

## **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 ELECTROLYSIS EXAMINERS

RULE CITATION: 21 NCAC 19 .0201

### RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ 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:

*Counsel has requested verification that that the agency has either adopted or is in the process of adopting a rule to comply with N.C.G.S. 93B-15 (S.L. 2009-458) concerning postponement or waiver of fees (and continuing education requirements) for eligible members of the armed forces.*

*If they cannot make that verification counsel believes that you should object to this fee rule based on a lack of authority to set fees without complying with the statutory mandate concerning their fees and the requirement to have rules concerning their waiver.*

### **§ 93B-15. Payment of license fees by members of the armed forces; board waiver rules.**

(a) An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

(b) Occupational licensing boards shall adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return. (1998-95, s. 8; 1999-337, s. 12; 2009-458, s. 1.)

Joseph J. DeLuca, Jr.  
Commission Counsel

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AGENCY: N.C. BOARD OF ELECTROLYSIS EXAMINERS

RULE CITATION: 21 NCAC 19 .0202

### RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ 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:

*In (d) line 26 there is no authority cited to require that an out-of-state licensed electrologist have been in practice for five years. In fact the relevant authority, G.S. 88A-10(a1)(2) contradicts the proposed amendment and simply requires that the applicant "for at least one year prior to the date of application ... was engaged in the practice of electrology in a state that does not license electrologists."*

*In (f)(1) there is no authority cited to require completion of 40 hours of a certification course. The relevant statute, G.S. 88A-11.1(a)(2) requires "a minimum 30-hour laser ... treatment certification course." There is no authority cited for the Board to add hours to a statutory requirement.*

**§ 88A-6. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

- (1) To administer and interpret this Chapter;
- (2) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes as may be necessary to carry out the provisions of this Chapter;
- (3) To determine the qualifications of persons who are licensed or certified pursuant to this Chapter;
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Chapter;
- (5) To establish, publish, and enforce rules of professional conduct, and to regulate advertising by licensees;
- (6) To maintain a record of all proceedings and make available to persons licensed under this Chapter, and to other concerned parties, an annual report of all Board action;
- (7) To collect fees for licensure, licensure renewal, and other services deemed necessary to carry out the purpose of this Chapter;
- (8) To employ and fix the compensation of personnel, including an executive director, that the Board determines are necessary to carry out the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter;
- (9) To conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining persons licensed or certified under this Chapter exist; and,
- (10) To adopt a seal containing the name of the Board for use on all certificates, licenses, and official reports issued by it. (1989 (Reg. Sess., 1990), c. 1033.)

**§ 88A-9. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purpose of carrying out the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter, or funds received pursuant to G.S. 88A-7. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State.

(b) All fees may be calculated by the Board in amounts sufficient to pay the costs of administration of this act, but in no event may they exceed the following:

(1)	Application for licensure as an electrologist .....	\$150.00
(1a)	Initial license .....	150.00
(1b)	Examination or reexamination .....	125.00
(2)	Licensure of electrology renewal .....	150.00
(3)	Application for licensure as an electrology ..... instructor.....	150.00
(4)	Licensure of electrology instructor renewal.....	150.00
(5)	Application for certification as a ..... Board-approved school of electrology.....	500.00
(5a)	Application for licensure as laser hair practitioner.....	150.00
(5b)	Licensure of laser hair practitioner renewal.....	150.00
(5c)	Application for licensure as laser hair practitioner instructor.....	150.00
(5d)	Licensure of laser hair practitioner instructor renewal.....	150.00
(5e)	Application for certification as a Board-approved school of ..... laser, light source, or pulsed-light treatments.....	500.00
(5f)	Certificate of Board-approved school of laser, light source, ..... or pulsed-light renewal.....	400.00
(6)	Certificate of Board-approved school of ..... electrology renewal .....	250.00
(6a)	Certification of out-of-state schools .....	150.00
(6b)	Certification of out-of-state schools renewal .....	100.00
(6c)	Office inspection or reinspection .....	100.00
(6d)	License by reciprocity .....	150.00
(7)	Late renewal charge .....	125.00
(8)	Reinstatement of expired license or certification.....	250.00

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- (9) Reactivation of license ..... 200.00
  - (10) Duplicate license or certification..... 25.00.
- (1989 (Reg. Sess., 1990), c. 1033, s. 1; 2001-176, s. 1; 2007-489, s. 4.)

**§ 88A-10. Requirements for licensure as an electrologist.**

- (a) Any person who desires to be licensed as an "electrologist" pursuant to this Chapter shall:
  - (1) Submit an application on a form approved by the Board.
  - (2) Be a resident of North Carolina.
  - (3) Be 21 years of age or older.
  - (4) Meet the requirements of subsection (a1) of this section.
  - (5) Pass an examination given by the Board.
  - (6) Submit the application and examination fees required in G.S. 88A-9(b).
- (a1) An applicant for licensure under this section shall provide:
  - (1) Proof of graduation from a school certified by the Board pursuant to G.S. 88A-19; or
  - (2) Proof satisfactory to the Board that, for at least one year prior to the date of application or the date of initial residence in this State, whichever is earlier, the applicant was engaged in the practice of electrology in a state that does not license electrologists.

Subdivision (2) of this subsection applies only to applicants whose residence in this State began on or after January 31, 1994, who do not meet the qualifications of subdivision (1) of this subsection or G.S. 88A-12.

