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September 8, 2015

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VIA E-MAIL TO RRC COUNSEL

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Garth K. Dunklin
North Carolina Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

*Re: Comments on Rules submitted by the North Carolina Board of Massage and
Bodywork Therapy for establishment licensing (21 NCAC 30.1001-21 NCAC
30.1015)*

Dear Chair Dunklin and Members of the RRC:

On behalf of my client Massage Envy Spa, pursuant to 26 NCAC 05.0103(a), I am writing in opposition to the rules submitted by the North Carolina Board of Massage and Bodywork Therapy ("Massage Board") for the mandatory licensure of all massage therapy establishments, 21 NCAC 30.1001 to 21 NCAC 30.1015. As explained below, these rules should be rejected because the Massage Board does not have the statutory authority to issue licenses or collect licensing fees for massage establishments.

The Massage Board voted to adopt these rules at its meeting on June 4, 2015, and after being deferred for the adoption of technical amendments, they will be considered at the September 17, 2015 meeting of the Rules Review Commission. I respectfully request to speak in opposition to these rules at the RRC's September 17 meeting pursuant to 26 NCAC 05.0105.

Massage Envy Spa

Massage Envy Spa is a nationwide leader in providing massage and spa services, with over 1,000 locations in 49 states. In North Carolina, Massage Envy Spa has 39 clinics, each of which operates at the highest standards of professionalism. The company employs approximately 1,600 team members in North Carolina, including approximately 1,000 licensed massage therapists. Massage Envy Spa has experience in licensing issues throughout the country, including in states which do authorize the licensing of establishments.

Before the Massage Board, Massage Envy Spa submitted comments opposing the Massage Board's proposal to license establishments. At that stage, the company's comments focused on the fact that these rules were unnecessary and would put significant new regulatory burdens on companies like Massage Envy Spa, and could cause even more harm to small businesses. Massage Envy Spa also expressed concerns about the additional workload that these

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rules would create for the Board, which could add to existing delays in obtaining individual massage therapist licenses. A copy of Massage Envy Spa's prior comments to the Massage Board is attached as **Exhibit A**.

Massage Envy Spa also noted in its prior comments that the Massage Board does not have the statutory authority to license massage establishments (as opposed to licensing individual therapists), or to impose separate new licensing fees for massage establishments. That is the primary basis on which Massage Envy Spa makes its objections to the Rules Review Commission. As you know, it is duty of the RRC to determine whether a proposed rule "is within the authority delegated to the agency by the General Assembly." N.C. Gen. Stat. § 150B-21.9. As explained below, the licensure of massage establishments is not within the statutory authority of the Massage Board, and the proposed rules should therefore be rejected.

North Carolina Has Not Authorized the Licensure of Massage Establishments

Article 36 of Chapter 90 of the North Carolina General Statutes is known as the "North Carolina Massage and Bodywork Therapy Practice Act" ("Practice Act"), N.C. Gen. Stat. § 90-620 (short title), and provides for the statutory authority of the Massage Board. The stated purpose of the Practice Act is to "ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services" through "mandatory licensure of those engaged in the practice of massage and bodywork therapy." N.C. Gen. Stat. § 90-621.

N.C. Gen. Stat. § 90-623 ("License required") requires a "person" to obtain a license from the Massage Board to practice as a massage and bodywork therapist. Nothing in the Practice Act, however, authorizes or requires a massage *establishment* to obtain a separate license in order to operate.

For each of the rules the Massage Board has submitted regarding the licensing of establishments (21 NCAC 30.1001 to 21 NCAC 30.1015), it has cited N.C. Gen. Stat. § 90-626(9) as its authority. That statute, however, only authorizes the Massage Board to adopt rules "necessary to carry out the purposes of this Article and the duties and responsibilities of the Board." Those purposes and duties do not include the regulation of establishments. N.C. Gen. Stat. § 90-626(9) authorizes the adoption of "rules related to ... massage and bodywork therapy establishments," but it does not authorize the *licensure* of those establishments or the assessment of license *fees* for massage establishments.

When the General Assembly wishes to require establishment licenses for a profession or activity, it knows how to do so, and it does so explicitly. The Practice Act here was adopted as a part of Session Law 1998-230, which was when the licensure of massage and bodywork therapists was first required by law in North Carolina. A copy of that Session Law is attached as **Exhibit B**. Notably, this same Session Law also rewrote the Cosmetic Art Act, and in that Act

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the General Assembly adopted NC Gen Stat § 88B-14 (see page 7 of Exhibit B) specifically authorizing the licensing of cosmetic art shops. However, that same Session Law did *not* give the same authority to license establishments to the Massage Board.

Prior to the passage of Session Law 1998-230, there was a previous effort to regulate the practice of massage and bodywork therapy in 1994. House Bill 185 (copy attached as **Exhibit C**) was titled “Massage Therapy Establishment Licensing Act”. That bill would have required massage establishment licenses (see draft section 89F-5 of the bill). However, that bill was not enacted into law.

The Massage Board has been considering requirements for licensure of massage establishments for a number of years. Before the current rulemaking effort was commenced, the Massage Board recognized that statutory amendments would be required to license massage establishments. For example, attached as **Exhibit D** are the October 2010 minutes of the Massage Board. On page 6, under the heading “Massage Establishment Regulation”, it was noted that the Board had created a committee to draft statutory amendments to allow the licensing of massage establishments. The committee was there reviewing “a draft of an amendment to the North Carolina Practice Act to allow the Board to regulate establishments,” and which would “provide[] for licensure of the Board of such entities.”

Similarly, the Massage Board’s April 2011 minutes (attached as **Exhibit E**, see page 4) reflect that they recognize that licensure of establishments would be a “substantial administrative and financial commitment” which would require statutory authority to charge license fees for massage therapy establishments. The Board recognized that the chance of obtaining that statutory authority to charge such license fees “was remote due to the economic crisis and the effect on small businesses.”¹

Perhaps because the Board recognized that it was unlikely to obtain the statutory authority to license massage establishments, or to charge fees for such licenses, it has promulgated the rules submitted to the RRC. However, as explained above, the Massage Board plainly lacks the statutory authority to regulate massage and bodywork therapy establishments, and it also lacks the statutory authority to establish licensing fees for such establishments. We therefore agree with the opinion and recommendation of RRC staff counsel that the proposed rules should be rejected on these grounds.²

¹ Associated Bodywork & Massage Professionals (ABMP) has submitted comments to the RRC which note that every state which authorizes the licensure of massage establishments has done so pursuant to explicit statutory authority. Massage Envy Spa agrees with those comments.

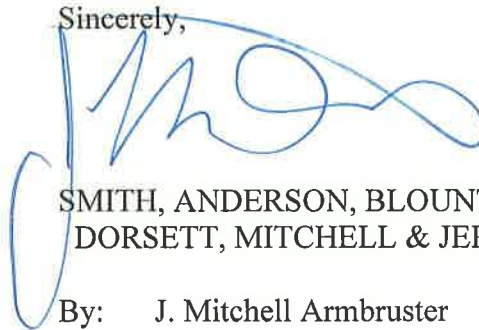
² RCC Staff Counsel has also identified additional bases on which individual proposed rules should be independently rejected. As a practical matter, Massage Envy Spa suggests that

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Conclusion

We therefore respectfully request that the RRC reject the Massage Board's establishment licensing rules (21 NCAC 30.1001 to 21 NCAC 30.1015) as being adopted without appropriate statutory authority. We appreciate the RRC's attention to this matter.

Sincerely,



SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN, LLP

By: J. Mitchell Armbruster

Enclosures (Exhibits A-E)

cc: James Fitzsimmons, Massage Envy Spa

the proposed rules should be rejected as a whole on the threshold issue of whether the Massage Board has the authority to license massage establishments and charge fees for such licenses.



May 8, 2015

Board of Massage and Bodywork Therapy
Charles P. Wilkins
PO Box 2538
Raleigh, NC 27602

Response to NC Massage Board Massage Establishment Licensing

Re: Proposed New Rules for Licensure of Massage and Bodywork Therapy Establishments (21 NCAC 30.1001 to .1014)

Dear Mr. Wilkins and Board Members:

I am writing to comment on proposed rules from the North Carolina Board of Massage and Bodywork Therapy ("Massage Board"), and more specifically the proposal for mandatory licensure of all massage establishments. As explained below, we have serious concerns about these proposed rules and believe the Board should decline to adopt them.

I am the North Carolina Developer for Massage Envy Spa. We have 39 open clinics in the state, each of which operates at the highest standards of professionalism. We employ approximately 1,600 team members, including approximately 1,000 licensed massage therapists. Massage Envy Spa also has over 1,000 locations nationwide in 49 states, and consequently has much experience with what works (and doesn't work) in licensing to promote high quality in our profession and to best serve the public.

Unnecessary Rules

My understanding is that these proposed rules are designed to combat human trafficking in the massage field. While that is a laudable objective, having the Massage Board lead this effort via a licensing requirement is not the answer. Based on our experiences, existing criminal laws already on the books, and the associated criminal penalties, far outweigh anything the Massage Board can mete out via a licensing regulation.

In reality, these rules will not effectively deter or stop the "bad guys", but will only impose unnecessary regulations and burdens on legitimate therapeutic massage establishments. Legitimate businesses will end up paying additional fees, being subjected to additional background and finger print checks, and an array of new safety and sanitation rules and regulations, virtually all of which are duplicative with existing county and/or municipal rules and regulations. For example, clinics in Raleigh have to go through a background and finger print check today. Adding the

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same requirement at the state level will not accomplish anything further. These new burdens will be significant on larger companies like Massage Envy Spa, and may even cause more harm on smaller businesses that will be subject to the rules.

In addition to the regulatory burden put on legitimate establishments, another consideration is the additional workload that these rules will create for the Board. The Massage Board currently plays a critical role in licensing new therapists. However, the timeline to process these new licenses ranges from 3 to 6 months, or sometimes longer. Adding licensing of massage establishments to this workload will no doubt lead to further delays for individuals and will hurt business formation and openings.

