

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1314
Healthcare Committee Substitute Adopted 7/11/07
Finance Committee Substitute Adopted 7/26/07
House Committee Substitute Favorable 7/2/08
Fifth Edition Engrossed 7/8/08

Short Title: Amend Massage & Bodywork Therapy Act.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT TO EXPAND THE EXISTING LAWS REGULATING MASSAGE AND BODYWORK THERAPY SCHOOLS; TO AUTHORIZE THE BOARD TO ESTABLISH FEES FOR LICENSING MASSAGE AND BODYWORK THERAPY SCHOOLS; AND TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE TO PRACTICE MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-621 reads as rewritten:

"§ 90-621. **Declaration of purpose.**

~~The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.~~ The purpose of this Article is to ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services. This purpose is achieved by establishing education and testing standards that ensure competency in the practice of massage and bodywork therapy. Mandatory licensure of those engaged in the practice of massage and bodywork therapy assures the public that each individual has satisfactorily met the standards of the profession and continues to meet both the ethical and competency goals of the profession."

SECTION 2. G.S. 90-622 reads as rewritten:

"§ 90-622. **Definitions.**

1 The following definitions apply in this Article:

2 (1) Accreditation. – Status granted to a postsecondary institution of higher
3 learning that has met standards set by an accrediting agency
4 recognized by the Secretary of the United States Department of
5 Education. The accreditation for massage and bodywork schools may
6 be institutional or programmatic in nature.

7 (4)(1a) Board. – The North Carolina Board of Massage and Bodywork
8 Therapy.

9 (2) Board-approved school. – Any massage and bodywork therapy school
10 or training program in this State or another state that is not otherwise
11 exempt from Board approval, that has met the eriteria established by
12 the Board, standards set forth in this Article, and been granted approval
13 by the Board.

14 (2a) Criminal history record check. – A report resulting from a request
15 made by the Board to the North Carolina Department of Justice for a
16 history of conviction of a crime, whether a misdemeanor or felony,
17 that bears on an applicant's fitness for licensure to practice massage
18 and bodywork therapy.

19 (3) Massage and bodywork therapy. – Systems of activity applied to the
20 soft tissues of the human body for therapeutic, educational, or
21 relaxation purposes. The application may include:
22 a. Pressure, friction, stroking, rocking, kneading, percussion, or
23 passive or active stretching within the normal anatomical range
24 of movement.
25 b. Complementary methods, including the external application of
26 water, heat, cold, lubricants, and other topical preparations.
27 c. The use of mechanical devices that mimic or enhance actions
28 that may possibly be done by the hands.

29 (3a) Massage and bodywork therapy school. – Any educational institution
30 that conducts a training program or curriculum for a tuition charge,
31 which is intended to teach adults the knowledge, skills, and abilities
32 necessary for the safe, effective, and ethical practice of massage and
33 bodywork therapy.

34 (4) Massage and bodywork therapist. – A person licensed under this
35 Article.

36 (5) Practice of massage and bodywork therapy. – The application of
37 massage and bodywork therapy to any person for a fee or other
38 consideration. ~~"Practice of massage and bodywork therapy" does not~~
39 ~~include the diagnosis of illness or disease, medical procedures,~~
40 ~~chiropractic adjustive procedures, electrical stimulation, ultrasound,~~
41 ~~prescription of medicines, or the use of modalities for which a license~~
42 ~~to practice medicine, chiropractic, nursing, physical therapy,~~
43 ~~occupational therapy, acupuncture, or podiatry is required by law."~~

44 **SECTION 3.** G.S. 90-623 is amended by adding a new subsection to read:

1 "(d) The practice of massage and bodywork therapy shall not include any of the
2 following:

- 3 (1) The diagnosis of illness or disease.
4 (2) Medical procedures, chiropractic adjustive procedures, electrical
5 stimulation, ultrasound, or prescription of medicines.
6 (3) The use of modalities for which a license to practice medicine,
7 chiropractic, nursing, physical therapy, occupational therapy,
8 acupuncture, or podiatry is required by law.
9 (4) Sexual activity, which shall mean any direct or indirect physical
10 contact, by any person or between persons, which is intended to
11 erotically stimulate either person, or which is likely to cause such
12 stimulation and includes sexual intercourse, fellatio, cunnilingus,
13 masturbation, or anal intercourse. As used in this subdivision,
14 masturbation means the manipulation of any body tissue with the
15 intent to cause sexual arousal. Sexual activity can involve the use of
16 any device or object and is not dependent on whether penetration,
17 orgasm, or ejaculation has occurred."

