

TEMPORARY RULE
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: COMMISSION FOR PUBLIC HEALTH

RULE CITATION: 10A NCAC 41A .0205

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Failure to meet the criteria for adoption as a temporary rule
- Extend the period of review

COMMENT:

The justification for adopting this rule as a temporary rule is based on a memorandum that only applies to the current fiscal year when the amendment will only become effective in the next fiscal year. There needs to be some type evidence that the budgetary restrictions will continue until future fiscal years. While the removal of unnecessary requirements is a commendable aim, it is difficult to conclude that a directive that only applies to one fiscal year requires a rule change that will only become effective the next fiscal year. The better procedure would have been to have gone through the permanent rulemaking process. If the agency had initiated permanent proceedings at the time it initiated the temporary proceedings, a permanent rule could have been adopted on the same date the temporary rule was adopted with at least as early an effective date. This rule does not appear to meet the requirements for adoption as a temporary rule.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: N.C. BOARD OF CHIROPRACTIC EXAMINERS

RULE CITATION: 21 NCAC 10 .0211

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Counsel believes that based on the authority cited the board does have the authority to set restrictions on those who provide financing or management services to chiropractic practices. More properly speaking they have the right to set limits on the agreements covering the provision of those services. In doing so they have the right to review the contractual relations and have the right to require the contract be in writing and set the entire terms of the agreement in writing.

This authority is derived from G.S. 90-157.3 which limits the ownership of a chiropractic practice to an NC licensed chiropractor and any participation in the control over a practice to an NC licensed chiropractor. The authority is also derived from G.S. 90-142 which allows the board to "adopt suitable rules and regulations for the ... enforcement" of the practice act.

In order to determine whether the management services agreements are proper and do not improperly restrict the independence and control of the practitioner the board must be able to review the entire agreement. To do this they are within their authority to require that the agreement be in writing. And any provisions within a management services agreement affecting "the control of the practice" would be properly within the review authority of the board.

Based on this it seems to me that the provisions in (d)(3) – (7) directly affect the practice of chiropractic and must be under the control of a NC licensed chiropractor and are within the authority of the board to regulate.

However paragraphs (d)(1) and (2) do not seem to affect the practice of chiropractic so much as they affect the division of profits from the practice. There is no authority cited to control or restrict how a licensee may choose to divide the proceeds he receives as a result of exercising his professional control over his practice. While the board may be entitled to review the revenue provisions of the agreement to determine whether any provision of the agreement might be a restriction on the licensee's professional control, they do not have the right to forbid all revenue sharing or fee paying arrangements.

§ 90-142. Rules and regulations.

The State Board of Chiropractic Examiners may adopt suitable rules and regulations for the performance of their duties and the enforcement of the provisions of this Article. (1919, c. 148, s. 4; C.S., s. 6714; 1967, c. 263, s. 2.)

§ 90-157.3. Ownership of chiropractic practices limited.

(a) Each partner in a partnership that is engaged in the practice of chiropractic shall be licensed under this Article.

(b) Each general partner in a limited partnership that is engaged in the practice of chiropractic and each limited partner who takes part in the control of the practice shall be licensed under this Article.

(c) The provisions of Chapter 55B of the General Statutes shall apply to all business corporations organized under Chapter 55 of the General Statutes and engaged in the practice of chiropractic. (1999-430, s. 2.)

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AGENCY: BOARD OF EXAMINERS FOR ELECTRICAL CONTRACTORS

RULE CITATION: 21 NCAC 18B .1103

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In (b), there is no authority cited for the Board to set occupational requirements for instructors.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 87-42. Duties and powers of Board.

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each has met the requirements for certification and shall discharge all duties enumerated in this Article. Applicants for certification as a qualified individual must be at least 18 years of age and shall be required to demonstrate to the satisfaction of the Board their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of qualified individuals, which may vary for the various license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes. (1937, c. 87, s. 4; 1969, c. 669, s. 1; 1989, c. 709, s. 3; 1993, c. 539, s. 605; 1994, Ex. Sess., c. 24, s. 14(c); 2001-159, s. 1.)