This Is A Legislative Issue

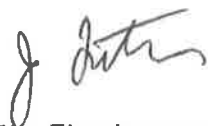
Finally, from the legislative perspective, we also note that the proposed rules appear to be akin to legislation – creating a new type of license and imposing licensing fees not authorized by the North Carolina Massage and Bodywork Therapy Practice Act. The powers and duties of the Massage Board under N.C. Gen. Stat. § 90-626 do not authorize the Board to separately license massage establishments. In contrast, some boards do have that authority. In North Carolina, the Cosmetology Board has statutory authority under N.C. Gen. Stat. § 88B-14 to license cosmetic art shop establishments. That statute was adopted in the same bill in 1998 (S.L. 1998-230) which adopted the North Carolina Massage Act, but the Massage Act did not include the same licensing authority for massage establishments.

In any event, we believe the decision as to whether massage establishments should be separately licensed, and what fees should be charged for such licenses (an issue the legislature usually controls quite closely), is a decision properly left to the legislature.

Therefore, for the above reasons, I urge the Board to withdraw or reject the currently proposed rules. We would welcome working with the Board on determining whether any proper rule changes are warranted to address the Board's concerns about illegitimate activities, and to share our observations from a nationwide perspective on these issues.

Thank you for your attention to this matter.

Sincerely,



Jim Fitzsimmons

Cc: J. Mitchell Armbruster

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-230
SENATE BILL 916

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART AND TO
REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

PART I. REWRITE OF THE NC COSMETIC ART ACT.

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"§ 88B-1. Short title.

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"§ 88B-2. Definitions.

The following definitions apply in this Chapter:

- (1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.
- (2) Board. – The North Carolina Board of Cosmetic Art Examiners.
- (3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.
- (4) Booth renter. – A person who rents a booth in a cosmetic art shop.
- (5) Cosmetic art. – All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.
- (6) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.
- (7) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.
- (8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

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- (9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.
- (10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.
- (11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.
- (12) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.
- (13) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.
- (14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.
- (15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

- (1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.
- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.
- (3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled

in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"§ 88B-4. Powers and duties of the Board.

(a) The Board shall have the following powers and duties:

- (1) To administer and interpret this Chapter.
- (2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To conduct investigations of alleged violations of this Chapter or the Board's rules.
- (6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.
- (7) To approve new cosmetic art schools.
- (8) To inspect cosmetic art schools and shops.
- (9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.
- (10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.
- (11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.
- (12) To adopt a seal.
- (13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"§ 88B-5. Meetings and compensation of the Board.

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out-of-state at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"§ 88B-6. Board office, employees, funds, budget requirements.

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"§ 88B-7. Qualifications for licensing cosmetologists.

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours

of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-8. Qualifications for licensing apprentices.

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

- (1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

- (1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-10. Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 150 hours of a manicurist curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-11. Qualifications for licensing teachers.

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

- (1) Possession of a high school diploma or a high school graduation equivalency certificate.
- (2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist license issued by the Board.
- (2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.
- (2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or manicurist license issued by the Board.
- (2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for manicurist teachers conducted by the Board.

"§ 88B-12. Temporary employment permit; extensions; limits on practice.

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

- (1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.
- (2) Has applied to take the examination within three months of completing the required hours.
- (3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

- (1) The applicant is an active practitioner in good standing.
- (2) The applicant has practiced at least one of the three years immediately preceding the application for a license.
- (3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.
- (4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"§ 88B-15. Practice outside cosmetic art shops.

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their places of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86A-14.

"§ 88B-16. Licensing cosmetic art schools.

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board

may establish standards for approving hours from schools in other states that are licensed.

"§ 88B-17. Bond required for private cosmetic art schools.

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, or refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

- (b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school's ceasing to operate.
- (2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars (\$10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.
- (3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

- (1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose

accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

- (2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"§ 88B-18. Examinations.

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"§ 88B-19. Expired school credits.

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"§ 88B-20. Fees required.

(a) The Board may charge examination fees as follows:

(1)	<u>Cosmetologist</u>	<u>\$ 20.00</u>
(2)	<u>Apprentice</u>	<u>\$ 5.00</u>
(3)	<u>Manicurist</u>	<u>\$ 15.00</u>
(4)	<u>Esthetician</u>	<u>\$ 20.00</u>
(5)	<u>Teacher</u>	<u>\$ 25.00.</u>

(b) The Board may charge application fees as follows:

(1)	<u>Inspection of a newly established cosmetic art shop</u>	<u>\$ 25.00</u>
(2)	<u>Reciprocity applicant under G.S. 88B-13</u>	<u>\$ 15.00.</u>

(c) The Board may charge license fees as follows:

(1)	<u>Cosmetologist</u>	<u>\$ 39.00 every 3 years</u>
(2)	<u>Apprentice</u>	<u>\$ 10.00 per year</u>
(3)	<u>Esthetician</u>	<u>\$ 10.00 per year</u>
(4)	<u>Manicurist</u>	<u>\$ 10.00 per year</u>

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|-----|-------------------------------------------|-------------------------------|
| (5) | <u>Teacher</u> | <u>\$ 10.00 every 2 years</u> |
| (6) | <u>Cosmetic art shop per active booth</u> | <u>\$ 3.00 per year</u> |
| (7) | <u>Cosmetic art school</u> | <u>\$ 50.00 per year</u> |
| (8) | <u>Duplicate license</u> | <u>\$ 1.00.</u> |

(d) The Board may require payment of late fees and reinstatement fees as follows:

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|-----|-------------------------------------------------------------------------------------|------------------|
| (1) | <u>Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal</u> | <u>\$ 10.00</u> |
| (2) | <u>Cosmetic art schools and shops late renewal</u> | <u>\$ 10.00</u> |
| (3) | <u>Reinstatement - cosmetic art schools and shops</u> | <u>\$ 25.00.</u> |

(e) The Board may prorate fees as appropriate.

"§ 88B-21. Renewals; expired licenses.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"§ 88B-22. Licenses required; criminal penalty.

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"§ 88B-23. Licenses to be posted.

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"§ 88B-24. Revocation of licenses and other disciplinary measures.

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Conviction of a felony shown by certified copy of the record of the court of conviction.
- (2) Gross malpractice or gross incompetency as determined by the Board.
- (3) Advertising by means of knowingly false or deceptive statements.
- (4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.
- (5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.
- (6) Practicing or attempting to practice by fraudulent misrepresentation.
- (7) Willful failure to display a certificate of license as required by G.S. 88B-23.
- (8) Willful violation of the rules adopted by the Board.
- (9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"§ 88B-25. Exemptions.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

- (1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

- (2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.
- (3) Nurses licensed under Chapter 90 of the General Statutes.
- (4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.
- (5) A person employed in a cosmetic art shop to shampoo hair.

"§ 88B-26. Rules to be posted.

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"§ 88B-27. Inspections.

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"§ 88B-28. Restraining orders.

The Board, the Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"§ 88B-29. Civil penalties.

(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars (\$1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. – Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful and malicious.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of

violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. – The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 2.1. G.S. 88B-10, as enacted by this act, reads as rewritten:

"§ 88B-10 Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

- (1) Successful completion of at least ~~150~~300 hours of a manicurist curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20."

Section 2.2. G.S. 86A-14 reads as rewritten:

"§ 86A-14. Persons exempt from the provisions of this Chapter.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

- (1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;
- (2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;
- (3) Registered nurses and licensed practical nurses and those working under their supervision;
- (4) Licensed embalmers and funeral directors and those working under their supervision;
- (5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~88B of the General Statutes; and
- (6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~88B of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. A cosmetic art shop that practices esthetics only and that submits proof to the Board that the shop is actively engaged in the practice of esthetics on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. A cosmetic art shop that practices manicuring only and that submits proof to the Board that the shop is actively engaged in the practice of manicuring on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 9. G.S. 14-400 reads as rewritten:

"§ 14-400. ~~Tattooing~~Tattooing; body piercing prohibited.

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

PART II. CREATE THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT.

Section 10. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"§ 90-621. Declaration of purpose.

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"§ 90-622. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Board of Massage and Bodywork Therapy.
- (2) Board-approved school. – Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.
- (3) Massage and bodywork therapy. – Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:
 - a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.
 - b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
 - c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.
- (4) Massage and bodywork therapist. – A person licensed under this Article.
- (5) Practice of massage and bodywork therapy. – The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-623. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

- (1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.
- (2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.
- (3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.
- (4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.
- (5) A person giving massage and bodywork therapy to members of that person's immediate family.
- (6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.
- (7) The practice of techniques that are specifically intended to affect the human energy field.

"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

- (1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments may be made from lists provided by the North Carolina Therapeutic Massage and Bodywork Task Force. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that

will promote diversity of the profession on the Board. Two of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, two shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the Governor.

(2) One member shall be a physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes. The appointment shall be made by the Governor and may be made from a list provided by the North Carolina Medical Society.

(3) One member shall be a member of the general public who shall not be licensed under Chapter 90 of the General Statutes or the spouse of a person who is so licensed, or have any financial interest, directly or indirectly, in the profession regulated under this Article. The appointment shall be made by the Governor.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

- (6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.
- (7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.
- (8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.
- (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.
- (10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.
- (11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.
- (12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.
- (13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-627. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-628. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

(1)	<u>Application for examination</u>	<u>\$200.00</u>
(2)	<u>License fee</u>	<u>150.00</u>
(3)	<u>License renewal</u>	<u>100.00</u>
(4)	<u>Late renewal penalty</u>	<u>75.00</u>
(5)	<u>License by reciprocity</u>	<u>50.00</u>
(6)	<u>Duplicate license</u>	<u>25.00</u>

- (7) Provisional license 150.00.

"§ 90-629. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

- (1) Has obtained a high school diploma or equivalent.
- (2) Is 18 years of age or older.
- (3) Is of good moral character as determined by the Board.
- (4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.
- (5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"§ 90-630. Reciprocity.

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"§ 90-631. Massage and bodywork therapy schools.

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

- (1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
- (2) Standards for faculty and learning resources.
- (3) Requirements for reporting changes in instructional staff and curriculum.
- (4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools,

whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"§ 90-632. License renewal and continuing education.

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"§ 90-633. Disciplinary action.