18 **SECTION 4.** G.S. 90-625 reads as rewritten:

19 **"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

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

- 22 (1) Five members shall be massage and bodywork therapists who have
23 been licensed under this Article and have been in the practice of
24 massage and bodywork therapy for at least five of the last seven years
25 prior to their serving on the Board. ~~The appointments may be made~~
26 ~~from lists provided by the North Carolina Therapeutic Massage and~~
27 ~~Bodywork Task Force.~~ Consideration shall be given to geographical
28 distribution, practice setting, clinical specialty, involvement in
29 massage and bodywork therapy education, and other factors that will
30 promote diversity of the profession on the Board. Two of the five
31 members shall be appointed by the General Assembly, upon the
32 recommendation of the Speaker of the House of Representatives, two
33 shall be appointed by the General Assembly, upon the
34 recommendation of the President Pro Tempore of the Senate, and one
35 shall be appointed by the Governor.
36 (2) One member shall be a physician licensed pursuant to Article 1 of
37 Chapter 90 of the General Statutes ~~Statutes~~ or a person once licensed
38 as a physician whose license lapsed while the person was in good
39 standing with the profession and eligible for licensure. The
40 appointment shall be made by the Governor and may be made from a
41 list provided by the North Carolina Medical Society.
42 (3) One member shall be a member of the general public who shall not be
43 licensed under Chapter 90 of the General Statutes or the spouse of a
44 person who is so licensed, or have any financial interest, directly or

indirectly, in the profession regulated under this Article. The appointment shall be made by the Governor.

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

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

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

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

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee or other professional credential shall be disqualified from participating in the official business of the Board until the charges have been ~~resolved~~ resolved by a determination that the misconduct does not rise to the level of disciplinary action resulting in the suspension or revocation of the member's professional credential."

SECTION 5. The current terms of the two members of the Board appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate are each extended to a total period of five years, ending on June 30 of the last year of each extended term. Upon the completion of these five-year terms, all future members of the Board shall serve three-year terms, as provided in G.S. 90-625(c).

SECTION 6. G.S. 90-626 is amended by adding a new subdivision to read: "**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

- ...
- (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.
- ..."

SECTION 7. G.S. 90-626(8) reads as rewritten:

"**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

...

(8) ~~Establish 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.~~

..."

SECTION 8. G.S. 90-628(b) reads as rewritten:

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

- (1) Application for ~~examination~~license \$200.00\$20.00
- (2) ~~License~~Initial license fee 150.00
- (3) License renewal 100.00
- (4) Late renewal penalty 75.00
- (5) ~~License by reciprocity~~ 50.00
- (6)(5) Duplicate license 25.00
- (7) ~~Provisional license~~ 150.00."

SECTION 9. G.S. 90-629 reads as rewritten:

"§ 90-629. Requirements for licensure.

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

- (1) Has obtained a high school diploma or equivalent.
- (2) Is 18 years of age or older.
- (3) Is of good moral character as determined by the Board.
- (4) Has successfully completed a ~~course of study~~training program consisting of a minimum of 500 ~~classroom in-class~~ hours of supervised instruction at a Board-approved school.
- (5) Has ~~successfully passed an~~a competency assessment examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board that meets generally accepted psychometric principles and standards and is approved by the Board.
- (6) Has submitted fingerprint cards in a form acceptable to the Board at the time the license application is filed and consented to a criminal history record check by the North Carolina Department of Justice."

SECTION 10. Article 36 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-629.1. Criminal history record checks of applicants for licensure.

(a) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check

1 and the use of fingerprints and other identifying information required by the State or
2 National Repositories, and any additional information required by the Department of
3 Justice. The Board shall keep all information obtained pursuant to this section
4 confidential.

