RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: N.C. BOARD OF MASSAGE AND BODYWORK THERAPY

RULE CITATION: 21 NCAC 30 .0624

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

 Extend the period of review

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

COMMENT:

*The Board exceeds the authority it cites (and probably authority it possesses) with the provisions in (a) and (b) directed towards all “instructional staff, administrative staff and students” at least in so far as they seem to apply to persons not licensed (or seeking licensure) by the board.*

*While this problem might be easily solved by some rewriting it is important to note and require that the board not seem to be regulating, nor attempting to regulate the behavior of persons the board does not have authority over.*

*In making this statement I am assuming that not all administrative staff, perhaps not even all faculty members or students, are subject to the board’s authority.*

*In (a)(1) line 7 the rule requires that all the named individuals, not just licensed ones, conduct themselves “in accordance with Standards of Conduct” set in other board rules regulating the behavior of licensees.*

*In (b) lines 17 - 19 the rule forbids “members of the instructional staff or administrative staff of the school” – which again would seem to include non-licensed individuals – from engaging in certain conduct, i.e., “sexual activity with students.” The board has no authority to regulate any activity by any persons not licensed by the board. It certainly seems that many members of a school’s administrative staff, if not members of the instructional staff, might not be licensed persons.*

*The board might have the authority to write a more restrictive rule requiring the schools, over which it does have some regulatory authority, to adopt policies concerning this issue, perhaps even requiring them to prohibit such activity. But its authority over schools is much more restricted. There is no standard that a school exhibit “good moral character” or “moral turpitude” such as must be shown by an individual applicant or licensee. The standards in G.S. 90-631 governing massage and bodywork therapy schools seem to focus on curriculum standards, the skills it imparts to students, and standards for faculty and learning resources and not so much on the conduct of faculty or administration that may not be directly related to the practice of massage and bodywork therapy.*

§ 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.

(5a)      Approve and regulate massage and bodywork schools, not otherwise exempt from the requirements of Board approval, by formulating the criteria and standards for approval of massage and bodywork schools, investigating massage and bodywork schools applying for approval, issuing approvals to massage and bodywork schools that meet the standards established by the Board, providing periodic inspections of approved massage and bodywork schools, and requiring periodic reports of approved massage and bodywork schools.

(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)        Pursuant to the maximum amounts set by this Article and other specific authority authorizing fees, establish reasonable fees for applications for examination, certificates of licensure and renewal, approval of massage and bodywork therapy schools, 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.

(14)      Assess civil penalties pursuant to G.S. 90‑634.1.

(15)      Assess the costs of disciplinary actions pursuant to G.S. 90‑634.1(d).

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.  (1998‑230, s. 10; 2003‑348, s. 3; 2008‑224, ss. 6, 7.)

§ 90‑631.  Massage and bodywork therapy schools.

(a)        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, not otherwise exempt from the requirements of Board approval, shall submit an application for approval to the Board. If a massage and bodywork therapy school offers training programs at more than one physical location, each location shall constitute a separate massage and bodywork therapy school. The Board shall grant approval to a school, whether in this State or another state, that meets the criteria established by the Board. The Board shall maintain a list of approved schools and a list of community college programs operating pursuant to subsection (b) of this section.

(a1)      The Board shall have general supervision over massage and bodywork therapy schools, not otherwise exempt from the requirements of Board approval, in this State for the purpose of protecting the health, safety, and welfare of the public by requiring that massage and bodywork therapy schools carry out their advertised promises and contracts made with their students and patrons and by requiring that approved massage and bodywork therapy schools maintain:

(1)        Adequate, safe, and sanitary facilities.

(2)        Sufficient and qualified instructional and administrative staff.

(3)        Satisfactory programs of operation and instructions.

(b)        A massage and bodywork therapy program operated by a North Carolina community college that is accredited by the Southern Association of Colleges and Schools is exempt from the approval process, licensure process, or both, established by the Board. The college shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.

(c)        A massage and bodywork therapy program operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency that is recognized by the United States Department of Education and is licensed by the North Carolina Community College System or The University of North Carolina Board of Governors is exempt from the approval process, licensure process, or both, established by the Board. The college or university shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.  (1998‑230, s. 10; 2005‑276, s. 8.15(a); 2008‑224, ss. 13, 14.)