§ 87-44.1. Continuing education courses required.

Beginning July 1, 1991, the Board may require as prerequisite to the annual renewal of a license that every listed qualified individual complete continuing education courses in subjects relating to electrical contracting to assure the safe and proper installation of electrical work and equipment in order to protect the life, health, and property of the public. The listed qualified individual shall complete, during the 12 months immediately preceding license renewal, a specific number of hours of continuing education courses approved by the Board prior to enrollment. The Board shall not require more than 10 hours of continuing education courses per 12 months and such continuing education courses shall include those taught at a community college as approved by the Board. The listed qualified individual may accumulate and carry forward not more than two additional years of the annual continuing education requirement.

Attendance at any course or courses of continuing education shall be certified to the Board on a form provided by the Board and shall be submitted at the time the licensee makes application to the Board for its license renewal and payment of its license renewal fee. This continuing education requirement may be waived by the Board in cases of certified illness or undue hardship as provided for in the Rules of the Board. (1989, c. 709, s. 8.)

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AGENCY: NC IRRIGATION CONTRACTOR'S LICENSING BOARD

RULE CITATION: 21 NCAC 23 .0102

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for Paragraphs (b) and (c). G.S. 89G-6(a)(4) requires each individual licensee to file and maintain a separate surety bond or letter of credit. There is no authority cited for an individual to practice under someone else's surety bond or letter of credit.

In (d) and (e), it is not clear what corporate entities the rule is referring to, and there is no authority cited to place any requirements on corporate entities.

Subparagraphs (f)(3), (4) and (5) make no sense as written. Only an individual can meet the statutory requirements for licensure. It is not clear how an individual can be administratively or legally dissolved, or have a corporate form.

In the final sentence in (f), there is no authority cited for the Board to license corporate entities.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

**Chapter 89G.
Irrigation Contractors.**

§ 89G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.
- (2) Irrigation construction or contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.
- (3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.
- (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.
- (5) Person. – An individual, firm, partnership, association, corporation, or other legal entity. (2008-177, s. 1.)

§ 89G-2. License required.

Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or contracting, use the designation "irrigation contractor," or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor as provided by this Chapter. All irrigation construction or contracting performed by an individual, partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter. (2008-177, s. 1.)

§ 89G-3. Exemptions.

The provisions in this Chapter shall not apply to:

- (1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- (2) Any property owner who performs irrigation construction or contracting work on his or her own property.
- (3) A landscape architect registered under Chapter 89A of the General Statutes.
- (4) A professional engineer licensed under Chapter 89C of the General Statutes.
- (5) Any irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars (\$2,500).
- (6) Any person performing irrigation construction or contracting work for temporary irrigation to establish vegetative cover for erosion control.
- (7) Any person performing irrigation construction or contracting work to control dust on commercial construction sites or mining operations.
- (8) Any person performing irrigation construction or contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

- (9) Any person performing irrigation construction or contracting work for use in commercial sod production.
- (10) Any person performing irrigation construction or contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- (11) A general contractor licensed under Article 1 of Chapter 87 of the General Statutes.
- (12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.
- (13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.
- (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.
- (15) Any person performing irrigation construction or contracting work for a golf course.
- (16) **(See editor's note for applicability)** Any person maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103. (2008-177, s. 1.)

§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.

(a) Composition and Terms. – The North Carolina Irrigation Contractors' Licensing Board is created. The Board shall consist of nine members who shall serve staggered terms. The initial Board shall be selected on or before October 1, 2008, as follows:

- (1) The Commissioner of Agriculture, upon the recommendation of the Carolinas Irrigation Association, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a three-year term.
- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives and pursuant to recommendations from the North Carolina Green Industry Council, shall appoint two members, one who is a registered landscape contractor in good standing with the North Carolina Landscape Contractors Registration Board to serve a one-year term and one who is an irrigation contractor to serve a three-year term.
- (3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a two-year term.
- (4) The President of The University of North Carolina System shall appoint one member from within the ranks of the land grant university community who is knowledgeable in irrigation methods and practices to serve a three-year term. The position is open to both current employees of The University of North Carolina System and persons who have earned emeritus status with The University of North Carolina System.
- (5) The Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects shall appoint one member who is a registered landscape architect to serve a two-year term.