5 (b) The cost of the criminal history record check and the fingerprinting shall be
6 borne by the applicant.

7 (c) If an applicant's criminal history record check reveals one or more criminal
8 convictions, the conviction shall not automatically bar licensure. The Board shall
9 consider all of the following factors regarding the conviction:

10 (1) The level of seriousness of the crime.

11 (2) The date of the crime.

12 (3) The age of the person at the time of the conviction.

13 (4) The circumstances surrounding the commission of the crime, if known.

14 (5) The nexus between the criminal conduct of the person and the job
15 duties of the position to be filled.

16 (6) The person's prison, jail, probation, parole, rehabilitation, and
17 employment records since the date the crime was committed.

18 If, after reviewing the factors, the Board determines that any of the grounds set forth
19 in the subdivisions of G.S. 90-633(a) exist, the Board may deny licensure of the
20 applicant. The Board may disclose to the applicant information contained in the
21 criminal history record check that is relevant to the denial. The Board shall not provide
22 a copy of the criminal history record check to the applicant. The applicant shall have the
23 right to appear before the Board to appeal the Board's decision. However, an appearance
24 before the full Board shall constitute an exhaustion of administrative remedies in
25 accordance with Chapter 150B of the General Statutes.

26 (d) The Board, its officers, and employees, acting in good faith and in
27 compliance with this section, shall be immune from civil liability for denying licensure
28 to an applicant based on information provided in the applicant's criminal history record
29 check."

30 **SECTION 11.** G.S. 90-630 is repealed.

31 **SECTION 12.** Article 36 of Chapter 90 of the General Statutes is amended
32 by adding the following new section to read:

33 **"§ 90-630.1. Licensure by endorsement.**

34 (a) The Board may issue a license to a practitioner who is duly licensed,
35 certified, or registered as a massage and bodywork therapist under the laws of another
36 jurisdiction. The practitioner shall be eligible for licensure by endorsement if all of the
37 following qualifications are met:

38 (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and
39 (6) and submits the required application and fees to the Board.

40 (2) The applicant currently holds a valid license, certificate, or registration
41 as a massage and bodywork therapist in another jurisdiction, and that
42 jurisdiction's requirements for licensure, certification, or registration as
43 a massage and bodywork therapist are substantially equivalent to or
44 exceed the requirements for licensure under this Article.

1 (3) The applicant is currently a practitioner in good standing, with no
2 disciplinary proceeding or unresolved complaint pending in any
3 jurisdiction at the time a license is to be issued in this State.

4 (4) The applicant passes a jurisprudence examination administered by the
5 Board regarding laws and rules adopted by the Board for licensure
6 under this Article.

7 (5) The applicant, including applicants credentialed in a foreign country,
8 demonstrates satisfactory proof of proficiency in the English language.

9 (b) The Board may issue a license by endorsement to a practitioner from another
10 state that does not license, certify, or register massage and bodywork therapists if all of
11 the following qualifications are met:

12 (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and
13 (6) and submits the required application and fees to the Board.

14 (2) The applicant has passed a competency assessment examination that
15 meets generally accepted psychometric principles and standards and is
16 approved by the Board.

17 (3) The applicant has graduated from a massage and bodywork therapy
18 school that: (i) offers a curriculum that meets or is substantially
19 equivalent to the standards set forth in the Board's criteria for school
20 approval; and (ii) is licensed or approved by the regulatory authority
21 for schools of massage and bodywork therapy in the state, province,
22 territory, or country in which it operates or is exempt by law.

23 (4) The applicant is currently a practitioner in good standing, with no
24 disciplinary proceeding or unresolved complaint pending in any
25 jurisdiction at the time a license is to be issued in this State.

26 (5) The applicant passes a jurisprudence examination administered by the
27 Board regarding laws and rules adopted by the Board for licensure
28 under this Article.

29 (6) The applicant, including an applicant credentialed in a foreign country,
30 demonstrates satisfactory proof of proficiency in the English language.

31 (7) Notwithstanding the requirements of subdivisions (2) and (3) of this
32 subsection, the applicant has other credentials, to be reviewed by the
33 Board on a case-by-case basis, that are deemed by the Board to be
34 substantially equivalent to the requirements in subdivisions (2) and (3)
35 of this subsection.