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) The use of drugs or intoxicating liquors to an extent that affects professional competency.
- (3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.
- (4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.
- (5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.
- (6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.
- (7) The commission of an act of malpractice, gross negligence, or incompetency.
- (8) Practice as a licensee under this Article without a valid certificate or renewal.
- (9) Engaging in conduct that could result in harm or injury to the public.
- (10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- (11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"§ 90-634. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

- (1) Practice of massage and bodywork therapy.
- (2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.
- (3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 12. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 10 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

- (1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall expire June 30, 2001.
- (2) The terms of all other members shall expire June 30, 2000.

Section 13. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 10 of this act, except the 500 classroom hours of supervised instruction do not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 14. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 10 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 10 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 10 of this act, and shall submit all of the following for consideration by the Board:

- (1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.
- (2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

- (3) Verification that the applicant has been practicing in the State at the time the application is submitted.
- (4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

PART III. EFFECTIVE DATES.

Section 15. Sections 1 through 7 of this act become effective November 1, 1998, and apply to applications made and acts occurring on or after that date, except that Section 2.1 of this act becomes effective January 1, 1999. Section 9 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. Sections 10 through 14 of this act become effective November 1, 1998, and apply to offenses occurring on or after that date, except that G.S. 90-623 and G.S. 90-634 become effective July 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 7:30 p.m. this 6th day of November, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

H

1

HOUSE BILL 185

Short Title: License Massage Therapy Establishments.

(Public)

Sponsors: Representatives Arnold; and Mitchell.

Referred to: Rules, Calendar, and Operations of the House.

February 14, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO LICENSE AND REGULATE MASSAGE THERAPY
3 ESTABLISHMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to
6 read:

7 **"CHAPTER 89F.**

8 **"MASSAGE THERAPY ESTABLISHMENT LICENSING ACT.**

9 **"§ 89F-1. Purpose and objective.**

10 The purpose of this Chapter is to protect the public health, safety, welfare, and
11 morals of the citizens of North Carolina. In order to accomplish this purpose, the
12 following license provisions and regulations are adopted for the privilege of carrying on
13 the business, trade, or profession of massage and for the operation of carrying on of the
14 business, trade, or profession commonly known as a massage wherein massage or
15 physical manipulation of the human body is carried on or practiced. The objective is to
16 permit only the business or profession of massage therapy as authorized under this
17 Chapter.

18 **"§ 89F-2. Definitions.**

19 For the purposes of this Chapter, unless the context otherwise requires, the following
20 definitions shall apply:

- 21 (1) 'Employee' means any person over 18 years of age, other than a
22 masseur or masseuse, who renders any service in connection with the
23 operation of a massage business and receives compensation from the
24 operator of the business or from patrons.

EXHIBIT

C

- (2) 'Establishment' or 'massage establishment' means any massage therapy establishment having a source of income or compensation derived from the practice of massage therapy as defined in subdivision (4) below, and which has a fixed place of business where any person, firm, association, or corporation engages in or carries on any of the activities as defined in subdivision (4) below.
- (3) 'Licensee' means any person to whom a license has been issued to own or operate a massage establishment as defined herein.
- (4) 'Massage therapy' means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other similar preparations commonly used in the practice of massage, under circumstances in which it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or gratuity therefor.
- (5) 'Masseur or masseuse' means any person who, for consideration, engages in the practice of massage therapy as defined in subdivision (4) above.
- (6) 'Outcall massage service' means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than at a massage establishment as defined in subdivision (2).
- (7) 'Patron' means any person over 18 years of age who receives a massage for which it is reasonably expected that the person will pay money or give consideration.
- (8) 'Permittee' means any person to whom a permit has been issued to act in the capacity of a masseur or masseuse as defined in this section.
- (9) 'Person' means any person to whom a permit has been issued to act in the capacity of a masseur or masseuse as defined in this section.
- (10) 'Recognized school' means any school or educational institution licensed to do business as a school or educational institution in the state in which it is located, or any school recognized by, approved by, or affiliated with the American Massage and Therapy Association, Inc., and which has as one of its purposes the teaching of the theory, method, profession, or work of massage, and which requires the successful completion of a course of study or learning not less than 70 hours, before the student shall be furnished with a diploma or certificate of graduation.
- (11) 'Sexual or genital area' means genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

1 **"§ 89F-3. License or permit required.**

2 (a) No person shall engage in or carry out the business of massage therapy
3 without a valid business license issued pursuant to the provisions of this Chapter for
4 each location in which the person conducts the business of massage.

5 (b) No person shall practice massage therapy as an employee or otherwise,
6 without a valid permit issued pursuant to this Chapter.

7 **"§ 89F-4. Exemptions.**

8 This Chapter does not apply to the following individuals while engaged in the
9 performance of the duties of their respective professions:

10 (1) Physicians, surgeons, chiropractors, osteopaths, physical therapists, or
11 podiatrists who are duly licensed to practice their respective
12 professions in this State.

13 (2) Nurses who are registered or licensed under the laws of this State.

14 (3) Athletic trainers who are employed by a recognized educational
15 institution or professional sports team, and whose work is limited to
16 athletic team members.

17 (4) Barbers and beauticians who are duly licensed in this State, except that
18 this exemption shall apply solely to the massaging of the neck, face,
19 scalp and hair of the head of the customer or client for cosmetic or
20 beautifying purposes.

21 **"§ 89F-5. Application for massage establishment license.**

22 (a) Every applicant for a license to maintain, operate, or conduct a massage
23 therapy establishment within the city limits of a city shall file an application under oath
24 on a form provided by the city with the chief of police and pay a nonrefundable annual
25 license fee, which shall be one hundred dollars (\$100.00) per year or any part thereof.
26 The application, once accepted, shall be investigated by the city police department and
27 copies of the application shall be sent to the city fire department in the district in which
28 the establishment is located within five days of receipt. Compliance with the North
29 Carolina Building Code shall be verified within 30 days of receipt of the application.

30 (b) Every applicant for a license to maintain, operate, or conduct a massage
31 establishment outside of city limits shall file an application under oath or a form
32 provided by the sheriff's office with the sheriff of the county in which the establishment
33 is located and pay a nonrefundable annual license fee, which shall be one hundred
34 dollars (\$100.00) per year or any part thereof. The application, once accepted, shall be
35 investigated by the sheriff's department and copies of the application shall be sent to the
36 fire department of the fire district in which the establishment is located within five days
37 of receipt. Compliance with the North Carolina Building Code shall be verified within
38 30 days of receipt of the application.

39 (c) Each application shall contain the following information:

40 (1) A definition of the service to be provided.

41 (2) The location, mailing address, and all telephone numbers of the
42 premises where the business is to be conducted.

43 (3) The name and residence address of each applicant. If the applicant is a
44 corporation, the names and the residence addresses of each of the

officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of any class of stock of the corporation, and the address of the corporation itself, if different from the address of the establishment. If the applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and the address of the partnership itself, if different from the address of the establishment. If any of the foregoing persons have resided at an address for less than two years prior to the date of filing the application, then the person shall provide each address of residence during the previous two years.

(4) Proof that the applicant is at least 18 years of age.

(5) The applicant's height, weight, color of eyes and hair, and sex.

(6) Copy of identification, such as drivers license and social security card.

(7) One photograph of the applicant at least two inches by two inches and a complete set of the applicant's fingerprints, which shall be taken by the chief of police or his agent. If the applicant is a corporation, one photograph at least two inches by two inches of all officers, directors, and managing agents of said corporation and a complete set of the officers' and agents' fingerprints, which shall be taken by the chief of police, the sheriff, or their agents. If the applicant is a partnership, a front-face photograph at least two inches by two inches in size of each partner, including a limited partner in said partnership, and a complete set of each partner or limited partner's fingerprints, which shall be taken by the chief of police, sheriff, or their agents.

(8) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application.

(9) The massage or similar business license history of the applicant; whether the applicant, in previously operating in this or another city or state has had a business license revoked or suspended, the reason for the suspension or revocation, and the business activity or occupation subsequent to the suspension or revocation.

(10) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes, and places convicted.

(11) The name and address of each employee practicing massage therapy who is or will be employed in the establishment.

(12) Applicant must furnish a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession, and work of massage is taught; provided, however, that if the applicant will not personally engage in the practice of massage as defined herein, the applicant need not possess a diploma or certificate of graduation from a recognized school or institution of learning.

- (13) The name and address of any business or other massage establishment that is owned or operated by any person whose name is required to be given pursuant to this section.
- (14) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.
- (15) Authorization for the licensing city or county, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.
- (16) The names, current addresses, and written statements of at least three bona fide permanent residents of the United States that the applicant is of good moral character. These references must be persons other than relatives and business associates.
- (17) All identification and information necessary to verify required information provided by all applicants.
- (18) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration being duly dated and signed.

Upon the completion of the application and the furnishing of all foregoing information, the police department or sheriff's department shall accept the application for the necessary investigations. The holder of an establishment license shall notify the chief of police or the sheriff of each change in any of the data required to be furnished by this section within 10 days after the change occurs.

"§ 89F-6. Application for masseur's or masseuse's permits.

Application for a masseur's or a masseuse's business permit shall be made on a form provided by the city to the chief of police or by the county to the sheriff in the same manner as provided above for massage establishment licenses, accompanied by the annual nonrefundable permit fee of seventy-five dollars (\$75.00) per year or part thereof. The application shall contain the following information:

- (1) The business address and all telephone numbers where massage therapy is to be practiced.
- (2) Name and current residence address, and all names, nicknames, and aliases by which the applicant has been known. If the applicant has the listed address for less than two years, then the applicant shall list each address at which the applicant resided during the previous two years.
- (3) Social security number, drivers license number, and date of birth.
- (4) Applicant's weight, height, color of hair and eyes, and sex.
- (5) Written evidence that the applicant is at least 18 years of age.
- (6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance except misdemeanor traffic violations.
- (7) Fingerprints of the applicant taken by the police department.

