

Article 36.

Massage and Bodywork Therapy Practice.

§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act. (1998-230, s. 10.)

§ 90-621. Declaration of purpose.

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. (1998-230, s. 10; 2008-224, s. 1.)

§ 90-622. Definitions.

The following definitions apply in this Article:

- (1) Accreditation. – Status granted to a postsecondary institution of higher learning that has met standards set by an accrediting agency recognized by the Secretary of the United States Department of Education. The accreditation for massage and bodywork schools may be institutional or programmatic in nature.
- (1a) Board. – The North Carolina Board of Massage and Bodywork Therapy.
- (2) Board-approved school. – Any massage and bodywork therapy school or training program in this State or another state that is not otherwise exempt from Board approval, that has met the standards set forth in this Article, and been granted approval by the Board.
- (2a) Criminal history record check. – A report resulting from a request made by the Board to the North Carolina Department of Public Safety for a history of conviction of a crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice massage and bodywork therapy.
- (3) Massage and bodywork therapy. – Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:
 - a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.
 - b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
 - c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.
- (3a) Massage and bodywork therapy school. – Any educational institution that conducts a training program or curriculum for a tuition charge, which is intended to teach adults the knowledge, skills, and abilities necessary for the safe, effective, and ethical practice of massage and bodywork therapy.
- (4) Massage and bodywork therapist. – A person licensed under this Article.

- (5) Practice of massage and bodywork therapy. – The application of massage and bodywork therapy to any person for a fee or other consideration. (1998-230, s. 10; 2008-224, s. 2; 2014-100, s. 17.1(o).)

§ 90-623. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including "massage therapist", "bodywork therapist", "masseur", "masseuse", "massagist", "somatic practitioner", "body therapist", "structural integrator", or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term "massage therapist" or "bodywork therapist" or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title "Licensed Massage and Bodywork Therapist". No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

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

- (1) The diagnosis of illness or disease.
- (2) Medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, or prescription of medicines.
- (3) The use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.
- (4) Sexual activity, which shall mean any direct or indirect physical contact, by any person or between persons, which is intended to erotically stimulate either person, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. As used in this subdivision, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred. (1998-230, s. 10; 2008-224, s. 3.)

§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

- (1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.
- (2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

- (3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.
- (4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.
- (5) A person giving massage and bodywork therapy to members of that person's immediate family.
- (6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.
- (7) The practice of techniques that are specifically intended to affect the human energy field.
- (8) A person employed by or contracting with a not-for-profit community service organization to perform massage and bodywork therapy on persons who are members of the not-for-profit community service organization and are of the same gender as the person giving the massage or bodywork therapy. (1998-230, s. 10; 2000-140, s. 93.)

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

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

- (1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. Consideration shall be given to geographical distribution, practice setting, clinical specialty, involvement in massage and bodywork therapy education, and other factors that will promote diversity of the profession on the Board. Two of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, two shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the Governor.
- (2) One member shall be a physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes or a person once licensed as a physician whose license lapsed while the person was in good standing with the profession and eligible for licensure. The appointment shall be made by the Governor and may be made from a list provided by the North Carolina Medical Society.
- (3) One member shall be a member of the general public who shall not be licensed under Chapter 90 of the General Statutes or the spouse of a 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 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. (1998-230, s. 10; 2008-224, s. 4.)

§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

- (1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.
- (2) Evaluate the qualifications of applicants for licensure under this Article.
- (3) Issue, renew, deny, suspend, or revoke licenses under this Article.
- (4) Reprimand or otherwise discipline licensees under this Article.
- (5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.
- (5a) Approve and regulate massage and bodywork schools, not otherwise exempt from the requirements of Board approval, by formulating the criteria and standards for approval of massage and bodywork schools, investigating massage and bodywork schools applying for approval, issuing approvals to massage and bodywork schools that meet the standards established by the Board, providing periodic inspections of approved massage and bodywork schools, and requiring periodic reports of approved massage and bodywork schools.
- (6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.
- (7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.
- (8) Pursuant to the maximum amounts set by this Article and other specific authority authorizing fees, establish reasonable fees for applications for examination, certificates of licensure and renewal, approval of massage and bodywork therapy schools, and other services provided by the Board.

- (9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.
- (10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.
- (11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.
- (12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.
- (13) Provide a system for grievances to be presented and resolved.
- (14) Assess civil penalties pursuant to G.S. 90-634.1.
- (15) Assess the costs of disciplinary actions pursuant to G.S. 90-634.1(d).

