

Hammond, Abigail M

From: E. Ann Christian <e.ann.christian@gmail.com>
Sent: Wednesday, March 08, 2017 9:07 AM
To: rrc.comments; Charles Wilkins
Subject: Fwd: Proposed Rule 21 NCAC 30 .0906
Attachments: RESOLUTION-NCBMBT-17.doc

All,

This is being re-sent to comply with the simultaneous sending requirement stating that the comments must be sent to the agency's rule-making coordinator, Mr. Charles Wilkins, Legal Counsel to the NCBMBT (Rule 26 NCAC 05 .0103[c]).

Ann Christian

----- Forwarded message -----

From: E. Ann Christian <e.ann.christian@gmail.com>
Date: Tue, Mar 7, 2017 at 4:58 PM
Subject: Fwd: Proposed Rule 21 NCAC 30 .0906
To: rrc.comments@oah.nc.gov

----- Forwarded message -----

From: E. Ann Christian <e.ann.christian@gmail.com>
Date: Tue, Mar 7, 2017 at 4:54 PM
Subject: Proposed Rule 21 NCAC 30 .0906
To: rrc.comments@oah.gov

Date: March 7, 2017

To: Members and Staff
NC Rules Review Commission

From: E. Ann Christian
Legal Counsel
NC Chapter of the American Massage Therapy Association

Re: Proposed Rule 21 NCAC 30 .0906 (SUMMARY SUSPENSION)

Please find attached a Resolution adopted by the AMTA-NC Board on January 22, 2017 in opposition to proposed Rule 21 NCAC 30 .0906 (SUMMARY SUSPENSION) that was filed by the NC Board of Massage and Bodywork Therapy and is scheduled for review by the Rules Review Commission during its upcoming March meeting.

The proposed Rule fails to fall within the authority delegated to the NC Board of Massage and Bodywork Therapy. The authority cited for this proposed Rule is simply the Board's general authority to "(i)ssue, renew, deny, suspend, or revoke licenses under this Article()" (G.S. 90-626[3]), recognizing the Board's authority to take action in the ordinary course of business of the Board. Nowhere does the Board cite authority for this extraordinary, expedited action without a due process right to hearing for a extended period of time (sixty [60] days), thus depriving a licensee the opportunity to provide services to clients and the opportunity to earn his or her livelihood.

Furthermore, the proposed Rule is not reasonably necessary to implement or interpret the Board's ability to protect the public as set forth in its general authority to deny, suspend, or revoke licenses. This method of implementation is unnecessary in that the Board clearly possesses the means to take immediate action via its power to make application to superior court for an order enjoining a violation of the Massage and Bodywork Therapy Practice Act and, in addition, it may impose civil penalties.

Finally, the requirement that the Board proceed down the avenue of injunctive action is consistent with the recently decided North Carolina Board of Dental Examiners v Federal Trade Commission case. This case requires occupational licensing boards that seek state-action immunity to be governed by the active supervision of the State. Requiring the Board of Massage and Bodywork Therapy to take this avenue of action insures that this Board composed of a controlling number of participants in the occupation that the Board regulates receive adequate oversight by the courts.

Please contact me if I can be of further assistance with the review of this proposed Rule by the Staff or Members of the Rules Review Commission.

Cc: CWilkins@bws-law.com

RESOLUTION: CONCERNING THE AMERICAN MASSAGE THERAPY ASSOCIATION--NORTH CAROLINA CHAPTER OPPOSITION TO PROPOSED RULE 21 NCAC 30 .0906, CAPTIONED “SUMMARY SUSPENSION”

WHEREAS, the North Carolina Chapter of the American Massage Therapy Association has reviewed proposed Rule 21 NCAC 30 .0906, captioned “SUMMARY SUSPENSION” governing the authority of the North Carolina Board of Massage and Bodywork Therapy that reads as follows:

The Board may impose an immediate suspension of licensure in cases where the continued practice of a massage and bodywork therapist poses an imminent and continuing threat to public health, welfare or safety so long as the Board schedules a hearing to occur within 60 days of the effective date of the suspension order.

WHEREAS, the authority cited for this proposed Rule is insufficient due to the fact that it is only general authority granting the North Carolina Board of Massage and Bodywork Therapy the power to “[i]ssue, renew, deny, suspend, or revoke licenses under this Article[]” (N.C.G.S. 90-626[3]) as opposed to specific authority required for the promulgation of a Rule to shortcut due process with immediate and summary suspension;

WHEREAS, this authority for summary suspension would grant the North Carolina Board of Massage and Bodywork Therapy sweeping powers that may be imposed in an arbitrary and capricious manner due to the absence of clear and concisely-defined precedent specific conditions;

WHEREAS, the livelihood of a massage therapist would be threatened by granting the North Carolina Board of Massage and Bodywork Therapy the authority to impose an immediate suspension of a license without providing the Respondent massage therapist the opportunity to provide a defense as provided by the Constitutional guarantee of due process of law;

WHEREAS, the United States Supreme Court judgment handed down on March 30, 2015 after hearing the North Carolina State Board of Dental Examiners v Federal Trade Commission case, clearly mandates to North Carolina that all occupational licensing boards must be governed by active supervision by the State;

WHEREAS, this authority for summary suspension is unnecessary because the North Carolina Board of Massage and Bodywork Therapy may exercise the power to suspend a license in the face of an imminent and continuing threat to public health, welfare or safety with active State supervision in place pursuant to the authority granted it by N.C.G.S. 90-634 authorizing it to

make application to superior court for an order enjoining a violation of Article 36 of the North Carolina General Statutes governing massage and bodywork practice.

WHEREAS, currently additional enforcement authority exists whereby the North Carolina Board of Massage and Bodywork Therapy may impose civil penalties pursuant to Section 90-634.1 of the North Carolina General Statutes where the practice of a massage and bodywork therapist could result in harm or injury to the public (N.C.G.S. 90-631.3[a][5]).

THEREFORE, BE IT RESOLVED that the North Carolina Chapter of the American Massage Therapy Association requests that the North Carolina Board of Massage and Bodywork Therapy vote not to adopt the proposed Rule 21 NCAC 30 .0906, captioned "SUMMARY SUSPENSION" to the end that this Rule will not be adopted into the North Carolina Administrative Code as the law of this State.