~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 17, 2021

**S. 227**

Introduced by Senators Shealy, McElveen and Matthews

S. Printed 2/17/21--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 227) to enact the “Massage Therapy Practice Act”; to amend Chapter 30, Title 40 of the 1976 Code, relating to Massage Therapy Practice, to provide that it is in, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, on page 6, by striking line 10 and inserting:

/ seven members appointed by the Governor, upon the advice and consent of the Senate. Six members must be /

Amend the bill further, as and if amended, on page 7, by striking lines 12 through 15 and inserting:

/ (2) recommending to the department regulations necessary to carry out the provisions of this chapter, including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals and establishments licensed pursuant to this chapter; /

Amend the bill further, as and if amended, beginning on page 8, by striking lines 41 through 42, on page 9, by striking lines 1 through 43, on page 10, by striking lines 1 through 43, and on page 11, by striking lines 1 through 33 and inserting:

/ Section 40‑30‑80. The department shall charge and collect the following fees:

(1) ~~massage/bodywork~~ massage therapist initial license application fee, not to exceed one hundred fifty dollars;

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

(3) biennial ~~massage/bodywork~~ massage therapist licensure renewal fee, not to exceed ~~two~~ one 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)~~ reinstatement application ~~and reactivation for inactive~~ fee from lapsed status of a ~~massage/bodywork~~ massage therapist license ~~fee~~, not to exceed two hundred ~~fifty~~ ten dollars;

~~(7)~~(5) renewal fee for inactive status of a massage therapist license, not to exceed ~~two~~ one hundred fifty dollars;

~~(8)~~(6) continuing education course provider fee, not to exceed one hundred dollars and continuing education course provider renewal fee, not to exceed fifty dollars;

(7) massage therapy establishment initial license application fee for each location, not to exceed one hundred fifty dollars;

(8) biennial massage therapy establishment license renewal fee for each location, not to exceed one hundred dollars;

(9) massage therapy establishment license reinstatement fee from lapsed status for each location, not to exceed two hundred fifty dollars;

(10) sole practitioner establishment initial license application fee, not to exceed seventy-five dollars;

(11) biennial sole practitioner establishment license renewal fee, not to exceed fifty dollars; and

(12) sole practitioner establishment license reinstatement fee from lapsed status, not to exceed one hundred fifty dollars.

Section 40-30-90. (A) ~~The department shall prepare and submit to the Governor an annual report on the administration of this chapter~~ This chapter shall not be construed to apply to or restrict:

(1) a currently enrolled student from engaging in the practice of massage therapy, provided that the practice, conduct, activities, or services are part of a required course of study and that the currently enrolled student clearly identifies himself as a student. A currently enrolled student shall not be compensated for work experience and must be supervised on site by a licensed massage therapy supervisor;

(2) student clinics operated by an approved massage therapy school or an approved massage therapy education program;

(3) an unlicensed individual from providing massage therapy services related to the domestic care of any family member or household member, as long as the individual does not offer, hold out, or claim to be a massage therapist and does not receive compensation for the massage therapy services;

(4) an individual currently licensed and in good standing to practice massage therapy in another jurisdiction from engaging in the practice of massage therapy in this State on a temporary basis during a professional event for a period of no more than thirty days, or no longer than the time period of the event, whichever is less, provided that:

(a) the individual must submit a written application prior to engaging in the temporary practice of massage therapy pursuant to this item, in a manner prescribed by the board. Upon the board’s approval, the individual may engage in the practice of massage therapy on a temporary basis; and

(b) any temporary practice beyond thirty days requires a massage therapist license, pursuant to this chapter; or

(5) an individual currently licensed and in good standing to practice massage therapy in another jurisdiction from engaging in the practice of massage therapy if the individual is responding to a disaster or emergency declared by the appropriate authority or the Governor of this State. An individual practicing massage therapy pursuant to this item must provide notice to the board in a manner prescribed by the board prior to providing massage therapy services in this State and is only eligible to practice during the time of the declared emergency.

(B) Individuals engaging in the practice of massage therapy in this State under subsection (A)(4) or (5) are deemed to have submitted to the jurisdiction of the board and are bound by the applicable laws and regulations of this State.

(C) While a practitioner licensed in another jurisdiction may participate in a continuing education program in this State, he is not authorized to practice massage therapy on the general public without proper approval or licensure from the board.

