CHAPTER 30

Massage/Bodywork Practice Act

**SECTION 40‑30‑10.** Short title.

 This chapter may be cited as the Massage/Bodywork Practice Act.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 127, The Health Professional Compliance Act.

Attorney General’s Opinions

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. (Decided under former law) 1984 S.C. Op.Atty.Gen. 166, 1984 S.C. Op.Atty.Gen. No. 84‑66, (June 11, 1984) 1984 WL 159873.

**SECTION 40‑30‑20.** Purpose.

 The General Assembly recognizes that the practice of massage/bodywork is potentially harmful to the public in that massage/bodywork therapists must have a knowledge of anatomy, kinesiology, and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage/bodywork is therapeutic, and regulations are necessary to protect the public from unqualified practitioners. It is, therefore, necessary in the interest of public health, safety, and welfare to regulate the practice of massage/bodywork in this State. However, restrictions must be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters must be afforded the public through legal remedies provided for in this chapter.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1.

Attorney General’s Opinions

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. (Decided under former law) 1984 S.C. Op.Atty.Gen. 166, 1984 S.C. Op.Atty.Gen. No. 84‑66, (June 11, 1984) 1984 WL 159873.

NOTES OF DECISIONS

In general 1

1. In general

Under equal protection test that act must bear reasonable relationship between its purpose and classifications used therein, Massage Parlor Act, Code 1962 Sections 56‑831 et seq. [Code 1976 Sections 40‑29‑10 et seq.], is constitutional. United Health Clubs of America, Inc. v. Strom (D.C.S.C. 1976) 423 F.Supp. 761.

The Massage Parlor Act, Code 1962 Sections 56‑831 to 56‑847 [Code 1976 Sections 40‑29‑10 to 40‑29‑190] is constitutional. United Health Clubs of America, Inc. v. Strom (D.C.S.C. 1976) 423 F.Supp. 761.

Massage Parlor Act, Code 1962 Sections 56‑831 to 56‑847 [Code 1976 Sections 40‑29‑10 to 40‑29‑190] does not affect a fundamental right, and hence is measured against the “reasonable relationship” standard applicable to professional licensing laws. United Health Clubs of America, Inc. v. Strom (D.C.S.C. 1976) 423 F.Supp. 761.

**SECTION 40‑30‑30.** Definitions.

 As used in this chapter:

 (1) “Approved massage/bodywork school” means a facility that meets minimum standards for training and curriculum as determined by regulation of the department.

 (2) “Department” means the Department of Labor, Licensing and Regulation.

 (3) “Director” means the Director of the Department of Labor, Licensing and Regulation.

 (4) “Hydrotherapy” means the use of water, vapor, or ice for treatment of superficial tissues.

 (5) “Licensure” means the procedure by which an individual applies to the department and is granted approval to practice massage/bodywork.

 (6) “Massage/bodywork therapy” means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

 (7) “Massage/bodywork therapist” means an individual licensed as required by this chapter, who administers massage/bodywork therapy for compensation.

 (8) “Massage device” means a mechanical device that mimics or enhances the actions possible by the hands by means of vibration.

 (9) “Panel” means the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

 (10) “Thermal therapy” means the use of ice or a heat lamp or moist heat on superficial tissues.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 1, eff June 7, 2013.

Effect of Amendment

The 2013 amendment deleted former subsections (1) and (5), definitions for “Advisory Panel” and “Disciplinary panel”, added subsection (9), definition of “Panel”, redesignated the subsections accordingly, and made other nonsubstantive changes.

Attorney General’s Opinions

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. (Decided under former law) 1984 S.C. Op.Atty.Gen. 166, 1984 S.C. Op.Atty.Gen. No. 84‑66, (June 11, 1984) 1984 WL 159873.

**SECTION 40‑30‑40.** Panel for Massage/Bodywork.

 (A) There is created the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The panel consists of seven members appointed by the Governor. Six members must be licensed massage/bodywork therapists in good standing and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment to the panel. One member must represent the public at large and must not have a financial interest, direct or indirect, in the profession or practice of massage/bodywork therapy. A panel member must be a high school graduate or shall have received a graduate equivalency diploma and must be a citizen of the United States and a resident of this State for not fewer than five years. Nominations for appointment to the panel may be submitted to the Governor from any individual, group, or association.