- (8) Two front-face portrait photographs taken within 30 days of the date of application and at least two inches by two inches in size.
- (9) The name and address of the recognized school attended, the dates attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 70 hours of instruction.
- (10) The massage or similar business history and experience for three years prior to the date of application, including, but not limited to, whether or not the applicant, in previously operating in this or another city or state under a license or permit, has had the license or permit denied, revoked, or suspended, the reasons for the suspension or revocation, and the business activities or occupations subsequent to the denial, suspension, or revocation.
- (11) A medical certificate signed by a physician licensed to practice in the State within seven days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required shall be provided at the applicant's expense.
- (12) Other information, identification, and physical examination of the person deemed necessary by the police chief or sheriff in order to discover the truth of the matters required to be set forth in the application.
- (13) The names, current addresses, and written statements of at least three bona fide permanent residents of the United States that the applicant is of good moral character. These references must be persons other than relatives and business associates.
- (14) Authorization for the city or county and its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.
- (15) Written declaration by the applicant, duly notarized under penalty of perjury, that the information contained in the application is true and accurate to the best of the applicant's knowledge.

"§ 89F-7. Issuance of license or permit for a massage establishment.

The chief of police or sheriff shall issue a license for a massage establishment or a permit for a masseur or masseuse, if all requirements for a massage establishment or massage permit described in this section are met unless:

- (1) The correct permit or license fee has not been tendered, and in the case of a check, or bank draft, not honored with payment upon presentation;
- (2) The operation as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, building, zoning, and health regulations;
- (3) Any person listed in the application, as required by G.S. 89F-5 or G.S. 89F-6, who has been convicted of any of the following offenses:

- a. An offense involving the use of force and violence upon the person of another that amounts to a felony.
- b. An offense involving sexual misconduct.
- c. An offense involving narcotics, dangerous drugs, or dangerous weapons that amounts to a felony.

The chief of police or sheriff may issue a license or permit to any person convicted of any of the crimes described in this section if the conviction occurred at least five years prior to the date of application and the person has had no subsequent felony convictions for crimes mentioned in this section;

- (4) The applicant has knowingly made a false, misleading, or fraudulent statement of fact in the permit application or in any document required in conjunction therewith;

- (5) The applicant has had a massage business, masseur, or other similar permit or license revoked by a municipality or any other state or local agency within five years prior to the date of application; or

- (6) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of 18 years.

"§ 89F-8. Approval or denial; application.

The chief of police or sheriff shall approve or deny an application for a license or permit under this Chapter within a reasonable period of time and in any event shall approve or deny said license or permit 60 days from the date the application was accepted. The chief of police or sheriff shall make written findings of fact to support a denial of a license or permit. Any applicant whose application for a license or permit is denied shall have the right to appeal the denial by giving written notice to the city council or county board of commissioners within seven days from the date of denial. In the case of an appeal, due process shall be accorded the applicant pursuant to G.S. 89F-15.

"§ 89F-9. Waiver of application requirements.

The requirements of this Chapter do not apply if the applicant furnishes satisfactory evidence that: (i) the applicant attended not less than 70 hours of instruction in the school within or without this State or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this Chapter; or (ii) the applicant has served a training apprenticeship of not less than five years under a person who, at that time of apprenticeship, met the requirements of G.S. 89F-6 and further, that the applicant has been actively engaged in the business, trade, or profession of massage for not less than 10 years, including the apprenticeship period.

"§ 89F-10. Multiple massage establishments.

Should any massage business have more than one location where the business of massage is pursued, then a license stating both the address of the principal place of business, and of the other location(s) shall be issued by the chief of police or sheriff

1 upon the tender of a license fee of one hundred dollars (\$100.00) per location. Licenses
2 issued for other locations shall terminate on the same date as that of the principal place
3 of business, regardless of the date of issuance.

4 **"§ 89F-11. Posting of license or permit.**

5 (a) Every masseur or masseuse shall post the permit required by this Chapter in
6 the work area.

7 (b) Every person, corporation, partnership, or association licensed under this
8 Chapter shall display the license required by this Chapter in a prominent place.

9 **"§ 89F-12. Register of employees.**

10 The licensee or person designated by the licensee of a massage establishment shall
11 maintain a register of all persons employed at any time as masseurs or masseuses. The
12 register shall be available at the massage establishment during regular business hours.

13 **"§ 89F-13. Revocation or suspension of license.**

14 Any license issued for a massage establishment may be revoked or suspended after
15 notice and hearing, for good cause, where it appears that the licensee has violated any of
16 the provisions of this Chapter, or where any employee of the licensee, including a
17 masseur or masseuse, is engaged in any conduct at the licensee's place of business
18 which violates ordinances and of which the licensee has actual or constructive
19 knowledge, or in the exercise of reasonable diligence should have had actual or
20 constructive knowledge. The permit may also be revoked or suspended by the city after
21 notice and hearing for good cause, upon the recommendation of the city or county
22 health department in which the establishment is located, upon a finding that the business
23 is being managed, conducted, or maintained without regard to proper sanitation and
24 hygiene. The revocation proceedings shall be as prescribed in G.S. 89F-15.

25 **"§ 89F-14. Revocation of masseur or masseuse permit.**

26 A masseur or masseuse permit issued by the chief of police or sheriff may be
27 revoked or suspended after notice and hearing, for good cause, where it appears that the
28 masseur or masseuse has been convicted of any offense which would be cause for denial
29 of a permit upon an original application, has made a false statement on an application
30 for a permit, or has committed an act in violation of this Chapter. The revocation
31 proceedings shall be as prescribed in G.S. 89F-15.

32 **"§ 89F-15. Revocation or suspension proceedings.**

33 Upon the determination of a violation of this Chapter or the existence of any other
34 condition which is grounds for revocation or suspension of a license or permit pursuant
35 to G.S. 89F-13 or G.S. 89F-14, the chief of police or sheriff shall serve written notice
36 upon the person whose license or permit has been determined to be subject to revocation
37 or suspension. The notice shall state: (i) the specific grounds which make the license or
38 permit subject to revocation or suspension, (ii) the date, time, and place of the hearing,
39 which shall not be earlier than 10 days following service of the notice, and (iii) that the
40 hearing will be held before a hearing panel of the city council or the county board of
41 commissioners of at least three members, as applicable. Within three days of the
42 hearing, the panel shall render its decision in writing either revoking the license or
43 permit, suspending the license or permit for a period of time not to exceed 90 days, or
44 finding that insufficient grounds for revocation or suspension exist and that the person

1 should retain the license or permit. In the case of a revocation or suspension, the
2 decision shall state the reasons for the action taken.

3 A person whose license or permit has been revoked or suspended following a
4 hearing shall have a right of appeal to the full city council if the establishment is within
5 city limits or the full county board of commissioners if the establishment is not within
6 the city limits. Notice of appeal must be given to the city council or board of
7 commissioners within seven days from the date of service of the decision. The
8 appellant shall be given written notice of the date, time, and place of the appeal hearing
9 at least seven days before the appeal is to be heard. The license or permit shall remain
10 valid until the appeal decision, but the stay of the revocation or suspension shall stay or
11 prevent institution of criminal proceedings or any other action against the person for any
12 violation of this Chapter or the law, regardless of whether the criminal or other action is
13 based on the same or similar grounds as those upon which the revocation or suspension
14 proceedings is based.

15 The person whose license or permit has been revoked or suspended shall have the
16 right to legal representation and to present evidence concerning the revocation or
17 suspension. The city council or county board of commissioners may reverse or affirm,
18 wholly or in part, or may reduce the length of suspension or reduce a revocation to a
19 suspension not to exceed 90 days, if in its judgment there is good cause for action based
20 upon reasonable grounds and the evidence presented at the hearing. Written notice of
21 the decision shall be served upon the appellant within three days following the decision.

22 Service of all notices and decisions shall be by personal service or certified mail,
23 return receipt requested, and in the case of service by mail, the service shall be complete
24 upon the mailing of the notice or decision.

25 **"§ 89F-16. Facilities necessary.**

26 No license to conduct a massage establishment shall be issued unless an inspection
27 reveals that the establishment complies with each of the following minimum
28 requirements:

- 29 (1) Construction of rooms used for toilets, tubs, steam baths, and showers
30 shall be installed in accordance with the North Carolina Building
31 Code. All plumbing fixtures shall be installed in accordance with the
32 North Carolina State Plumbing Code.
33 a. Steam rooms and shower compartments shall have waterproof
34 floors, walls, and ceilings.
35 b. Floors of wet and dry heat rooms shall be adequately pitched to
36 one or more floor drains properly connected to the sewer,
37 except that dry heat rooms with wooden floors need not be
38 provided with pitched floors and floor drains.
39 c. A source of hot water must be available within the immediate
40 vicinity of dry and wet heat rooms to facilitate cleaning.
41 (2) The premises shall have adequate equipment for disinfecting and
42 sterilizing nondisposable instruments and materials used in
43 administering massages. The nondisposable instruments and materials
44 shall be disinfected after use on each patron.

- (3) Closed cabinets shall be provided and used for the storage of clean linens, towels, and other materials used in connection with administering massages. All soiled linens, towels, and other materials shall be kept in properly covered containers or cabinets to be kept separate from the clean storage areas.
- (4) Toilet facilities shall be provided in convenient locations. If employees and/or patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time.
- (5) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or in close proximity thereto. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.
- (6) All electrical equipment shall be installed in accordance with the requirements of the North Carolina Electrical Code.

"§ 89F-17. Operating requirements.

(a) The massage establishment, including all appliances and apparatuses, shall be kept clean and operated in a sanitary condition.

(b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(c) All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, fully covering the body (except for the arms and hands) from a point not to exceed four inches above the center of the kneecap to the base of the neck. A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to dressing rooms shall open inward and shall be self-closing.

(d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use and stored in a sanitary manner.

(e) No massage establishment granted a license under the provisions of this Chapter shall place, publish, or distribute or cause to be placed, published, or distributed, any advertisement, picture, or statement that is known, or through the exercise of reasonable care, should be known, to be false, deceptive, or misleading in order to induce any person to purchase or utilize any professional massage services.

"§ 89F-18. Persons under age 18 prohibited on premises.

No person shall permit any person under the age of 18 years to come or remain on the premises of any massage business establishment, unless the person is on the premises on lawful business.

"§ 89F-19. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide, or keep, or cause to be sold, given, dispensed, provided, or kept, any alcoholic beverage on the premises of any massage business.

"§ 89F-20. Hours.

1 No massage business shall be kept open for any purpose between the hours of 10:00
2 p.m. and 8:00 a.m.

3 **"§ 89F-21. Employment of masseur or masseuse.**

4 No person shall employ as a masseur or masseuse any person unless the employee
5 has obtained and has in effect a permit issued pursuant to this Chapter.