(6) The Governor shall appoint one public member to serve a two-year term.

Upon the expiration of the terms of the initial Board members, each member shall be appointed by the appointing authorities designated in subdivisions (1) through (6) of this subsection for a three-year term and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms.

(b) Qualifications. – Members of the Board shall be residents of this State. The irrigation contractor members shall meet the requirements for licensure under this Chapter and remain in good standing with the Board during their terms. The public member of the Board shall not be: (i) trained or experienced in irrigation construction or contracting; (ii) an agent or employee of a person engaged in the practice of irrigation construction or contracting; or (iii) the spouse of an individual who may not serve as a public member of the Board.

(c) Vacancies. – Any vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members 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 are appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in the member's capacity as a licensed irrigation contractor shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(e) Officers and Meetings. – The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

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

(g) Assistance. – The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter. (2008-177, s. 1.)

§ 89G-5. Powers and duties.

The Board shall have the following powers and duties:

- (1) To administer and enforce the provisions of this Chapter.
- (2) To adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To reprimand or otherwise discipline licensees under this Chapter.
- (6) To receive and investigate complaints from members of the public.
- (7) To conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
- (8) To conduct administrative hearings in accordance with Chapter 150B of the General Statutes.
- (9) To seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.
- (10) To collect fees required by G.S. 89G-10 and other monies permitted by law to be paid to the Board.
- (11) To require licensees to file and maintain an adequate surety bond.

- (12) To establish and approve continuing educational requirements for persons licensed under this Chapter.
- (13) To employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
- (14) To maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board actions.
- (15) To adopt and publish a code of professional conduct and practice for all persons licensed under this Chapter. The code shall establish minimum standards for water conservation in the practice of irrigation construction and contracting.
- (16) To publish a list of irrigation best management practices to be followed by licensed irrigation contractors.
- (17) To adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board. (2008-177, s. 1.)

§ 89G-6. Application; qualifications; examination; issuance.

(a) Upon application to the Board and the payment of the required fees, an applicant may be licensed under this Chapter as an irrigation contractor if the applicant submits evidence that demonstrates his or her qualifications as prescribed in rules adopted by the Board and meets all of the following qualifications:

- (1) Is at least 18 years of age.
- (2) Is of good moral character as determined by the Board.
- (3) Has at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting shall be the equivalent of one year of experience.
- (4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars (\$10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor's faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed irrigation contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the application is satisfactory to the Board, the applicant shall be required to pass an examination administered by the Board. The Board shall establish the scope and subject matter of the examination, and an examination shall be held at least twice a year at a time and place to be determined by the Board. The examination, at a minimum, shall test the applicant's understanding of the following:

- (1) Efficiency of water use and conservation in the practice of irrigation construction and contracting.
- (2) Proper methods of irrigation construction.
- (3) Proper methods for irrigation installation.
- (4) Basic business skills.

(c) When the Board determines that an applicant has met all the requirements for licensure, the Board shall issue a license to the applicant. (2008-177, s. 1.)

§ 89G-7. Use of seal; posting license.

(a) Upon licensure by the Board, each irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend "N.C. Licensed Irrigation Contractor." An irrigation contractor may use the seal only while the license is valid.

(b) Every irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business. (2008-177, s. 1.)

§ 89G-8. Reciprocity.

The Board may issue a license, without examination, to any person who is an irrigation contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State. (2008-177, s. 1.)

§ 89G-9. License renewal and continuing education.

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice shall apply for license renewal and shall submit the required fees. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet continuing education requirements set by the Board. Each licensee shall complete 10 continuing education units per year. Failure to obtain continuing education units shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter. (2008-177, s. 1.)