 (B) Members serve a term of four years and until their successors are appointed and qualify. A vacancy on the panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

 (C) Members of the panel must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with and as a result of their service on the panel. Compensation and reimbursements paid to panel members pursuant to this subsection must be paid as an expense of the panel in the administration of this chapter.

 (D) The Governor may remove a member of the panel in accordance with Section 1‑3‑240.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1; 1999 Act No. 26, Section 3; 2008 Act No. 273, Section 6; 2013 Act No. 41, Section 2, eff June 7, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

Library References

Health 194.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 33, 71.

Attorney General’s Opinions

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. (Decided under former law) 1984 S.C. Op.Atty.Gen. 166, 1984 S.C. Op.Atty.Gen. No. 84‑66, (June 11, 1984) 1984 WL 159873.

**SECTION 40‑30‑50.** Duties of panel for Massage/Bodywork.

 (A) The Panel for Massage/Bodywork shall:

 (1) advise and recommend action to the department in the development of regulations, statutory revisions, and such other matters as the department may request in regard to the administration of this chapter;

 (2) conduct hearings:

 (a) on alleged violations of this chapter and regulations promulgated pursuant to this chapter;

 (b) on licensure determination if not appropriate to be determined at the staff level;

 (3) mediate consumer complaints if appropriate;

 (4) recommend discipline for individuals licensed pursuant to this chapter in any manner provided for in this chapter.

 (B) The panel may administer oaths and upon its own motion, or upon request of a party, shall subpoena witnesses, compel their attendance, take evidence, and require the production of matter that is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of individuals having knowledge of relevant facts or other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the panel, the panel may apply pursuant to the Administrative Procedures Act to an administrative law judge for an order requiring the individual to appear before the panel and to produce documentary evidence and give other evidence concerning the matter under inquiry.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 2, eff June 7, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Administrative Procedure Act, see Sections 1‑23‑310 et seq.

Library References

Health 194.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 33, 71.

Attorney General’s Opinions

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. (Decided under former law) 1984 S.C. Op.Atty.Gen. 166, 1984 S.C. Op.Atty.Gen. No. 84‑66, (June 11, 1984) 1984 WL 159873.

**SECTION 40‑30‑60.** Employees; duties.

 (A) The Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

 (B) The director shall prescribe duties, which may include, but are not limited to:

 (1) maintaining and preserving records;

 (2) receiving and accounting for all monies received by the panel;

 (3) issuing necessary notices to licensees;

 (4) determining the eligibility of applicants for examination and licensure;

 (5) examining applicants for licensure including, but not limited to:

 (a) prescribing the subjects, character, and manner of licensing examinations;

 (b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;

 (6) issuing and renewing licenses of qualified applicants;

 (7) evaluating and approving continuing education course hours and programs;

 (8) promulgating regulations to carry out this chapter including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals licensed pursuant to this chapter.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 2, eff June 7, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Regulations for massage/bodywork therapy, see S.C. Code of Regulations R. 77‑100 et seq.

Library References

Health 194.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 33, 71.

**SECTIONS 40‑30‑65, 40‑30‑70.** Repealed by 2013 Act No. 41, Section 8, eff June 7, 2013.

Editor’s Note

Former Section 40‑30‑65 was titled Disciplinary Panel for Massage/Bodywork and was derived from 1996 Act No. 387, Section 1; 1999 Act No. 26, Section 4.

Former Section 40‑30‑70 was titled Duties of disciplinary panel and was derived from 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1.

**SECTION 40‑30‑80.** Fees.

 The department shall charge and collect the following fees:

 (1) massage/bodywork therapist application, not to exceed fifty dollars;

 (2) massage/bodywork therapist initial licensure fee, not to exceed one hundred dollars;

 (3) biennial massage/bodywork therapist licensure renewal fee, not to exceed two hundred dollars;

 (4) massage/bodywork therapist reexamination fee, not to exceed two hundred fifty dollars;

 (5) application and provisional massage/bodywork therapist licensure fee, not to exceed two hundred dollars;

 (6) application and reactivation for inactive status of a massage/bodywork therapist license fee, not to exceed two hundred fifty dollars;

 (7) renewal fee for inactive status, not to exceed two hundred fifty dollars;

 (8) continuing education course provider fee, not to exceed one hundred dollars and continuing education course provider renewal fee, not to exceed fifty dollars.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1.