6 **"§ 89F-22. Inspections.**

7 The chief of police, sheriff, or an authorized representative shall be authorized to
8 make inspections of each massage business establishment for the purposes of
9 determining that the provisions of this Chapter are fully complied with. If, in the
10 opinion of the chief of police, sheriff, or an authorized representative, there is probable
11 cause to enter a massage establishment for the purpose of making inspections and
12 examinations pursuant to this Chapter, that person shall request the owner or occupant
13 to grant permission for the entry, and if refused, shall request the owner or occupant to
14 grant permission for the entry, and if refused, shall make application for a search
15 warrant showing why the warrant should be issued for the purposes set forth in this
16 Chapter.

17 **"§ 89F-23. Unlawful acts.**

18 (a) It shall be unlawful for any person holding a permit under this Chapter to
19 treat a person of the opposite sex, except upon the signed order of a licensed physician,
20 osteopath, chiropractor, or registered physical therapist, that shall be dated and shall
21 specifically state the number of treatments, not to exceed 10. The date and hour of each
22 treatment given and the name of the operator shall be entered on the order by the
23 establishment where the treatments are given and shall be open to inspection by the
24 police pursuant to G.S. 89F-22. Any disclosure or use of information for purposes other
25 than the enforcement of this Chapter shall be unlawful. The requirements of this
26 subsection shall not apply to treatments given in the residence of a patient, the office of
27 a licensed physician, osteopath, or registered physical therapist, chiropractor, or in a
28 regularly established and licensed hospital or sanitarium.

29 (b) It shall be unlawful for any person, in a massage establishment to place his or
30 her hand or hands upon, to touch with any part of his or her body, to fondle in any
31 manner, a sexual or genital part of any other person. Sexual or genital parts shall
32 include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva
33 or breasts of a female.

34 (c) It shall be unlawful for any person, in a massage establishment to expose his
35 or her sexual or genital parts, or any portions thereof, to any other person. It shall also
36 be unlawful for any person, in a massage establishment, to expose the sexual or genital
37 parts, or any portions thereof, of any other person.

38 (d) It shall be unlawful for any person while in the presence of any other person
39 in a massage establishment, to fail to conceal with a fully opaque covering, the sexual or
40 genital parts of his or her body.

41 (e) It shall be unlawful for any person owning, operating, or managing a massage
42 establishment knowingly to cause, allow, or permit in or about the establishment, any
43 agent, employee, or any other person under his control or supervision to perform acts
44 prohibited in subsections (a), (b), (c), or (d) of this section.

(f) It shall be unlawful for any permittee under this Chapter to administer a massage on an outcall basis as defined in G.S. 89F-2. Massages shall be administered solely within an establishment licensed under this Chapter. Any violation of these provisions shall be deemed grounds for revocation of a permit. The restriction on an outcall massage shall not apply to a permittee who performs an outcall massage upon a customer or client who is physically unable to travel to the massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering the treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity, or illness of said client or customer shall be kept by the licensee or person or employee designated by the licensee. Records shall be open to inspection by the police pursuant to G.S. 89F-22. The information furnished or secured as a result of an inspection shall be confidential. Any disclosure or use of information for purposes other than the enforcement to this Chapter shall be unlawful.

(g) It shall be unlawful for massage therapy to be administered within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. Nothing contained herein shall be construed to eliminate the requirements concerning the maintenance of premises, nor to preclude authorized inspection, whenever an inspection is deemed necessary by the police or other authorities.

"§ 89F-24. Sale or transfer or change of location.

Upon the sale, transfer, or relocation of a massage establishment, the license shall be null and void unless a transfer of the license is approved by the chief of police or sheriff as provided in G.S. 89F-26 within 60 days of the sale, transfer, or relocation.

"§ 89F-25. Name and place of business.

No person granted a license pursuant to this Chapter shall operate the massage establishment under a name not specified in the license, nor conduct business in any designation or location not specified in the license.

"§ 89F-26. Transfer of license or permit.

No license or permit shall be transferable unless and until an application for transfer has been submitted to and approved by the chief of police or sheriff. An application for a transfer shall be in writing and shall be accompanied by fees prescribed in G.S. 89F-5 and G.S. 89F-6. The written application for transfer shall contain the same information as required for an initial application for the license or permit and shall be issued to the chief of police or sheriff pursuant to G.S. 89F-7.

"§ 89F-27. Violation and penalty.

(a) Any person, except those persons who are specifically exempted by this Chapter, whether acting as an individual owner, employee of the owner, operator, or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee, or operator, or acting as a participant or worker, in any way, directly or indirectly, who gives massages or operates a massage establishment or provides any of the services defined in this Chapter without first obtaining a license or permit and paying a fee to do so to the city or county shall be guilty of a misdemeanor

1 and upon conviction, shall be punished by a fine not to exceed five hundred dollars
2 (\$500.00) or by imprisonment for a period not to exceed 30 days, or both.

3 (b) Any person who shall violate any provision of this Chapter shall be guilty of
4 a misdemeanor and upon conviction, shall be punished by a fine not to exceed five
5 hundred dollars (\$500.00) or by imprisonment for a period not to exceed 30 days, or
6 both.

7 **"§ 89F-28. Severability.**

8 If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for
9 any reason held invalid or unconstitutional by any court of competent jurisdiction, the
10 portion shall be deemed a separate, distinct, and independent provision and severable
11 from the remaining Chapter and the holding shall not affect the validity of the remaining
12 portions."

13 Sec. 2. This act becomes effective October 1, 1994.



NORTH CAROLINA BOARD of MASSAGE AND BODYWORK THERAPY

Mailing Address: PO Box 2539, Raleigh, NC 27602 Phone: 919.546.0050
Location Address: 150 Fayetteville Street Mall, Suite 1900, Raleigh, NC 27601

OPEN SESSION MINUTES

October 21, 2010; 10:00 am – 7:30 pm

Wachovia Capitol Center Building

150 Fayetteville Street, 13th Floor Large Conference Room, Raleigh, NC 27601

"The mission of NCBMBT is to regulate the practice of massage and bodywork therapy in the State of North Carolina to ensure competency, and to protect the public health, safety and welfare."

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the offices of the Board on October 21, 2010 at 10:00 a.m.

MEMBERS PRESENT

Ms. Jamie Huffman, Ms. Laura Allen, Ms. Nancy Toner Weinberger, Mr. Kevin Powell, Dr. Edwin Preston, Ms. Candace Frye and Mr. Robby Brown

MEMBERS ABSENT

None

OTHERS PRESENT

Mr. Charles Wilkins and Mr. Ben Thompson, Legal Counsel to the Board, and Ms. Bonnie Kennedy, Administrative Director

CHAIR

Ms. Huffman

RECORDING SECRETARY

Ms. Kennedy

CONFLICT OF INTEREST

Ms. Huffman asked if any Board member had any conflict of interest with any item on the meeting's agenda. Ms. Allen advised she would recuse herself from any discussion or decision regarding the National Certification Board. There being no additional conflict, the agenda was approved.

APPROVAL OF MINUTES

The Board approved its minutes of August 12, 2010.

TREASURER'S REPORT

The treasurer's report was approved as presented.

AUDIT

The audit of the Board's finances for July 1, 2009 through June 30, 2010 was reviewed and approved. Ms. Weinberger reported that she, as treasurer, will review bank reconciliation statements and approve all checks written by the Board office to provide a check and balance recommended in the audit.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

New Rules: .0629(9); .0629(10); .0630(11)

Rules .0629(9) and .0629(1) are approved and became effective November 1, 2010. Rule .0630 (11), when finally approved, will be in effect February 1, 2011. A public hearing is scheduled on the proposed amendment to Rule .0630 at 11 a.m. today.

Status of Amendments to Practice Act

There are no amendments to the Practice Act scheduled for consideration.

Amendments to Board's Guidelines

None

Disciplinary Hearings

There are two disciplinary hearings scheduled for 1:00 p.m. today.

Ms. Kennedy reported:

Licensee Report

10,509	licenses have been issued
7,208	active licenses

Renewal Report

There are 4,122 licensees scheduled to renew by November 1, 2010. There are 439 licenses that expired December 31, 2008 that are eligible to renew by December 31, 2010. There are 1,229 licensees that have renewed.

COMMITTEE REPORTS

Policy Committee

Ms. Huffman, Chair, reported the Committee met September 17, 2010 as set forth in the Committee's minutes.

Ms. Huffman further reported the Committee recommends that a liaison from the Board attend meetings of the Community College System's massage and bodywork therapy committee. Upon motion made, seconded and passed, the Board agreed that the Board chair or member of the Policy Committee serve as liaison from the Board to attend meetings of the Community College System's massage and bodywork therapy committee.

License Standards Committee

Ms. Huffman, Chair, reported the Committee met August 12, 2010 and August 13, 2010, as set forth in the minutes. Ms. Huffman further reported:

Substance Abuse and Mental Health Issues

Mr. Wilkins reported he had been in contact with representatives of the Board of Nursing to determine what programs the Board of Nursing might have that would assist the Board in identifying, treating, monitoring and resolving licensees with substance abuse or mental health issues. The Board of Nursing is reviewing its ability to provide services to the Board. This matter will remain in this Committee for further discussion when it hears further from the Board of Nursing.

Brian C. McCrimmon

The Committee reviewed Mr. McCrimmon's response regarding his criminal record and agreed that he should be interviewed by the Committee regarding his criminal record and moral character before making a final decision or recommendation.

Theresa Ann Saulter

The Committee reviewed Ms. Saulter's disciplinary record with the Board of Nursing. Ms. Saulter did not provide documentation to show whether her nursing license has been fully re-instated. The Committee asked that she provide documentation to show whether her nursing license has been fully re-instated or provide a statement that she no longer is seeking to have her nursing license re-instated.