§ 89G-10. Expenses and fees.

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	\$100.00
(2)	Examination fee	200.00
(3)	License renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	Corporate license	100.00
(7)	Duplicate license	25.00.

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services.

(c) The Board must annually review the fees set out in this section to determine whether these fees reflect the actual cost of administering this act and seek legislative changes to the fees if necessary. (2008-177, ss. 1, 5.)

§ 89G-11. Disciplinary action.

The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

- (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

- (2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.
- (3) Commits an act of gross malpractice or incompetence as determined by the Board.
- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.
- (5) Has been declared incompetent by a court of competent jurisdiction.
- (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
- (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- (8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force. (2008-177, s. 1.)

§ 89G-12. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89G-11, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, 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 violation found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board. (2008-177, s. 1.)

§ 89G-13. Injunction to prevent violation; notification of complaints.

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of irrigation construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules adopted by the Board.

(b) A licensed irrigation contractor shall notify the Board by registered mail of any complaints filed against the contractor within 30 days from the date the complaint was filed. (2008-177, s. 1.)

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AGENCY: NC IRRIGATION CONTRACTOR'S LICENSING BOARD

RULE CITATION: 21 NCAC 23 .0105

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for a licensee to buy back a license the Board has revoked by reaching a settlement agreement with the Board. While the Board does have the authority to issue civil penalties, that does not appear to be what Paragraph (b) does nor has a schedule of civil penalties been established as required by G.S. 89G-12(c).

In (d), there is no authority cited for the Board to grant an exemption from the statutorily mandated 10 continuing education units per year. Even if there is authority, it is not clear why an individualized plan would ever be requested since the same grounds for approval of one would also result in approval of a total exemption.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: NC IRRIGATION CONTRACTOR'S LICENSING BOARD

RULE CITATION: 21 NCAC 23 .0601

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

As written this rule sets no requirements and does not appear to be necessary.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: NC MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

RULE CITATION: 21 NCAC 31 .0201

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - X Unclear or ambiguous
 - X Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In (3), it is not clear when additional documentation will be required.

In (4), there is no authority cited for the Board to require American Association of Marriage and Family Therapy Approved Supervisors endorsement as a condition of licensure. That is beyond what G.S. 90-270.54 requires.

In (5), there is a requirement that an applicant obtain the endorsement of three licensed or certified mental health professionals as evidence of good moral character. "Good moral character" is a requirement for licensure by the Board, but there is no reason to believe that the endorsement of a mental health professional is superior to the endorsement of anyone else in determining good moral character. This would also present a hardship on persons with very good moral character who do not name numerous personal relationships with mental health professionals. This requirement does not appear to be reasonably necessary to implement the statute.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 90-270.51. Powers and duties.

- (a) The Board shall administer and enforce this Article.
- (b) Subject to the provisions of Chapter 150B of the General Statutes, the Board may adopt, amend, or repeal rules to administer and enforce this Article, including rules of professional ethics for the practice of marriage and family therapy.
- (c) The Board shall examine and pass on the qualifications of all applicants for licensure under this Article, and shall issue a license to each successful applicant.
- (d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.
- (e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year.
- (f) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, attorneys, experts, and other employees as necessary to perform its duties.
- (g) Reserved for future codification purposes.
- (h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1987, c. 827, s. 78; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, ss. 5.1, 5.2.)

§ 90-270.52. License application.

- (a) Each person desiring to obtain a license under this Article shall apply to the Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish evidence satisfactory to the Board that the applicant:
 - (1) Is of good moral character;
 - (2) Has not engaged or is not engaged in any practice or conduct that would be a ground for denial, revocation, or suspension of a license under G.S. 90-270.60;
 - (3) Is qualified for licensure pursuant to the requirements of this Article.
- (b) A license obtained through fraud or by any false representation is void. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.54. Requirements for licensure as a marriage and family therapist.