Library References

Health 157.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 37.

**SECTION 40‑30‑90.** Annual report.

 The department shall prepare and submit to the Governor an annual report on the administration of this chapter.

HISTORY: 1986 Act No. 467, Section 3; 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 3, eff June 7, 2013.

Effect of Amendment

The 2013 amendment inserted “to the Governor” and deleted from the end “in accordance with Section 40‑73‑20”.

Library References

Health 194.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 33, 71.

**SECTION 40‑30‑100.** Practice without license.

 No person may practice massage/bodywork without a license issued in accordance with this chapter by the director; however, a person licensed by the State under this title or any other provision of law whose scope of practice overlaps with the practice of massage/bodywork is not also required to be licensed under this chapter unless the person holds himself out to be a practitioner of massage/bodywork. Nothing in this chapter may be construed to authorize a massage/bodywork therapist licensed under this chapter to practice physical therapy or chiropractic or to utilize chiropractic therapeutic modalities except where the scope of practice for massage/bodywork, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 128, 177.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 12 to 13, 15 to 19.

**SECTION 40‑30‑110.** Qualifications for license.

 To be licensed by the department as a massage/bodywork therapist an individual:

 (1) must be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;

 (2) shall have completed a five hundred hour course of classroom study at an approved massage/bodywork school having a curriculum that meets the standards set forth in regulation by the department; and

 (3) shall have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 4, eff June 7, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

Library References

Health 150, 156.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 24 to 29, 36.

**SECTION 40‑30‑120.** Application for license.

 An application for licensure must be made in writing under oath on a form prescribed by the department and accompanied by all applicable fees.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 155.

Westlaw Topic No. 198H.

**SECTION 40‑30‑130.** Examination.

 (A) An applicant who fails an examination may be reexamined as provided by the department in regulation.

 (B) A licensing examination must be conducted so that the applicant is known to the department by number until the examination is completed and the proper grade determined. An accurate record of each examination must be made and filed with all examination papers with the director of the department and must be kept for reference and inspection for a period of not fewer than two years immediately following the examination.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 156.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 28 to 29, 36.

**SECTION 40‑30‑140.** Issuance of license.

 (A) If an applicant satisfies the licensure requirements and pays the applicable fees as provided for in this chapter, the department shall issue a license to the applicant. A license is a personal right and not transferable and the issuance of a license is evidence that the licensee is entitled to all rights and privileges of a massage/bodywork therapist while the license remains current and unrestricted.

 (B) A person licensed under this chapter shall display the license in a prominent and conspicuous place in the person’s place of business and shall include the number of the license in an advertisement of massage/bodywork services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium.

 (C) Only a person licensed under this chapter may use the title of “massage/bodywork therapist”.

 (D) Under conditions established by the department in regulation the department may issue a provisional license to applicants meeting these requirements.

 (E) A duplicate license may be issued to a licensee by the department in accordance with regulations promulgated by the department and upon payment of a fee.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 157, 160, 192.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 37, 40 to 42, 71 to 73.

**SECTION 40‑30‑150.** License from another state.

 The department shall issue a license to a person who holds an active license in another state if the standards for licensure in that state are at least the substantial equivalent to the licensing standards provided for in this chapter, and the person satisfies any other requirements the department may prescribe in regulation.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 150.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 24 to 27.

**SECTION 40‑30‑160.** Records and registry.

 (A) The department shall keep a record of its proceedings and a registry of all applications for licensure. The register shall show the name, age, and last known address of each applicant, the place of business of the applicant, the education, experience, and other qualifications of the applicant, type of examination required, whether or not a license was granted, whether or not the applicant was denied a license, the date of the action of the department, and other information considered necessary by the department.

 (B) The record of department proceedings and its registry of applications must be open to public inspection and a copy of the registry must be provided upon request and payment of a fee.

 (C) Records of the department and its registry are prima facie evidence of its proceedings and a transcript certified by the director under seal is admissible as evidence with the same force and effect as the original.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 196.

Records 54, 60.

Westlaw Topic Nos. 198H, 326.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 71, 77.