36 (c) The Board shall maintain a list of jurisdictions whose regulatory standards for
37 the practice of massage and bodywork therapy have been determined by the Board to be
38 substantially equivalent to or to exceed the requirements for licensure under this
39 Article."

40 **SECTION 13.** G.S. 90-631(a) reads as rewritten:

41 "(a) The Board shall establish rules for the approval of massage and bodywork
42 therapy schools. These rules shall include:

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

8 Any school that offers a training program in massage and bodywork ~~therapy may~~
 9 ~~make~~ therapy, not otherwise exempt from the requirements of Board approval, shall
 10 submit an application for approval to the Board. If a massage and bodywork therapy
 11 school offers training programs at more than one physical location, each location shall
 12 constitute a separate massage and bodywork therapy school. The Board shall grant
 13 approval to ~~schools,~~ a school, whether in this State or another state, that ~~meet~~ meets the
 14 criteria established by the Board. The Board shall maintain a list of approved schools
 15 and a list of community college programs operating pursuant to subsection (b) of this
 16 section."

17 **SECTION 14.** G.S. 90-631 is amended by adding a new subsection to read:

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

- 24 (1) Adequate, safe, and sanitary facilities.
- 25 (2) Sufficient and qualified instructional and administrative staff.
- 26 (3) Satisfactory programs of operation and instructions."

27 **SECTION 15.** Article 36 of Chapter 90 of the General Statutes is amended
 28 by adding the following new sections to read:

29 **"§ 90-631.1. Massage and bodywork therapy school approval required.**

30 Unless exempt from the Board approval process, no individual, association,
 31 partnership, corporation, or other entity shall open, operate, or advertise a massage and
 32 bodywork therapy school in this State unless it has first complied with all the
 33 requirements of this Article and rules adopted by the Board and has been approved by
 34 the Board.

35 **"§ 90-631.2. Authority to establish fees for massage and bodywork therapy school**
 36 **approval.**

37 (a) The Board shall establish a schedule of fees for approvals and renewals
 38 granted and for inspections performed pursuant to this Article. The fees collected under
 39 this section are intended to cover the administrative costs of the approval programs. No
 40 fee for application approval or renewal of approval shall be refunded in the event the
 41 application is rejected or the approval suspended or revoked.

42 (b) Fees for Board approval of schools are as follows:

- 43 (1) Request for Application Approval Package \$20.00
- 44 (2) Initial application for approval (one program) 2,000.00

1	(3)	<u>Initial application for approval of additional</u>	
2		<u>programs (same location)</u>	<u>750.00</u>
3	(4)	<u>Inspection for initial approval or renewal (one program)</u>	<u>1,500.00</u>
4	(5)	<u>Inspection for initial approval or renewal of additional</u>	
5		<u>programs (same location)</u>	<u>500.00</u>
6	(6)	<u>Renewal of approval (one program)</u>	<u>1,000.00</u>
7	(7)	<u>Renewal of approval (each additional program)</u>	<u>750.00</u>

8 (c) Renewal inspections shall not occur more frequently than every three years,
9 unless necessary.

10 (d) A school that is required to have more than one inspection in a fiscal year in
11 order to investigate or verify areas of noncompliance with the standards for school
12 approval shall pay a fee of one thousand five hundred dollars (\$1,500) for each
13 additional inspection.

14 **§ 90-631.3. Grounds for suspension, revocation, or refusal of massage and**
15 **bodywork therapy school approval; notice and hearing; judicial review.**

16 (a) The Board may deny, suspend, revoke, or refuse to approve a massage and
17 bodywork therapy school for any of the following reasons:

- 18 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
19 attempting to obtain approval of a massage and bodywork therapy
20 school.
- 21 (2) Engaging in any act or practice in violation of any of the provisions of
22 this Article or of any of the rules adopted by the Board, or aiding,
23 abetting, or assisting any other person in the violation of the provisions
24 of this Article or rules adopted by the Board.
- 25 (3) Failure to require that its students must complete the minimum
26 standards in order to graduate.
- 27 (4) Operating a massage and bodywork therapy school without approval
28 from this Board.
- 29 (5) Engaging in conduct that could result in harm or injury to the public.
- 30 (6) The employment of fraud, deceit, or misrepresentation when
31 communicating with the general public, health care professionals, or
32 other business professionals.
- 33 (7) Falsely holding out a massage and bodywork therapy school as
34 approved by this Board.
- 35 (8) Failure to allow authorized representatives of the Board to conduct
36 inspections of the massage and bodywork therapy school or refusing to
37 make available to the Board, following written notice to the massage
38 and bodywork therapy school, the requested information pertaining to
39 the requirements for approval set forth in this Article.
- 40 (9) Failure to notify the Board in writing within 30 days of any
41 notification it receives from its accrediting agency or the United States
42 Department of Education Office of Postsecondary Education of a show
43 cause action, probation action, or denial of accreditation.

1 (10) The applicant for or holder of massage and bodywork therapy school
2 approval has pleaded guilty, entered a plea of nolo contendere, or has
3 been found guilty of a crime involving moral turpitude by a judge or
4 jury in any state or federal court.

5 (b) A refusal to issue, refusal to renew, or suspension or revocation of massage
6 and bodywork therapy school approval under this section shall be made in accordance
7 with Chapter 150B of the General Statutes."

8 **SECTION 16.** G.S. 90-632 reads as rewritten:

9 "**§ 90-632. License renewal and continuing education.**

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

14 (b) The continuing education requirement for the initial license renewal is as
15 follows:

16 (1) If the licensure period is two years or more, each licensee shall submit
17 to the Board evidence of the successful completion of at least 24 hours
18 of study, as approved by the Board, since the initial licensure
19 application date in the practice of massage and bodywork therapy.

20 (2) If the licensure period is less than two years, but more than one year,
21 each licensee shall submit to the Board evidence of the successful
22 completion of at least 12 hours of study, as approved by the Board,
23 since the initial licensure application date in the practice of massage
24 and bodywork therapy.

25 (c) For subsequent license renewals, each licensee shall submit to the Board
26 evidence of the successful completion of at least 24 hours of study, as approved by the
27 Board, since the previous licensure renewal submission date in the practice of massage
28 and bodywork therapy."

29 **SECTION 17.** G.S. 90-633 reads as rewritten:

30 "**§ 90-633. Disciplinary action.**

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

33 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
34 attempting to obtain a license or the renewal of a license.

35 (2) The use of drugs or intoxicating liquors to an extent that affects
36 professional competency.

37 (3) Conviction of an offense under any municipal, State, or federal
38 narcotic or controlled substance ~~law until proof of rehabilitation can be~~
39 ~~established.~~law.

40 (4) Conviction of a felony or other public offense involving moral
41 ~~turpitude until proof of rehabilitation can be established.~~turpitude.

42 (5) An adjudication of insanity or ~~incompetency until proof of recovery~~
43 ~~from the condition can be established.~~incompetency.

- 1 (6) Engaging in any act or practice in violation of any of the provisions of
2 this Article or of any of the rules adopted by the Board, or aiding,
3 abetting, or assisting any other person in the violation of these
4 provisions or rules. For purposes of this subdivision, the phrase
5 'aiding, abetting, or assisting any other person' does not include acts
6 intended to inform the individual who is not in compliance with this
7 Article of the steps necessary to comply with this Article or any rules
8 adopted by the Board.
- 9 (7) The commission of an act of malpractice, gross negligence, or
10 incompetency.
- 11 (8) Practice as a licensee under this Article without a valid certificate or
12 renewal.
- 13 (9) Engaging in conduct that could result in harm or injury to the public.
- 14 (10) The employment of fraud, deceit, or misrepresentation when
15 communicating with the general public, health care professionals, or
16 other business professionals.
- 17 (11) Falsely holding out himself or herself as licensed or certified in any
18 discipline of massage and bodywork therapy without successfully
19 completing training approved by the Board in that specialty.
- 20 (12) The application of systems of activity by a massage and bodywork
21 therapist during the course of therapy with the intent of providing
22 sexual stimulation or otherwise pursuing sexual contact.