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. (1998-230, s. 10; 2003-348, s. 3; 2008-224, ss. 6, 7.)

§ 90-627. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article. (1998-230, s. 10.)

§ 90-628. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

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

- (1) Application for license\$20.00
- (2) Initial license fee 150.00
- (3) License renewal..... 100.00
- (4) Late renewal penalty 75.00
- (5) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008.
- (6) Duplicate license25.00
- (7) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008.
(1998-230, s. 10; 2008-224, s. 8.)

§ 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 training program consisting of a minimum of 500 in-class hours of supervised instruction at a Board-approved school.
- (5) Has passed a competency assessment examination 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 Public Safety. (1998-230, s. 10; 2008-224, s. 9; 2014-100, s. 17.1(o).)

§ 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 Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

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

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

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

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

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2008-224, s. 10; 2014-100, s. 17.1(o).)

§ 90-630: Repealed by Session Laws 2008-224, s. 11, effective August 17, 2008.

§ 90-630.1. Licensure by endorsement.

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

- (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and (6) and submits the required application and fees to the Board.
- (2) The applicant currently holds a valid license, certificate, or registration as a massage and bodywork therapist in another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration as a massage and bodywork therapist are substantially equivalent to or exceed the requirements for licensure under this Article.
- (3) The applicant is currently a practitioner in good standing, with no disciplinary proceeding or unresolved complaint pending in any jurisdiction at the time a license is to be issued in this State.
- (4) The applicant passes a jurisprudence examination administered by the Board regarding laws and rules adopted by the Board for licensure under this Article.
- (5) The applicant, including applicants credentialed in a foreign country, demonstrates satisfactory proof of proficiency in the English language.

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

- (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and (6) and submits the required application and fees to the Board.
- (2) The applicant has passed a competency assessment examination that meets generally accepted psychometric principles and standards and is approved by the Board.
- (3) The applicant has graduated from a massage and bodywork therapy school that: (i) offers a curriculum that meets or is substantially equivalent to the standards set forth in the Board's criteria for school approval; and (ii) is licensed or approved by the regulatory authority for schools of massage and bodywork therapy in the state, province, territory, or country in which it operates or is exempt by law.
- (4) The applicant is currently a practitioner in good standing, with no disciplinary proceeding or unresolved complaint pending in any jurisdiction at the time a license is to be issued in this State.
- (5) The applicant passes a jurisprudence examination administered by the Board regarding laws and rules adopted by the Board for licensure under this Article.
- (6) The applicant, including an applicant credentialed in a foreign country, demonstrates satisfactory proof of proficiency in the English language.
- (7) Notwithstanding the requirements of subdivisions (2) and (3) of this subsection, the applicant has other credentials, to be reviewed by the Board on

a case-by-case basis, that are deemed by the Board to be substantially equivalent to the requirements in subdivisions (2) and (3) of this subsection.

(c) The Board shall maintain a list of jurisdictions whose regulatory standards for the practice of massage and bodywork therapy have been determined by the Board to be substantially equivalent to or to exceed the requirements for licensure under this Article. (2008-224, s. 12.)

§ 90-631. Massage and bodywork therapy schools.

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

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

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

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

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

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

(c) A massage and bodywork therapy program operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency that is recognized by the United States Department of Education and is licensed by the North Carolina Community College System or The University of North Carolina Board of Governors is exempt from the approval process, licensure process, or both, established by the Board. The college or university shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources

established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board. (1998-230, s. 10; 2005-276, s. 8.15(a); 2008-224, ss. 13, 14.)

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

Unless exempt from the Board approval process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy school in this State unless it has first complied with all the requirements of this Article and rules adopted by the Board and has been approved by the Board. (2008-224, s. 15.)

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

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

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

(1) Request for Application Approval Package	\$20.00
(2) Initial application for approval (one program)	2,000.00
(3) Initial application for approval of additional programs (same location)	750.00
(4) Inspection for initial approval or renewal (one program)	1,500.00
(5) Inspection for initial approval or renewal of additional programs (same location)	500.00
(6) Renewal of approval (one program)	1,000.00
(7) Renewal of approval (each additional program)	750.00

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

(d) A school that is required to have more than one inspection in a fiscal year in order to investigate or verify areas of noncompliance with the standards for school approval shall pay a fee of one thousand five hundred dollars (\$1,500) for each additional inspection. (2008-224, s. 15.)