(b) At least twice each year, the Board shall give an examination to applicants for licensure to determine the applicants' knowledge of the basic and clinical sciences relating to the theory and practice of electrology. The Board shall give applicants notice of the date, time, and place of the examination at least 60 days in advance.

(c) When the Board determines that an applicant has met all the requirements for licensure, and has submitted the initial license fee required in G.S. 88A-9(b), the Board shall issue a license to the applicant.

(d) An applicant otherwise qualified for licensure who is not a resident of this State may nevertheless submit a statement of intent to begin practicing electrology in this State and receive a license. The applicant must provide to the Board within six months of receiving a license evidence satisfactory to the Board that the applicant has actually begun to practice electrology in this State. The Board may revoke the license of an applicant who fails to submit this proof or whose proof fails to satisfy the Board. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1993 (Reg. Sess., 1994), c. 755, s. 1; 2001-176, s. 2; 2007-489, s. 5.)

**§ 88A-11. Licensure without examination.**

The Board may issue a license to practice electrology, without examination, to an applicant:

- (1) Who was engaged in the practice of electrolysis in this State or another state prior to July 1, 1993, and who submits an application for licensure to the Board on or before January 31, 1994.
- (2) Who is certified or licensed in good standing to practice electrolysis in another state, provided that the other state's educational hours of instruction are equal to or greater than the hours required in this State. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1991 (Reg. Sess., 1992), c. 1003, s. 1; 1993, c. 530, s. 4.)

**§ 88A-11.1. Requirements for licensure as a laser hair practitioner; limitations on licensed laser hair practitioners.**

(a) Any person seeking licensure by the Board as a laser hair practitioner shall have met the following requirements at the time the license is requested:

- (1) Be an electrologist licensed under this Chapter.
- (2) Completed a minimum 30-hour laser, light source, or pulsed-light treatment certification course approved by the Board and in accordance with rules adopted by the Board.
- (3) Be currently using or anticipate using laser, light source, or pulsed-light devices that the person has been certified by a Board-approved school to operate.

(b) When the Board determines that an applicant has met all the requirements for licensure, and has submitted the initial license fee required in G.S. 88A-9(b), the Board shall issue a license to the applicant.

(c) Each laser hair practitioner shall practice laser, light source, or pulsed-light treatments under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes. The physician shall be readily available, but not required to be on site when the laser, light source, or pulsed-light treatments are being performed. However, the authority to regulate laser clinicians shall remain with the Board.

(d) A laser hair practitioner shall not dispense or administer medication or provide advice regarding the use of medication, whether prescription or over-the-counter, in connection with laser, light source, or pulsed-light treatments.

(e) All laser hair practitioners shall use laser, light source, or pulsed-light devices approved by the federal Food and Drug Administration and comply with all applicable federal and State regulations, rules, and laws. Any licensed laser hair practitioner violating this subsection shall have his or her license revoked by the Board.

(f) Only a licensed physician may use laser, light source, or pulsed-light devices for ablative procedures. (2007-489, s. 6.)

#### **§ 88A-12. License renewal.**

(a) Every electrologist license or laser hair practitioner license issued pursuant to this Chapter must be renewed annually. On or before the date the current license expires, a person who desires to continue to practice electrology or as a laser hair practitioner shall apply for license renewal to the Board on forms approved by the Board, provide evidence of the successful completion of a continuing educational program approved by the Board, meet the criteria for renewal established by the Board, and pay the required fee. The Board may provide for the late renewal of licensure upon payment of a late fee as set by the Board, but late renewal may not be granted more than 90 days after expiration of the license.

(b) Any person who has failed to renew his or her license for more than 90 days after expiration may have it reinstated by applying to the Board for reinstatement on a form approved by the Board, furnishing a statement of the reason for failure to apply for renewal prior to the deadline, and paying the required fee. The Board may require evidence of competency to resume practice before reinstating the applicant's license. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1993 (Reg. Sess., 1994), c. 755, s. 3; 2007-489, s. 7.)

#### **§ 88A-21. Disciplinary authority of the Board.**

(a) Grounds for disciplinary action shall include:

- (1) Conviction of, or finding of guilt with respect to, a crime in this State or any other jurisdiction, regardless of adjudication, if any element of the crime directly relates to the practice of electrolysis;
- (2) Obtaining, or attempting to obtain, a license to practice electrolysis by bribery or by fraudulent misrepresentation;
- (3) Malpractice or the inability to practice electrolysis with reasonable skill and safety;
- (4) Disseminating false, deceptive, or misleading advertising;
- (5) Judicial determination of mental incompetency;
- (6) The revocation, suspension, or denial of the person's license or certification to practice electrolysis in any other state or territory of the United States;
- (7) A finding, upon investigation by the Board, that the applicant or licensee is guilty of unprofessional conduct. "Unprofessional conduct" includes any act which departs from, or fails to conform to, the minimum standards of acceptable and prevailing electrolysis practice;
- (8) Assisting, aiding, abetting, or procuring the practice of a person who is not licensed under this Chapter; and,
- (9) Violation of any provision of this Chapter, or any rule or regulation of the Board.

(b) In accordance with Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license or certification issued pursuant to this Chapter or deny any application for licensure or certification if the Board determines that the applicant or licensee has committed any of the acts listed in subsection (a).

(c) The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice electrology safely and properly. (1989 (Reg. Sess., 1990), c. 1033.)

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AGENCY: N.C. RESPIRATORY CARE BOARD

RULE CITATION: 21 NCAC 61 .0401

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to adopt the rule in accordance with the APA

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