C.J.S. Records Sections 116, 118, 120, 126, 130 to 132, 139 to 142.

**SECTION 40‑30‑170.** Publication of roster.

 Annually the department shall prepare and publish a roster containing the names and places of businesses of all persons licensed under this chapter. A copy of the roster must be provided upon request and upon payment of a fee.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 194.

Records 54.

Westlaw Topic Nos. 198H, 326.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 30 to 33, 71.

C.J.S. Records Sections 116, 118, 120, 130 to 132.

**SECTION 40‑30‑180.** Renewal of license.

 (A) A person licensed under this chapter biennially must satisfy these license renewal requirements in order to continue practicing massage/body work therapy:

 (1) pay a renewal fee in the amount, at the time, and in the manner as the department provides in regulation;

 (2) complete continuing education requirements prescribed by the department in accordance with Section 40‑30‑190 and submit evidence of compliance; however, a massage/body work therapist who has proof of a “Certificate in Massage” issued prior to January 1, 1974, is exempt from continuing education requirements.

 A massage/body work therapist’s license automatically reverts to inactive status if the massage/body work therapist fails to timely comply with this subsection and only may be reinstated upon application and payment of any fees and after having met any additional requirements which the department may establish in regulation including, but not limited to, continuing education requirements.

 (B) A license which has been inactive for more than four years automatically expires if the person has not made application for renewal of the license. An expired license is null and void without any further action by the department.

HISTORY: 1996 Act No. 387, Section 1; 1999 Act No. 26, Section 1.

Library References

Health 161.

Westlaw Topic No. 198H.

**SECTION 40‑30‑190.** Promulgation of regulations.

 The department shall promulgate regulations establishing:

 (1) continuing education requirements and compliance procedures:

 (a) for license renewal not to exceed twelve classroom hours per biennium;

 (b) for license reinstatement not to exceed six classroom hours for each year the license was inactive;

 (2) criteria for the approval of continuing education programs or courses including, but not limited to, correspondence courses.

HISTORY: 1996 Act No. 387, Section 1; 1999 Act No. 26, Section 2.

CROSS REFERENCES

Regulations for massage/bodywork therapy, see S.C. Code of Regulations R. 77‑100 et seq.

Library References

Health 161.

Westlaw Topic No. 198H.

**SECTION 40‑30‑200.** Fitness to practice; investigation of complaints.

 If the director has reason to believe that an individual licensed pursuant to this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated pursuant to this chapter or if a written complaint is filed with the director charging a licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 5, eff June 7, 2013.

Effect of Amendment

The 2013 amendment deleted “disciplinary” before “panel for a hearing”, and made other nonsubstantive changes.

Library References

Health 217.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60 to 61.

**SECTION 40‑30‑210.** Repealed by 2013 Act No. 41, Section 8, eff June 7, 2013.

Editor’s Note

Former Section 40‑30‑210 was titled Proceedings before disciplinary panel and was derived from 1996 Act No. 387, Section 1.

**SECTION 40‑30‑220.** Cease and desist orders; temporary restraining orders.

 (A) If the panel or the department has reason to believe that an individual is violating or intends to violate a provision of this chapter or a regulation promulgated pursuant to this chapter, in addition to all other remedies, the panel may order an individual to immediately cease and desist from engaging in the conduct. If the individual is practicing massage/bodywork without being licensed pursuant to this chapter the panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The administrative law judge may issue a temporary restraining order ex parte and the panel or the department is not required to:

 (1) post a bond;

 (2) establish the absence of an adequate remedy at law;

 (3) establish that irreparable damage would result from the continued violation.

 A panel member, the Director of the Department of Labor, Licensing or Regulation, or any other employee of the department may not be held liable for damages resulting from a wrongful temporary restraining order.

 (B) In accordance with the South Carolina Rules of Civil Procedure, the panel or the department also may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or a regulation promulgated pursuant to this chapter.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment, in the last paragraph of subsection (A), substituted “A panel member” for “No disciplinary panel member”, and made other nonsubstantive changes.

Library References

Health 222(1).

Injunction 89(5).

Westlaw Topic Nos. 198H, 212.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60, 68.