- (a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:
 - (1) Meets educational and experience qualifications as follows:
 - a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and

family therapy, or a related degree, which degree is evidenced by the applicant's official transcripts. An applicant with a related degree may meet the educational requirements if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

- b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or a related degree (with ongoing supervision consistent with standards approved by the Board); and

(2) Passes an examination approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58. (1979, c. 697, s. 1; 1981, c. 611, s. 2; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 6.)

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: NC MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

RULE CITATION: 21 NCAC 31 .0501

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for Paragraph (b). An applicant with a master's degree in marriage and family therapy meets the educational requirements imposed by the statute. Only applicants with a related degree are subject to additional training requirements.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 90-270.47. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

- (1) Renumbered.
- (2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.
- (2a) "Clinical experience" means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.
- (2b) "Larger systems" means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.
- (3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.
- (3a) "Licensed marriage and family therapy associate" means an individual to whom a license has been issued pursuant to this Article whose license is in force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the supervision of an American Association for Marriage and Family Therapy (AAMFT) approved supervisor in accordance with rules adopted by the Board.
- (3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with health care and other professionals when appropriate.
- (4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.
- (5) "Recognized educational institution" means any university, college, professional school, or other institution of higher learning that:
 - a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.
 - b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.
 - c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board.
- (6) "Related degree" means:
 - a. Master's or doctoral degree in clinical social work;

- b. Master's or doctoral degree in psychiatric nursing;
- c. Master's or doctoral degree in counseling or clinical or counseling psychology;
- d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
- e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 1.)

§ 90-270.51. Powers and duties.

- (a) The Board shall administer and enforce this Article.
- (b) Subject to the provisions of Chapter 150B of the General Statutes, the Board may adopt, amend, or repeal rules to administer and enforce this Article, including rules of professional ethics for the practice of marriage and family therapy.
- (c) The Board shall examine and pass on the qualifications of all applicants for licensure under this Article, and shall issue a license to each successful applicant.
- (d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.
- (e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year.
- (f) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, attorneys, experts, and other employees as necessary to perform its duties.
- (g) Reserved for future codification purposes.
- (h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1987, c. 827, s. 78; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, ss. 5.1, 5.2.)

§ 90-270.54. Requirements for licensure as a marriage and family therapist.

- (a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:
 - (1) Meets educational and experience qualifications as follows:
 - a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and family therapy, or a related degree, which degree is evidenced by the applicant's official transcripts. An applicant with a related degree may meet the educational requirements if the applicant presents satisfactory

evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

- b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or a related degree (with ongoing supervision consistent with standards approved by the Board); and

(2) Passes an examination approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58. (1979, c. 697, s. 1; 1981, c. 611, s. 2; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 6.)

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: NC MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

RULE CITATION: 21 NCAC 31 .0801

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In (a)(3), there is a requirement that an applicant obtain the endorsement of three licensed or certified mental health professionals as evidence of good moral character. "Good moral character" is a requirement for licensure by the Board, but there is no reason to believe that the endorsement of a mental health professional is superior to the endorsement of anyone else in determining good moral character. This would also present a hardship on persons with very good moral character who do not name numerous personal relationships with mental health professionals. This requirement does not appear to be reasonably necessary to implement the statute.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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 EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

RULE CITATION: 21 NCAC 64 .0307

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In line six I am not certain that the meaning of "lascivious conduct" and what actions are forbidden is clear to all who read the prohibition. However the commissioners have taken different positions on such character issues and terms, often depending on the context. If the commissioners have a problem with this language, I'm sure the agency could satisfy that problem.

What concerns me more it that the board has no authority to adopt this rule, at least not the way it is currently written.

The board has cited no authority, and counsel is not aware of any authority, to deny licensure based on some sort of qualification relating to sexual activity. G.S. 90-295 and 90-298, the specific statutes setting out the qualifications for licensure refer to qualifications that address only an applicant's education and experience. There is another statute, G.S. 90-296, that requires passing an examination. (That statute even refers to "an applicant ... who has satisfied the academic requirements of G.S. 90-295" without referring to any other qualifications.)