23 (b) The Board may reinstate a revoked license, revoke censure or other judgment,
24 or remove other licensure restrictions if the Board finds that the reasons for revocation,
25 censure, or other judgment or other licensure restrictions no longer exist and the
26 massage and bodywork therapist or applicant can reasonably be expected to safely and
27 properly practice as a massage and bodywork therapist."

28 **SECTION 18.** G.S. 90-634 reads as rewritten:

29 **"§ 90-634. Enforcement; injunctive relief.**

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

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

37 (b) A person who violates subsection (a) of this section shall be guilty of a Class
38 1 misdemeanor.

39 (b1) Unless exempt from the approval process, it is unlawful for an individual,
40 association, partnership, corporation, or other entity to open, operate, or advertise a
41 massage and bodywork therapy school without first having obtained the approval
42 required by G.S. 90-637.1.

43 (b2) An individual, association, partnership, corporation, or other entity that
44 violates subsection (b1) of this section shall be guilty of a Class 3 misdemeanor.

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

5 **SECTION 19.** G.S. 90-634.1 reads as rewritten:

6 "**§ 90-634.1. Civil penalties; disciplinary costs.**

7 (a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty
8 not in excess of one thousand dollars (\$1,000) for the violation of any section of this
9 Article or the violation of any rules adopted by the Board. The continuation of the same
10 act for which the penalty is imposed shall not be the basis for an additional penalty
11 unless the penalty is imposed against the same party who has repeated the same act for
12 which the discipline has previously been imposed. The clear proceeds of any civil
13 penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture
14 Fund in accordance with G.S. 115C-457.2.

15 (b) Consideration Factors. – Before imposing and assessing a civil penalty, the
16 Board shall consider the following factors:

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

23 (c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil
24 penalties for violations of this Article and rules adopted by the Board.

25 (d) ~~Costs.~~ ~~The Board may assess the costs of disciplinary actions against a~~
26 ~~person found to be in violation of this Article or rules adopted by the~~
27 ~~Board.~~ Transcriptions Costs. – The Board may assess the costs of transcriptions of a
28 disciplinary hearing held by the Board or the Office of Administrative Hearings to
29 include the recording of the hearing by a court reporter and transcription of the
30 proceeding against a person found to be in violation of this Article or rules adopted by
31 the Board."

32 **SECTION 20.** Part 2 of Article 4 of Chapter 114 of the General Statutes is
33 amended by adding the following new section to read:

34 "**§ 114-19.11B. Criminal record checks of applicants for licensure as massage and**
35 **bodywork therapists.**

36 The Department of Justice may provide to the North Carolina Board of Massage and
37 Bodywork Therapy from the State and National Repositories of Criminal Histories the
38 criminal history of any applicant for licensure pursuant to Article 36 of Chapter 90 of
39 the General Statutes. Along with the request, the Board shall provide to the Department
40 of Justice the fingerprints of the applicant, a form signed by the applicant consenting to
41 the criminal record check and use of fingerprints and other identifying information
42 required by the State and National Repositories, and any additional information required
43 by the Department of Justice. The applicant's fingerprints shall be forwarded to the State
44 Bureau of Investigation for a search of the State's criminal history record file, and the

1 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
2 Investigation for a national criminal history record check. The Board shall keep all
3 information obtained pursuant to this section confidential. The Department of Justice
4 may charge a fee to offset the cost incurred by it to conduct a criminal record check
5 under this section. The fee shall not exceed the actual cost of locating, editing,
6 researching, and retrieving the information."

7 **SECTION 21.** Section 18 of this act becomes effective December 1, 2008,
8 and applies to offenses committed on or after that date. Prosecutions for offenses
9 committed before the effective date of this act are not abated or affected by this act, and
10 the statutes that would be applicable but for this act remain applicable to those
11 prosecutions. The remainder of this act is effective when it becomes law and applies to
12 the actions of therapists and schools on or after that date, to massage and bodywork
13 therapist applications for licensure, and to massage and bodywork therapy school
14 applications for Board approval submitted to the Board on or after that date.