**SECTION 40‑30‑230.** Misconduct.

 The following constitute misconduct and are grounds for the department denying initial licensure to or the panel taking disciplinary action against an individual who:

 (1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure pursuant to this chapter;

 (2) has had his or her license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

 (3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;

 (4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;

 (5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;

 (6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

 (7) lacks the professional or ethical competence to practice massage/bodywork;

 (8) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16‑1‑60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork;

 (9) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him or her unfit to practice massage/bodywork;

 (10) has sustained a physical or mental disability, as determined by a physician that renders further practice by the licensee dangerous to the public.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment, in the first paragraph, deleted “disciplinary” before “panel taking disciplinary action”; deleted former subsection (7), relating to conduct; redesignated former subsections (8) through (11) as (7) through (10); rewrote subsection (8); and made other nonsubstantive changes.

Library References

Health 202 to 213.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 52 to 59.

**SECTION 40‑30‑240.** Mental or physical examination; records; drug testing.

 If investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40‑30‑230(10), or a physical or mental disability, as provided for in Section 40‑30‑230(11), the panel upon reasonable grounds may:

 (1) require an applicant or licensee to submit to a mental or physical examination including a drug test by physicians designated by the panel. The results of an examination are admissible in a hearing before the panel, notwithstanding a claim of privilege pursuant to a contrary rule of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application for a license to practice massage/bodywork in this State is deemed to have consented to submit to a mental or physical examination including a drug test and to have waived all objections to the admissibility of the results in a hearing before the panel upon the grounds that the results constitute a privileged communication. If an applicant or licensee fails to submit to an examination when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual’s control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited from practicing pursuant to this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients;

 (2) obtain records of an examination required by item (1) specifically relating to the mental or physical condition of an applicant or licensee who is the subject of an investigation and these records are admissible in a hearing before the panel, notwithstanding any other provision of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application to practice massage/bodywork in this State is deemed to have consented to the panel obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the panel upon the grounds that the records constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the panel to obtain these records when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual’s control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited pursuant to this section from practicing massage/bodywork must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment substituted “panel” for “disciplinary panel” throughout, and made other nonsubstantive changes.

Library References

Health 217.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60 to 61.

**SECTION 40‑30‑250.** Discipline.

 (A) Upon a determination by the panel that one or more of the grounds for discipline exists, as provided for in Section 40‑30‑230, the panel may:

 (1) issue a nondisciplinary letter of caution;

 (2) issue a private reprimand;

 (3) issue a public reprimand;

 (4) impose a fine not to exceed five hundred dollars;

 (5) place the licensee on probation, restrict the license, or suspend the license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension, respectively including, but not limited to, satisfactory completion of additional education of a supervisory period or of continuing education programs as may be specified;

 (6) permanently revoke the license.

 (B) A decision by the panel to discipline a licensee as authorized pursuant to this section must be made by a majority vote of the total membership of the panel serving at the time the vote is taken.

 (C) Except for a private reprimand, a final order of the department refusing to issue a license to an applicant or a final order of the panel disciplining a licensee pursuant to this section is public information.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment substituted “panel” for “disciplinary panel” throughout; added subsection (A)(2), relating to private reprimand; redesignated former subsections (A)(2) through (A)(5) as (A)(3) through (A)(6); and made other nonsubstantive changes.

Library References

Health 196, 222.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60, 68, 71, 77.

**SECTION 40‑30‑260.** Voluntary surrender of license.

 A licensee who is under investigation for misconduct, as defined in Section 40‑30‑230, voluntarily may surrender his or her license to the department, invalidating the license at the time it is surrendered. An individual who voluntarily surrenders his or her license may not practice as a massage/bodywork therapist until the panel reinstates the individual’s license. An individual practicing as a massage/bodywork therapist during the period of voluntary license surrender is deemed an illegal practitioner and is subject to the penalties provided in this chapter. Surrendering a license must not be considered an admission of guilt in a proceeding held pursuant to this chapter. However, surrendering a license does not preclude the panel from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

Library References

Health 160, 222.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 40 to 42, 60, 68.

**SECTION 40‑30‑270.** Appeal.

 An individual aggrieved by an action of the panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the panel’s or the department’s decision pending completion of the appellate process.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 6, eff June 7, 2013.

Effect of Amendment

The 2013 amendment substituted “An individual” for “A person”, and deleted “disciplinary” before “panel” and “panel’s”.