There is also no reference in G.S. 90-301, Grounds for suspension or revocation; 90-301A, Unethical acts and practices; or 90-302, Prohibited acts and practices, to any prohibition against "lascivious conduct" or requirement to have good moral character.

The Rules Review Commission has consistently taken the position that where the legislature has set out the qualifications for licensure and has not given the agency any further discretion to add to those qualifications or establish new or different qualifications, then the agency cannot do so by rulemaking.

It is possible that the board could incorporate a more carefully crafted requirement to refrain from lascivious conduct as part of its code of ethics. Then, under 90-301(3) it would have the authority to suspend or revoke (but not necessarily deny) licensure to someone who violated that code.

But based on the language in this rule, the board has not included this prohibition as part of its ethical code of conduct since two words previously in the sentence it also lists “unethical” as well as illegal conduct as grounds for denying or revoking licensure. If the prohibition against “lascivious conduct” were part of the ethics code, then it would not be necessary to list it separately.

Again, let me note that depending on how the board might rewrite this rule if the Commission objects to it, the board might not have the authority to deny licensure for the same action they could revoke licensure. Not every act that might be prohibited to a licensed individual is prohibited to a member of the general public. Not every act that might be prohibited to a licensed individual might even be perceived as some sort of bad act if performed by a member of the general public.

G.S. 90-301 lists the grounds for suspending or revoking a license. One of those grounds (4) is the “[v]iolation of any lawful order, rule or regulation rendered or adopted by the Board.” The board is entitled to set many qualifications (in other words, “order, rule or regulation”) outside the statutes to remain a licensed individual. It is not entitled to expand those qualifications in order to obtain licensure.

Counsel recommends objecting to this rule on several grounds. The first is ambiguity if the Commissioners are concerned about the meaning of the “lascivious” as used in this rule. I am recommending objection based on lack of statutory authority to deny or revoke licensure based on “lascivious” conduct that is not otherwise illegal or unethical. I am also recommending objection based on lack of authority to deny licensure for conduct that is not otherwise forbidden to members of the general public.

§ 90-295. Qualifications of applicants for permanent licensure.

(a) To be eligible for permanent licensure by the Board as a speech and language pathologist, the applicant must:

- (1) Possess at least a master's degree in speech and language pathology or qualifications deemed equivalent by the Board under rules duly adopted by the Board under this Article. The degree or equivalent qualifications shall be from an accredited institution.
- (2) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 75 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, development thereof, disorders thereof, and clinical techniques for evaluation and management of such disorders.
 - a. Fifteen of these 75 semester hours must be obtained in courses that provide information that pertains to normal development and use of speech, language and hearing.
 - b. Thirty-six of these 75 semester hours must be in courses that provide information relative to communication disorders and information about and training in evaluation and management of speech, language, and hearing disorders. At least 24 of these 30 semester hours must be in courses in speech and language pathology.