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

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

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain approval of a massage and bodywork therapy school.
- (2) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of the provisions of this Article or rules adopted by the Board.
- (3) Failure to require that its students must complete the minimum standards in order to graduate.

- (4) Operating a massage and bodywork therapy school without approval from this Board.
- (5) Engaging in conduct that could result in harm or injury to the public.
- (6) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- (7) Falsely holding out a massage and bodywork therapy school as approved by this Board.
- (8) Failure to allow authorized representatives of the Board to conduct inspections of the massage and bodywork therapy school or refusing to make available to the Board, following written notice to the massage and bodywork therapy school, the requested information pertaining to the requirements for approval set forth in this Article.
- (9) Failure to notify the Board in writing within 30 days of any notification it receives from its accrediting agency or the United States Department of Education Office of Postsecondary Education of a show cause action, probation action, or denial of accreditation.
- (10) The applicant for or holder of massage and bodywork therapy school approval has pleaded guilty, entered a plea of nolo contendere, or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(b) A refusal to issue, refusal to renew, or suspension or revocation of massage and bodywork therapy school approval under this section shall be made in accordance with Chapter 150B of the General Statutes. (2008-224, s. 15.)

§ 90-632. License renewal and continuing education.

- (a) The license to practice under this Article shall be renewed every two years.
- (b) The continuing education requirement for the initial license renewal is as follows:
 - (1) If the licensure period is two years or more, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.
 - (2) If the licensure period is less than two years, but more than one year, each licensee shall submit to the Board evidence of the successful completion of at least 12 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.

(c) For subsequent license renewals, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the previous licensure renewal submission date in the practice of massage and bodywork therapy. (1998-230, s. 10; 2008-224, s. 16.)

§ 90-633. Disciplinary action.

- (a) The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:
 - (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

- (2) The use of drugs or intoxicating liquors to an extent that affects professional competency.
- (3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law.
- (4) Conviction of a felony or other public offense involving moral turpitude.
- (5) An adjudication of insanity or incompetency.
- (6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules. For purposes of this subdivision, the phrase "aiding, abetting, or assisting any other person" does not include acts intended to inform the individual who is not in compliance with this Article of the steps necessary to comply with this Article or any rules adopted by the Board.
- (7) The commission of an act of malpractice, gross negligence, or incompetency.
- (8) Practice as a licensee under this Article without a valid certificate or renewal.
- (9) Engaging in conduct that could result in harm or injury to the public.
- (10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- (11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.
- (12) The application of systems of activity by a massage and bodywork therapist during the course of therapy with the intent of providing sexual stimulation or otherwise pursuing sexual contact.

(b) The Board may reinstate a revoked license, revoke censure or other judgment, or remove other licensure restrictions if the Board finds that the reasons for revocation, censure, or other judgment or other licensure restrictions no longer exist and the massage and bodywork therapist or applicant can reasonably be expected to safely and properly practice as a massage and bodywork therapist. (1998-230, s. 10; 2008-224, s. 17.)

§ 90-634. Enforcement; injunctive relief.

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

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

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

(b1) Unless exempt from the approval process, it is unlawful for an individual, association, partnership, corporation, or other entity to open, operate, or advertise a massage and bodywork therapy school without first having obtained the approval required by G.S. 90-631.1.

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

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person, association, partnership, corporation, or other entity has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action. (1998-230, s. 10; 2008-224, s. 18; 2009-570, s. 12.)

§ 90-634.1. Civil penalties; disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of one thousand dollars (\$1,000) for the violation of any section of this Article or the violation of any rules adopted by the Board. The continuation of the same act for which the penalty is imposed shall not be the basis for an additional penalty unless the penalty is imposed against the same party who has repeated the same act for which the discipline has previously been imposed. 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) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider 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 violations found to exist.

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

(d) Transcriptions Costs. – The Board may assess the costs of transcriptions of a disciplinary hearing held by the Board or the Office of Administrative Hearings to include the recording of the hearing by a court reporter and transcription of the proceeding against a person found to be in violation of this Article or rules adopted by the Board. (2003-348, s. 4; 2008-224, s. 19.)

§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. (1998-230, s. 10.)

§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article. (1998-230, s. 10.)

§§ 90-637 through 90-639. Reserved for future codification purposes.