Luxor Day Spa

The Committee reviewed: (1) Ms. Kennedy's April 16, 2010 Memorandum regarding a call from Ms. Connie Wilder, Chief of Operations for the North Carolina Board of Cosmetic Arts, regarding a massage given by Minh Ntong Thivu at Luxor Day; (2) the investigative report regarding a massage given by "Mindy" to the investigator at the Luxor Day Spa; (3) Mr. Wilkins' letter to Ms. Connie Wilder requesting that the Board of Cosmetic Arts take action on

the improper practices at Luxor Day Spa; and (4) Ms. Wilder's response that the allegations against the Spa were not within the jurisdiction of the North Carolina Board of Cosmetic Arts.

The Committee agreed a Cease and Desist Order should be sent to Luxor Day Spa regarding allowing unlicensed persons to provide massage and the Spa advertising "massage services" on its doors.

Rebekah Ann Saylor

The Committee met with Ms. Saylor to discuss her past criminal record. The Committee also met with her therapist Teresa Tinklenberg. The Committee agrees that Ms. Saylor may be granted a Conditional License on the condition that she agrees to provide copies of her criminal record with her next two license renewals.

Heather Barefoot

The Committee met with Ms. Barefoot to discuss her past criminal record. The Committee also met with her mother Betty Barefoot. The Committee asked that Ms. Barefoot provide additional information to address inconsistencies between the statements made by Ms. Barefoot and statements made by her mother.

NCBTMB School Compliance, Sanctions and Revocations

The Committee reviewed a report for NCBTMB regarding schools it had suspended or revoked. Ms. Allen advised the Committee that the NCBTMB will not allow a student who graduates from a school whose school code the NCBTMB has suspended or revoked to take the NCBTMB examinations. Applicants for a North Carolina license have graduated from several schools on the list, however, the applicants had taken and passed the NCBTMB exam so it is presumed the applicant had graduated from the school prior to the school having its school code suspended or revoked. There also seems to be a need to carefully review any applicant from the listed schools as well as any applicant from the listed schools who take and pass the MBLEX offered by the FSMTB. Ms. Kennedy will be advised of the Committee's discussion.

School Approval Committee

Ms. Weinberger, Chair, reported the Committee met August 25, 2010 as set forth in the minutes.

Ms. Weinberger further reported:

Power Point Presentation for Use by Schools

The Committee agreed the presentation needed some preliminary slides to be better understood by prospective students. The Committee is in the process of preparing those additional slides for consideration. Ms. Weinberger will upload the presentation for the Board to review. It was also agreed that schools cannot change the presentation but must present it in its entirety.

Increase Educational Standards

The Committee discussed the requirement of 90-629(4) that specifies that an applicant for a license must have "completed a training program consisting of a minimum of 500 in-class hours

of supervised instruction at a Board-approved school". The Committee reviewed the history of this requirement, the Body of Knowledge project, other states, COMTA and the possibility of a survey of the schools.

Curriculum Hours in Proprietary Schools

Mr. Wilkins was asked to inquire whether M&M Consulting can provide a list of the current curricula of the schools to determine what courses are being taught in addition to the core curriculum.

The Committee had previously agreed that a separate form for collecting curriculum data from schools should be developed and asked that M&M Consulting prepare a draft form for the Committee to review.

Natural Touch Massage School of Greensboro and Natural Touch Massage School of Hickory

Mr. Wilkins reported that both Natural Touch Massage Schools of Greensboro and Hickory have completed the "teach out" of their students and that most of them had taken their entry level exams and have been licensed. It appears the "teach outs" were completed as planned.

Distance Learning

In relation to distance learning, the Committee discussed the requirement of 90-629(4) that specifies that an applicant for a license must have "completed a training program consisting of a minimum of 500 in-class hours of supervised instruction at a Board-approved school". The 500 in-class requirement does not allow for distance learning in the core curriculum but distance learning may be used if the school program is in excess of 500 hours. It was agreed questions regarding this issue should be contained in the survey to schools being developed.

Clinic Hours In School Curriculum

The Committee reviewed Rules .0620(3) and .0620(2)(f) regarding use of students in school clinics. Mr. Wilkins was asked to request that M&M Consulting provide a chart showing the number of hours in clinic compared with the number of hours in the school's program. It was also agreed to include a question about this in the school survey, if necessary.

Student Compensation Prohibited

The Committee reviewed Rule .0626 and discussed prior decisions by the Board regarding student compensation. It was agreed student compensation would continue to be decided on a case-by-case basis.

NCBTMB Examination Sunset

The Committee discussed the decision of the Board to stop accepting the NCBTMB examinations after December 31, 2010. Ms. Allen recused herself from the discussion. The remainder of the Committee agreed the issue should be placed on the Board's agenda for October.

Accreditation by USDOE of Board's School Approval Process

The Committee discussed the possibility and advisability of the Board being accredited by the US Department of Education. After gathering more information on this issue, the Committee determined this was not possible.

Establishment Regulation Committee

Mr. Powell, Chair, reported the Committee met August 13, 2010 as set forth in the minutes.

Massage Establishment Regulation

The Committee reviewed the Florida statute that authorized the Florida Massage Board to regulate establishments. The Committee also reviewed applications for a massage therapy establishment license from Florida, Hawaii, Missouri and Nebraska, states that currently license massage therapy establishments. The Committee also reviewed Rule .0513 that provides facility requirements for LMBTs.

A primary concern is the definition of "massage therapy establishment". The Committee does not believe the definition should include LMBTs but should include establishments that offer massage therapy services that are not owned or operated by LMBTs.

The Committee reviewed a draft of an amendment to the North Carolina Practice Act to allow the Board to regulate establishments. Mr. Wilkins will draft a definition of "massage therapy establishment" for the Committee to consider. The Committee plans to meet with representatives of AMTA-NC Chapter to review a draft of an amendment to the Practice Act that would define "massage therapy establishment" and provide for licensure by the Board of such entities.

Communications Committee

Ms. Weinberger, Chair, reported the Committee met September 23, 2010 as set forth in the minutes.

Ms. Weinberger further reported:

Public Education Campaign

The Committee discussed ideas for the public education campaign. The Committee agreed the primary message the Board should seek to send to the public is: "If you are getting a massage the therapist must be licensed." Ways to send this message were discussed and it was agreed (1) the Board's webpage should have a separate Public Section that provides basic information about massage and bodywork therapy in terms and in a manner that is non-technical, easy to understand, and easy to find; (2) the Board should not be involved in Social Media Networks, such as YouTube or Facebook as this would not be professional; and (3) the Committee should meet with a knowledgeable person, such as Jill Hammergren, to discuss the feasibility of using press releases and ads in newspapers, internet, TV, radio or billboards.

Ms. Huffman suggested that the Committee continue to consider using You Tube as a possible public education campaign tool as its content and use are different than other social networking sites. The budget for the public education campaign is \$20,000.

December 2010 Newsletter

The December newsletter is being prepared and a draft should be available for review by the December Board meeting.

Jurisprudence Examination Committee

Mr. Wilkins reported that he and Ms. Weinberger had been working on the questions for the Jurisprudence Learning Exercise and that a memorandum of the status of the exercise with all 59 questions and instructions will be provided to the Board today for review and comment by November 22, 2010.

Licensing Boards Coordination Committee

No written report.

OLD BUSINESS

FSMTB Conference

Ms. Huffman and Mr. Powell reported on the FSMTB conference they recently attended and passed out some meeting materials. A more detailed written report will follow. Highlights of the conference included: communicating and sharing with other member boards; learning of the progress of the Federation; obtaining written resources and data for reference; licensure vs. certification; MBLEX history; Federation database that is available to member boards and needs populating with data; development of a Model Practice Act; reports on Florida and California fraudulent schools; distance learning; approving continuing education content and instructors; definition of massage therapy; and regulation or exemption of modalities.

Ms. Huffman and Mr. Powell both thought attending the conference was most beneficial and encouraged other Board members to try and attend in 2011.

Upon motion made, seconded and passed, the Board agreed to cooperate with the Federation in populating with Board data the various databases being developed by the Federation.

Public Hearing on Rule .0630(20)

Following proper notice, the Board conducted a public hearing on its proposed amendment to Rule .0630 by adding a new subsection (20). No one appeared or spoke during the Public Hearing. The proposed amendment to Rule .0630 will be presented to the Rules Review Commission for further review.

FARB Forum

Ms. Huffman reported several Board members had expressed interest in attending the FARB forum in New Orleans and for those interested to confirm with her their continued plan to attend. She reminded anyone attending conferences that they must submit pre-approval forms prior to booking flights or making reservations and that they are responsible for booking their travel. However, Ms. Kennedy is

registering and paying for the FARB conference for Mr. Powell, Mr. Thompson, Ms. Allen, Ms. Huffman and Ms. Weinberger to try and secure a lower rate for the five attendees.

CAC Conference

Dr. Preston is planning to attend the Citizens Advocacy Council conference in Washington, D.C. on November 11 and 12, 2010 as a representative of the Board.

Strategic Planning Session

Ms. Huffman announced the 2011 Strategic Planning Session is scheduled for Friday, January 21 and Saturday, January 22, 2011 at the Rizzo Center in Chapel Hill.

FSMTB

Ms. Susan Beam, treasurer of FSMTB, announced the Federation is moving forward with a task force on the possibility of establishing a program for approving continuing education providers and continuing education courses.

NCBTMB

The NCBTMB is investigating schools to see if they are legitimate and are not havens for human trafficking, prostitution or diplomas for sale. If problems are found, the NCBTMB can suspend or revoke the school's "code." The Board reviewed a report from the NCBTMB of schools whose codes had been suspended or revoked.

Association of Structural Integrators

Ms. Marsha Presnell-Jennette addressed the Board regarding her written request to the Board and a possible change to the Practice Act to allow the Board to license structural integrators and accept the ASI entry level examination.

Vapocoolant device

The Board discussed the request by Gebauer Company that the Board determine whether certain Class I Medical Devices known as vapocoolant sprays manufactured by Gebauer Company are proper to be used by LMBTs. Following a review of the materials on the subject and a report by Ms. Candace Frye, the Board was of the opinion that two vapocoolant devices manufactured or sold by Gebauer known as "Spray and Stretch" and "Instant Ice", are proper for LMBTs to use so long as the LMBT is trained to use the device.

Board of Chiropractic Examiners

The Board reviewed an email from Ron Cohn, D.C. requesting that the Board consider accepting chiropractic continuing education courses taken by chiropractic physicians who are also LMBTs and by LMBTs who are working with chiropractic physicians as courses for renewal of their massage and bodywork therapy license. The issue was referred to the Policy Committee to be considered along with the other issues regarding continuing education courses and continuing education providers being considered by the Board.