- c. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of speech and language pathology or audiology may also apply toward the total 75 semester hours.
 - d. Thirty-six of the total 75 semester hours that are required for a license must be in courses that are acceptable toward a graduate degree by the college or university at which they are taken. Moreover, 21 of those semester hours must be in graduate level courses in speech and language pathology.
- (3) Submit evidence of the completion of a minimum of 400 clock hours of supervised, direct clinical experience with individuals who present a variety of communication disorders. This experience must have been obtained within the training institution or in one of its cooperating programs in the following areas: (i) Speech – Adult (20 diagnostic and 20 therapeutic); Children (20 diagnostic and 20 therapeutic); or (ii) Language – Adult (20 diagnostic and 20 therapeutic); Children (20 diagnostic and 20 therapeutic). Each new applicant must submit a verified clinical clock hour summary sheet signed by the clinic or program director, in addition to completion of the license application.
 - (4) Present written evidence of nine months of full-time professional experience in which bona fide clinical work has been accomplished in speech and language pathology. The professional work must have been supervised by a speech and language pathologist who is State-licensed or certified by the American Speech-Language-Hearing Association. This experience must follow the completion of the requirements listed in subdivisions (1), (2) and (3). Full time is defined as at least nine months in a calendar year and a minimum of 30 hours per week. Half time is defined as at least 18 months in two calendar years and a minimum of 20 hours per week. The supervision must be performed by a person who holds a valid license under this Article, or certificate of clinical competence from the American Speech-Language-Hearing Association, in speech and language pathology.
 - (5) Pass an examination established or approved by the Board.
- (b) To be eligible for permanent licensure by the Board as an audiologist, the applicant must:
- (1) Possess a doctoral degree in audiology or qualifications deemed equivalent by the Board under rules duly adopted by the Board under this Article. The degree or equivalent qualifications shall be from an accredited institution.
 - (2) Persons who were engaged in the practice of audiology and do not possess a doctoral degree in audiology before October 1, 2007, shall be exempt from the degree requirement in subdivision (1) of this subsection provided those persons remain continuously licensed in the field.
 - (3) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 90 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, the development of human communication, the disorders associated with human communication, and the clinical techniques for evaluation and management of such disorders.
 - (4) Present written evidence documenting 1,800 clock hours of professional experience directly supervised by an audiologist who is State-licensed or certified by the American Speech-Language-Hearing Association or other Board-approved agency. The clock hours of professional experience must be with individuals who present a variety of communication and auditory disorders and must have been obtained within the training program at an accredited college or university or in one of its cooperating programs.
 - (5) Pass an examination established or approved by the Board. (1975, c. 773, s. 1; 1987, c. 665, s. 3; 2007-436, s. 4; 2009-138, s. 1.)

§ 90-296. Examinations.

(a) An applicant for permanent licensure who has satisfied the academic requirements of G.S. 90-295, shall pass a written examination approved or established by the Board. A person who holds a

temporary license during the supervised experience year must take and pass the examination required by the Board for permanent licensure before the end of the temporary license period.

(b) The Board shall administer or approve at least two examinations of the type described in subsection (a) of this section each year, and additional examinations as the volume of applications makes appropriate.

(c) An examination shall not be required as a prerequisite for a license for:

- (1) A person who holds a certificate of clinical competence issued by the American Speech-Hearing-Language Association in the specialized area for which such person seeks licensure; or
- (2) A person who has met the educational, practical experience, and examination requirements of another state or jurisdiction which has requirements equivalent to or higher than those in effect pursuant to this Article for the practice of audiology or speech pathology. (1975, c. 773, s. 1; 1981, c. 572, s. 3; 1987, c. 665, s. 4.)

§ 90-297. Repealed by Session Laws 1987, c. 665, s. 5.

§ 90-298. Qualifications for applicants for temporary licensure.

(a) To be eligible for temporary licensure an applicant must:

- (1) Meet the academic and clinical practicum requirements of G.S. 90-295(1), (2), and (3); and
- (2) Submit a plan of supervised experience complying with the provisions of G.S. 90-295(4); and
- (3) Pay the temporary license fee required by G.S. 90-305(5).

(b) A temporary license is required when an applicant has not completed the required supervised experience and passed the required examination. A person who holds a temporary license during the supervised experience year must take and pass the examination required by the Board for permanent licensure before the end of the temporary license period.

(c) A temporary license issued under this section shall be valid only during the period of supervised experience required by G.S. 90-295(4), and shall not be renewed. (1975, c. 773, s. 1; 1987, c. 665, s. 6.)

§ 90-301. Grounds for suspension or revocation of license.

Any person licensed under this Article may have his license revoked or suspended for a fixed period by the Board under the provisions of North Carolina General Statutes, Chapter 150B, for any of the following causes:

- (1) His license has been secured by fraud or deceit practiced upon the Board.
- (2) Fraud or deceit in connection with his services rendered as an audiologist or speech pathologist.
- (3) Unethical conduct as defined in this Article or in a code of ethics adopted by the Board.
- (4) Violation of any lawful order, rule or regulation rendered or adopted by the Board.
- (5) Failure to exercise a reasonable degree of professional skill and care in the delivery of professional services.
- (6) Any violation of the provisions of this Article. (1975, c. 773, s. 1; 1981, c. 572, s. 4; 1987, c. 665, s. 7; c. 827, s. 1.)

