the Board of Massage and Bodywork Therapy expanded to include establishment licensing.

We believe the Board of Massage and Bodywork Therapy (BMBT) is operating outside its authority by submitting rules requiring massage establishments to become licensed. We ask that you review and reject 21 NCAC 30-1001 and 21 NCAC 30.1002 – NCAC 30.1015 on that basis.

Thank you for your consideration of ABMP’s concerns. If you have any questions I can be reached at jean@abmp.com or 800-458-2267 extension 645.

Sincerely,



Jean Robinson
Government Relations Director