Library References

Health 223.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60, 69.

**SECTION 40‑30‑280.** Service of notice upon nonresident.

 (A) Service of any notice provided for by law upon a nonresident licensed under this chapter or upon a resident who having been licensed, subsequently becomes a nonresident or after due diligence cannot be found at his usual abode or place of business in this State, may be made by leaving with the Director of the Department of Labor, Licensing and Regulation a copy of the notice and any accompanying documents. A copy of the notice, accompanying documents, and a certified copy of the service on the director must be mailed to the licensee at his last known address, return receipt requested. The director shall keep a record of the day of the service of the notice, and the return receipt must be attached to and made a part of the return of service of the notice by the department.

 (B) A continuance may be given in any hearing under this chapter for which notice is given pursuant to this section so as to afford the licensee a reasonable opportunity to appear and be heard.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 216.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60, 63.

**SECTION 40‑30‑290.** Costs and fines.

 (A) All costs and fines imposed under Section 40‑30‑250 are due and payable immediately upon imposition. Unless the costs and fines are paid within sixty days after the order becomes final, the order constitutes a judgment and may be filed and executed upon in the same manner as a judgment in the court of common pleas, and the department may collect costs and attorney fees incurred in executing the judgment. Interest at the legal rate accrues on the amount due from the date imposed until the date paid.

 (B) All fines and costs collected under this section must be remitted by the department to the State Treasurer and deposited in a special fund from which the department, upon approval of the State Department of Administration, must be reimbursed for the administrative costs associated with investigations and hearings under this chapter.

HISTORY: 1996 Act No. 387, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Library References

Health 222.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 60, 68.

**SECTION 40‑30‑300.** Privileged communications.

 (A) Every communication, whether oral or written, made by or on behalf of an individual, to the director or the panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

 (B) Nothing in this chapter may be construed to prohibit the respondent or his or her legal counsel from exercising the respondent’s constitutional right of due process under the law, including, but not limited to, the respondent’s right to have normal access to the charges and evidence filed against him or her.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 7, eff June 7, 2013.

Effect of Amendment

The 2013 amendment, in subsection (A), deleted “disciplinary” before “panel”; in subsection (B), substituted “ including, but not limited to, the respondent’s right to have normal access to the charges and evidence filed against him or her” for “nor as prohibiting the respondent from normal access to the charges and evidence filed against him as part of due process under the law”; and made other nonsubstantive changes.

Library References

Health 196.

Privileged Communications and Confidentiality 423.

Westlaw Topic Nos. 198H, 311H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 71, 77.

C.J.S. Witnesses Sections 370 to 371.

**SECTION 40‑30‑310.** Violation of chapter; civil penalties.

 (A) It is unlawful for an individual to:

 (1) hold himself or herself out as a massage/bodywork therapist unless licensed pursuant to this chapter;

 (2) allow an employed individual to practice massage/bodywork unless licensed pursuant to this chapter;

 (3) present as his or her own the license of another;

 (4) allow the use of his or her license by an unlicensed individual;

 (5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;

 (6) falsely impersonate another license holder;

 (7) use or attempt to use a license that has been revoked;

 (8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

 (B) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against an individual violating a provision of this chapter or a regulation promulgated pursuant to this chapter or an order of the department or the panel. For each violation, the court may impose a fine of no more than one thousand dollars.

HISTORY: 1996 Act No. 387, Section 1; 2013 Act No. 41, Section 7, eff June 7, 2013.

Effect of Amendment

The 2013 amendment, in subsection (A)(6), deleted from the end “of like or different name”; added at the end of subsection (A)(8) “or a regulation promulgated pursuant to this chapter”; in subsection (B), deleted “disciplinary” before “panel”; and made other nonsubstantive changes.

Library References

Health 177, 975.

Injunction 89(5).

Westlaw Topic Nos. 198H, 212.

C.J.S. Health and Environment Section 89.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 15 to 19.

**SECTION 40‑30‑320.** Instruction of massage/bodywork.

 Nothing in this chapter may be construed to prevent the teaching of massage/bodywork in this State at an approved massage/bodywork school.

HISTORY: 1996 Act No. 387, Section 1.

Library References

Health 177.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Sections 15 to 19.