NEW BUSINESS

2011 Board Meeting Schedule

The Board reviewed and approved its meeting schedule for 2011. It was noted that Ms. Allen will not attend the April meeting and Ms. Weinberger will not attend the June meeting. When the FSMTB meeting date is established the Board may consider changing the date of the October meeting.

Bruising a Healthy Client

The Board considered an email from a school director asking whether bruising a healthy client is considered neglect or incompetence that should be reported to the Board. The Board agreed that bruising during or following a massage or bodywork therapy session is not in and of itself proof the LMBT was negligent or incompetent. However, bruising during or following a massage or bodywork therapy session is some evidence of negligence or incompetence and should raise a concern by the LMBT. The LMBT should investigate with the client the cause and extent of the bruising to determine if the LMBT was negligent or incompetent or whether there was some other cause for the bruising. If it appears the LMBT was negligent or incompetent, the incident should be reported to the Board.

RECESS

The Board took a lunch recess from 12:10 p.m. to 1 p.m.

RESUME OPEN SESSION

The Board returned to Open Session at 1:00 p.m.

John Stiner

The Board conducted a disciplinary hearing regarding allegations Mr. Stiner, LMBT violated the Massage and Bodywork Therapy Practice Act and Rules of the Board by engaging in inappropriate conduct with a client during a massage and bodywork therapy session.

Acceptance of NCBTMB Exams after December 31, 2010

The Board reviewed written documents from the FSMTB, the NCBTMB, the Alliance for Massage Therapy Education and the AMTA and received verbal statements from a representative of the FSMTB and a representative of the NCBTMB regarding the Board's Guideline 1.8.4 that limits the Board's acceptance of NCBTMB exams after December 31, 2010. Following a full discussion of the issue and a review of the documents and statements presented, the Board upon motion made, seconded and passed, agreed to amend its Guideline 1.8.4 by deleting the words "who is from a state that does not regulate the practice of massage and bodywork therapy."

PUBLIC COMMENT

The Board received comments from the public.

April Turner

The Board conducted a disciplinary hearing regarding allegations Ms. Turner, LMBT violated the Massage and Bodywork Therapy Practice Act and Rules of the Board by negligently and incompetently massaging a client during a massage and bodywork therapy session causing bruising and injury to the client.

CLOSED SESSION

Upon motion duly made, seconded, and passed, and pursuant to NCGS 143-318.11(a)(1), (3) and (7) as well as NCGS 143-318.18(6), the Board went into Closed Session at 5:30 p.m.

RETURN TO OPEN SESSION

The Board returned to Open Session at 7:30 p.m.

John Stiner

The Board reported it had reviewed the evidence presented during Mr. Stiner's hearing and was of the opinion that Mr. Stiner had violated Rule .0502(2) by failing to deliver treatment to his client that ensured her safety, comfort and privacy. The Board Ordered that Mr. Stiner (1) be placed on probation for two years beginning the day he is served by registered mail with a copy of the Order of the Board; (2) complete an anger management course approved by the Board within six months of being on probation; (3) not violate the North Carolina Massage and Bodywork Therapy Practice Act or the Rules of the North Carolina Board of Massage and Bodywork Therapy during his period of probation; (4) obtain six in-class hours of continuing education approved by the Board in North Carolina law, rules and ethics, roles, boundaries, and client communication within six months of being on probation, in addition to the continued education required to renew his license; and (5) pay a civil penalty of \$500 and costs of \$250 within six months of being on probation.

April Turner

The Board reported it had reviewed the evidence presented during Ms. Turner's hearing and was of the opinion that Ms. Turner had violated N.C.G.S. 90-633(7), Rule .0502 subsections (1), (2) and (3), and Rule .0503(4) by delivering treatment to his client that caused serious bruising and injury to her buttocks, arms and back. The Board Ordered that Ms. Turner shall (1) have her license suspended for ninety days beginning the day she is served by registered mail with a copy of the Order of the Board (2) be placed on probation for two years beginning the day she is served by registered mail with a copy of the Order of the Board; (3) not violate the North Carolina Massage and Bodywork Therapy Practice Act or the Rules of the North Carolina Board of Massage and Bodywork Therapy during her period of probation; (4) obtain twenty four in-class hours of continuing education approved by the Board, with six of the hours being in North Carolina law, rules and ethics, roles, boundaries, and client communication, by her license renewal date of November 1, 2011, in addition to the continued education required to renew her license; and (5) pay a civil penalty of \$1000 and costs of \$250 during her period of suspension.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 7:35 p.m.

Ms. Jaime Huffman, Chair

Nancy Toner Weinberger



NORTH CAROLINA BOARD of MASSAGE AND BODYWORK THERAPY

Mailing Address: PO Box 2539, Raleigh, NC 27602 Phone: 919.546.0050
Location Address: 150 Fayetteville Street Mall, Suite 1900, Raleigh, NC 27601

Open Session Minutes

April 29, 2011; 10:00 am – 12:00 pm

Wachovia Capitol Center Building

150 Fayetteville Street, 13th Floor Large Conference Room, Raleigh, NC 27601

"The mission of NCBMBT is to regulate the practice of massage and bodywork therapy in the State of North Carolina to ensure competency, and to protect the public health, safety and welfare."

TIME AND PLACE

The North Carolina Board of Massage and Bodywork Therapy met in Open Session in the offices of the Board on April 29, 2011 at 10:00 a.m.

MEMBERS PRESENT

Ms. Jaime Huffman, Ms. Candace Frye, Ms. Laura Allen, Ms. Nancy Toner Weinberger, Mr. Kevin Powell and Dr. Edwin Preston

MEMBERS ABSENT

Mr. Robby Brown

OTHERS PRESENT

Mr. Charles Wilkins, Legal Counsel to the Board, Ms. Bonnie Kennedy, Administrative Director and Ms. Elizabeth Welden, Administrative Assistant

CHAIR

Ms. Huffman

RECORDING SECRETARY

Ms. Welden

CONFLICT OF INTEREST

Ms. Huffman asked if any Board member had any conflict of interest with any item on the meeting's agenda. Ms. Allen advised she would recuse herself from any discussion or decision regarding the Federation of State Massage Therapy Boards. There being no additional conflict, the agenda was approved.

APPROVAL OF MINUTES

The Board approved its minutes of February 17, 2011.

TREASURER'S REPORT

The treasurer's report was approved as presented.

ADMINISTRATIVE REPORTS

Mr. Wilkins reported:

Rule .0624

Rule .0624, Standards of Professional Conduct, is recommended for amendment to comply with the directive by the Board that professional conduct should apply to all school facilities where staff and students are performing therapeutic treatments. A public hearing on the proposed rule change will be held today at 11:00 a.m. Public comment ends June 5, 2011. The Board may adopt the rule change at its June 2011 meeting for an effective date of August 1, 2011.

Status of Amendments to Practice Act

There are no amendments to the Practice Act scheduled for consideration.

Disciplinary Hearings

There are no disciplinary hearings scheduled for today.

Legislative

The Naturopathic Doctors Licensing Act and Clinical Exercise Physiologist License are current bills presented in the legislature and could effect the practice of massage therapy.

Ms. Kennedy reported:

Licensee Report

10,972 licenses have been issued
7,079 active licenses

Renewal Report

There are 4,122 licensees scheduled to renew by November 1, 2010. There are 3,496 licensees that have renewed of which 548 were late.

COMMITTEE REPORTS

Policy Committee

No written report.

License Standards Committee

Ms. Allen reported the Committee met February 18, 2011 and April 28, 2011 as set forth in the minutes.

School Approval Committee

Ms. Weinberger reported the Committee met by conference call on April 25, 2011 as set forth in the minutes. She further reported:

Mount Eagle Institute

The Committee reviewed the correspondence between the Board and Mount Eagle Institute following review by M&M Consulting of Mount Eagle's application for school approval. Following completion of the application, M&M Consulting will conduct a site visit of the school.

Rule .0612

The Committee considered whether Rule .0612 should be amended to further specify requirements for a prospective teacher of massage and bodywork therapy to be trained in teaching methods. M&M Consulting reviews the credentials of prospective teachers, including their stated teacher training, and recommends whether the teacher should be approved. M&M Consulting advised they could conduct an assessment (possibly including personal observation) and review of the various teacher training courses offered in North Carolina to determine whether the teacher training is adequate to sufficiently train prospective teachers in teaching methods, if the SAC and Board thought that was necessary. Teacher training takes several different forms, from a 200+ in class course to "on the job" training at the school where the teacher plans to teach. The Committee agreed it would ask M&M Consulting to include, along with its summary of each school's renewal application, the teacher training form provided in school renewals for the SAC to review. The Committee would like to see what teacher training schools are currently offering. The issue will remain in Committee for further discussion.

Miller-Motte College-Greenville Site Visit

The review of M&M Consulting's report of their site visit to Miller-Motte College-Greenville was tabled to the Committee's next meeting to give the Committee time to review the report.

Maiden School of Massage and Bodywork

Ms. Weinberger recused herself from any discussion or vote on Maiden School of Massage and Bodywork due to her personal friendship with the owner of the school. Upon motion made, seconded and passed, Maiden School of Massage and Bodywork was approved.

2011 School Renewals

Renewal packages were sent out in December 2010 for the 2011 school renewals and have been received from fifteen of the eighteen approved schools that are scheduled to renew this year. However, three schools, Blue Ridge Healing Arts Academy, Privai Academy and The Whole You School of Massage, scheduled to renew this year have closed. Two schools, Miller-Motte of Cary and TMTI were granted two year renewals in 2010 and do not have to renew until 2012. Letters have been sent to those schools that need to provide additional information or clarification for their renewals. It is anticipated M&M Consulting will be able to provide a summary of the renewals to the Committee by late May or early June so the Committee will have the information for its next meeting and can make a recommendation to the Board in June whether to approve the renewals and, if so, whether to approve the schools for one or two years.

Strategic Planning Goals

The Committee reviewed its goals from the 2010 Strategic Planning Retreat and agreed the Committee met its goals. The Committee discussed goals for 2011 and agreed the issue of teacher training should be considered.