§ 90-301A. Unethical acts and practices.

Unethical acts and practices shall be defined as including:

- (1) Obtaining or attempting to obtain any fee by fraud or misrepresentation.
- (2) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this Article.
- (3) Using, or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

- (4) Aiding, abetting, or assisting any other person or entity in violating the provisions of this Article.
- (5) Willfully harming any person in the course of the delivery of professional services licensed by this Article.
- (6) Treating a person who cannot reasonably be expected to benefit from treatment.
- (7) Charging a fee for treatment or services not rendered.
- (8) Providing or attempting to provide services or supervision of services by persons not properly prepared or legally qualified to perform or permitting services to be provided by a person under such person's supervision who is not properly prepared or legally qualified to perform such services.
- (9) Guaranteeing the result of any therapeutic or evaluation procedure. (1987, c. 665, s. 8.)

§ 90-302. Prohibited acts and practices.

No person, partnership, corporation, or other entity may:

- (1) Sell, barter, transfer or offer to sell or barter a license.
- (2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice audiology or speech pathology.
- (3) Alter a license.
- (4) Use or attempt to use a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered.
- (5) Make a false, material statement in an application for a North Carolina license.
- (6) Aid, assist, abet, or direct any person licensed under this Article in violation of the provisions of this Article. (1975, c. 773, s. 1; 1987, c. 665, s. 9.)

§ 90-303. Board of Examiners for speech and language pathology and audiology; qualifications, appointment and terms of members; vacancies; meetings, etc.

(a) There shall be a Board of Examiners for Speech and Language Pathologists and Audiologists, which shall be composed of seven members, who shall all be residents of this State. Two members shall have a paid work experience in audiology for at least five years and hold a North Carolina license as an audiologist. Two members shall have paid work experience in speech pathology for at least five years and hold a North Carolina license as a speech and language pathologist. One member shall be a physician who is licensed to practice medicine in the State of North Carolina. Two members shall be appointed by the Governor to represent the interest of the public at large. These two members shall be neither licensed speech and language pathologists nor audiologists. These members shall be appointed not later than July 1, 1981; one shall be initially appointed for a term of two years; the other shall be appointed for a term of three years. Thereafter all public members shall serve three-year terms.

(b) The members of the Board shall be appointed by the Governor.

(c) The initial Board shall have members appointed for terms of one year, two years, three years, four years, and five years. All board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive three-year terms.

(d) Members of the Board shall receive no compensation for their service, but shall receive the same per diem, subsistence and travel allowance as provided in G.S. 138-5. (1975, c. 773, s. 1; 1981, c. 572, ss. 5, 6; 2007-436, s. 5.)

§ 90-304. Powers and duties of Board.

(a) The powers and duties of the Board are as follows:

- (1) To administer, coordinate, and enforce the provisions of this Article, establish fees, evaluate the qualifications of applicants, supervise the examination of applicants, and issue subpoenas, examine witnesses, and administer oaths, and investigate persons engaging in practices which violate the provisions of this Article.

- (2) To conduct hearings and keep records and minutes as necessary to an orderly dispatch of business.
 - (3) To adopt responsible rules including rules that establish ethical standards of practice and require continuing professional education and to amend or repeal the same.
 - (4) To issue annually a list stating the names of persons currently licensed under the provisions of this Article.
 - (5) To employ such personnel as determined by its needs and budget.
 - (6) To adopt seals by which it shall authenticate their proceedings, copies of the proceedings, records and the acts of the Board, and licenses.
 - (7) To bring an action to restrain or enjoin violations of this Article in addition to and not in lieu of criminal prosecution or proceedings to revoke or suspend licenses issued under this Article.
- (b) The Board shall not adopt or enforce any rule or regulation which prohibits advertising except for false or misleading advertising. (1975, c. 773, s. 1; 1981, c. 572, s. 7; 1987, c. 665, s. 10; 2007-436, s. 6.)