Establishment Regulation Committee

Ms. Powell, Chair, reported the Committee met by conference call on March 30, 2011, as set forth in the minutes. He further reported:

Massage Establishment Regulation

It was agreed that regulation of establishments that provide massage and bodywork therapy services will be a substantial administrative and financial commitment for the Board and can only be accomplished through license fees charged to the regulated establishments. Mr. Wilkins reported the consensus from Ed Sansbury, Kim Moore, Ann Christian and himself was that the Practice Act should not be opened in 2011 for the purpose of obtaining authority to charge a fee for licensing massage therapy establishments in that the chance of passage was remote due to the economic crisis and the affect on small businesses.

It was agreed the Board should begin to gather data of massage establishments in North Carolina to determine the number of establishments and to have data available to the Board for its consideration should the Board seek authority from the Legislature to charge fees to license massage establishments in the future. The Committee discussed the possibility of a self-reporting process for massage establishments as an initial step once an adequate database of establishments is developed.

The Committee also agreed the Board should gather information from disciplinary actions that involve massage establishments to illustrate the problems the Board encounters when it is unable to discipline massage establishments and to illustrate the risk to the public.

The Committee discussed the Florida statute that authorizes the Florida Massage Board to regulate establishments and also reviewed applications for massage therapy establishment licenses from Florida, Hawaii, Missouri and Nebraska, states that currently license massage therapy establishments. The Committee noted that these states license individual therapists and establishments that offer massage therapy services whether or not the establishments are owned or operated by LMBTs.

The definition of "massage therapy establishment" from Florida states: "Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage.

Threshold questions for the Committee are:

- (1) What is the Board attempting to achieve by licensing massage therapy establishments?
- (2) How will it be accomplished?
- (3) What will be the initial and ongoing administrative burden and expense?
- (4) Are the administrative burden and expense necessary to protect the public?
- (5) Are the administrative burden and expense cost effective?

The Board wants to determine the estimated cost in developing a database of massage establishments in North Carolina.

Communications Committee

Ms. Weinberger reported the Committee met by conference call on April 27, 2011, as set forth in the minutes. She further reported:

Public Education Campaign

There was discussion of the feasibility of using press releases, ads in newspapers, internet, TV, radio or billboards for the public education campaign. The primary message to the public is: "If you are getting a massage the therapist must be licensed." The Committee discussed the anticipated cost/benefit of the various methods of getting the message out.

It was agreed to develop a public page to the website as a first step of the campaign and as a basis to which further public education can be directed.

Jurisprudence Examination Committee

Ms. Weinberger reported the jurisprudence exam should be on the NCBMBT website this year.

Licensing Boards Coordination Committee

Mr. Powell reported the Committee would like to meet with the NC Board of Chiropractic Examiners.

OLD BUSINESS

FSMTB Conference

Ms. Huffman reported the FSMTB 2011 conference will be held in Los Angeles, CA, October 14-16, 2011. Ms. Huffman advised the Board members to send an email if interested in attending.

CAC meeting

The CAC meeting will be held October 20 & 21, 2011 in Washington, DC. Ms. Huffman advised the Board members to send an email if interested in attending.

Strategic Planning Session

The 2011 Strategic Planning Session will be held April 30, 2011 at the Rizzo Center in Chapel Hill.

FSMTB exam review

Mr. Powell reported on the meeting held on February 18-20, 2011 in Chicago, IL. Mr. Powell reported the exam review process is six stages from the time the exam question is proposed. Mr. Powell also reported the Board will benefit by providing input to the exam.

NEW BUSINESS

FSMTB model Practice Act and continuing education approval program

The FSMTB information on the model Practice Act and continuing education approval program were included in the Board packets for review.

Alliance for Massage Therapy Educations News Release

The Alliance for Massage Therapy Education news release was included in the Board packet for review.

Zero Balancing

The Board discussed whether zero balancing is a modality under our Practice Act and whether it is manipulation of the soft tissue. Upon motion made, seconded and passed, the Board approved Zero Balancing as a modality that would require a massage and bodywork therapy license.

Community College System – Rene Batts

Ms. Batts thanked the Board for working with the community colleges on their attestation letters. She also advised it is too early to determine whether budgetary issues will affect the Community Colleges.

Aubrey Marett

Ms. Marett appealed the decision by the Board to deny her application for licensure and made a presentation to the Board.

September Board Meeting

The Board agreed to change its September meeting from September 29, 2011 to September 22, 2011.

PUBLIC COMMENT

The Board received comments from the public.

CLOSED SESSION

Upon motion duly made, seconded, and passed, and pursuant to NCGS 143-318.11(a)(1), (3) and (7) as well as NCGS 143-318.18(6), the Board went into Closed Session at 11: 20 p.m.

ADJOURNMENT

Upon motion duly made, seconded and passed, the meeting was adjourned at 12:00 p.m.

Ms. Jaime Huffman, Chair

Nancy Toner Weinberger, Treasurer



Coalition of Massage & Bodywork CE Instructors

August 15, 2015

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

Dear Commission Members,

The *Coalition of Massage & Bodywork CE Instructors* is an informally structured group of massage and bodywork continuing education instructors based in North Carolina. Our primary mission is to keep North Carolina massage & bodywork continuing education instructors informed and influence the standards of continuing education. We have occasional meetings when we see the need, and communicate regularly through email. Representatives of our group attend the NC *Board of Massage & Bodywork Therapy* meetings and we provide input to the Board on issues that we feel are important to the profession.

We would like to express our concerns about the permanent rule change submission regarding the designation of Approved Providers for Continuing Education, specifically 21 NCAC 30 .0702 (7). This rule is scheduled for an RRC hearing September 17, 2015.

The current rule and proposed change is:

~~"Approved provider. -- One that has been granted the designation of "Approved Provider for Continuing Education" by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). One that has been approved by any entity with which the Board has reached a contractual agreement for the approval of continuing education providers and courses."~~

Our objection is based on the grounds that a substantive change is proposed to the current rule that now makes it more vague and introduces a process that is unspecified.

The rule lacks specificity in that it does not state any standards for what kind of entity or entities the Board would contract with.

The rule should state the procedure for designating that entity and where the contract and the name of that entity can be viewed by the public.

Furthermore, immediate adoption of this rule could result in disruption of services because the Board does not have a contract with any entity at this time. The *National Certification Board for Therapeutic Massage and Bodywork* (NCBTMB), who has provided the approval of Continuing Education Providers in North Carolina since massage licensure began, has offered to contract with the Board but the Board has not yet followed through. At this time all continuing education providers in North Carolina are approved by the NCBTMB, as required by the original rule .0702 (7). If this new permanent rule is adopted on September 17, 2015 without a contract with the current approving agency, NCBTMB, then there will be no approved continuing education providers to give massage and bodywork therapists their required CE hours in time for license renewal on October 31, 2015.

The entity or entities that this rule designates is crucial to the entire continuing education program for licensed massage and bodywork therapists. Changing that entity has a major effect on all teachers of continuing education, as well as licensed therapists. Therefore we trust that the process of designating that entity will be open, orderly, and allow input from the professional community that will be directly affected by any changes.

Thank you for your consideration of the Coalition's concerns.

Sincerely,

Nancy Toner Weinberger
Spokesperson, *Coalition of Massage & Bodywork CE Instructors*
919-562-1548
weinberger@mindspring.com
<http://www.coalitionofmbceinstructors.org/>

The following Coalition members have requested to have their electronic signatures affixed to this letter:

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Coalition of Massage & Bodywork CE Instructors

August 7, 2015

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

Dear Commission Members,

The *Coalition of Massage & Bodywork CE Instructors* is an informally structured group of massage and bodywork continuing education instructors based in North Carolina. Our primary mission is to keep North Carolina massage & bodywork continuing education instructors informed and influence the standards of continuing education. We have occasional meetings when we see the need, and communicate regularly through email. Representatives of our group attend the NC *Board of Massage & Bodywork Therapy* meetings and we provide input to the Board on issues that we feel are important to the profession.

We would like to express our concerns about the revisions made to a set of permanent rules submissions regarding licensing massage establishments, specifically 21 NCAC 30 .1001 – 21 NCAC 30 .1015. These rules are scheduled for an RRC hearing September 17.

Our objection is based on the grounds that a substantive change was made to the original proposal after the public comment period and public hearing; these changes are not acceptable.

The removal of .1001(2)(d) (exemption of sole practitioners) from the original proposal for Establishment Licensure results in two problems and should be re-instated.

1. Sections .1004 (Massage Establishment Operations) and .1009 (Sexual Activity Prohibited) of the proposed Establishment License are redundant with section .0500 (Standards of Professional Conduct) of the existing Massage and Bodywork License rules. The Massage and Bodywork License already regulates the facility and conduct of all licensed therapists. The proposed Establishment License does not add any substantive regulation pertaining to the practice and conduct of individual therapists. Therefore, to

require sole practitioners, as defined in .1001(4), to obtain an Establishment License is redundant and double regulation and they should be exempt from the Establishment License as was the original intent of the proposal.

2. .1001(4) (Definition of sole practitioner) is in conflict with .1003(1) (Requirements for Licensure) rendering the license not applicable to sole practitioners. The first qualification for being licensed as an Establishment is the applicant employs licensed therapists. By definition sole practitioners do not employ other therapists so the license is not applicable to sole practitioners. This requirement indicates that the target for the Establishment License is businesses that employ therapists. Therefore, sole practitioners should be exempt from the establishment license.

The *Coalition of Massage & Bodywork CE Instructors* is not opposed to an establishment license for businesses that employ therapists. But we do object to requiring sole practitioners to have an establishment license on the grounds that the facility and conduct of all individual therapists are already regulated by the Massage and Bodywork License. Having to maintain two licenses with essentially the same regulations is an unnecessary burden without any benefit to the public.

Thank you for your consideration of the Coalition's concerns.

Sincerely,

Nancy Toner Weinberger
Spokesperson, *Coalition of Massage & Bodywork CE Instructors*
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<http://www.coalitionofmbceinstructors.org/>

The following Coalition members have requested to have their electronic signatures affixed to this letter:

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Coalition Supporters who also wished to sign this letter:

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Associated Bodywork & Massage Professionals

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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