(D) The following facilities and practices that employ licensed massage therapists, or that engage licensed massage therapists on an independent contractor basis, are not required to obtain a massage therapy establishment license, or a sole practitioner establishment license:

(1) hospitals and long-term health care facilities that are subject to a licensing regime, a supervising authority, or an agency with jurisdiction over the hospital’s or facility’s operation or licensing;

(2) a chiropractor licensed by the South Carolina Board of Chiropractic Examiners,

(3) a medical doctor or an osteopath licensed by the South Carolina Board of Medical Examiners, and

(4) a physical therapist licensed by the South Carolina Board of Physical Therapy.

Section 40‑30‑100. (A) No person may practice or offer to practice massage therapy ~~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~~ massage therapy is not also required to be licensed under this chapter unless the person holds himself out to be a ~~practitioner of massage/bodywork~~ massage therapist.

(B) Unless otherwise exempt from licensure, no person or entity may open, operate, maintain, use, or advertise as a massage therapy establishment or a sole practitioner establishment without obtaining a massage therapist license, massage therapy establishment license, or sole practitioner establishment license, as applicable, pursuant to this chapter.

(C) Nothing in this chapter may be construed to authorize ~~a massage/bodywork therapist~~ an individual or establishment 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~~ massage therapy, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic. /

Amend the bill further, as and if amended, on page 16, by striking lines 33 through 41 and inserting:

/ (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~~ For each violation, separate citations may be issued, and separate administrative penalties may be assessed; however, no more than five thousand dollars in administrative penalties may be assessed against an establishment or an individual, including an unlicensed practice, per offense. Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal. /

Amend the bill further, as and if amended, on page 20, by striking lines 41 through 43, and on page 21, by striking lines 1 through 18 and inserting:

/ (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~~ solicitation or prostitution, assault and battery, or other like offenses; to money laundering or other like offense; to a crime that directly relates to the practice or ability to practice massage therapy; to a crime involving moral turpitude; or to a violent crime as defined in Section 16‑1‑60, a felony that directly relates to the practice or ability to practice massage therapy during the previous five years, or a felony that reasonably relates to the ability to practice massage therapy and for which an essential element is dishonesty during the previous seven years; /

Amend the bill further, as and if amended, on page 21, by striking line 35.

Amend the bill further, as and if amended, by striking SECTION 3 in its entirety and inserting:

/SECTION 3. This act takes effect one year after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill creates the Board of Massage Therapy (board) in place of the Panel for Massage/Bodywork (panel) under the administration of LLR. This bill provides for the powers, duties, and terms of the board, related duties of LLR, necessary definitions in regards to the Message Therapy Practice Act, and procedures and requirements for licensure. Under current law, the panel holds many of the same powers and duties of the new board but must also provide for or contract for the examination of applicants for licensure, keep an accurate record of each examination, and prepare and submit to the Governor an annual report on the administration of the Massage Therapy Practice Act. These provisions are removed by the bill.

Additionally, this bill requires applicants to undergo a state criminal history records check, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant.

**Department of Labor, Licensing and Regulation.** The department is required to provide administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board. Additionally, the board is composed of seven members who must meet at least twice a year. Under current law, there is no requirement for yearly meetings. Furthermore, new application processes are created for individual massage therapists, for massage therapy establishments, and for sole practitioner establishments. These provisions may increase LLR expenditures due to increased administrative and regulatory duties. The expenditure impact of this bill on LLR is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** The expenditure impact of this bill on SLED is pending, contingent upon a response from the agency.

**State Revenue**

**Department of Labor, Licensing and Regulation.** This bill provides penalties, provides requirements for licensure by endorsement, allows for temporary massage practice under a manner prescribed by the board, and updates the licensure fee schedule. Administrative penalties for violations are increased from a maximum of $1,000 under current law to $5,000 per offense. Additionally, disciplinary fines are increased from a maximum of $500 under current law to $5,000 per offense. The bill also details a new $50,000 fine for practicing without a license or submitting false information to obtain a license. LLR is authorized to recoup its costs of investigation and prosecution from violators.

For a detailed listing of fee changes, see Figure 1. LLR is required, pursuant to Section 40-1-50(D), to adjust fees biennially to ensure that fee revenue is sufficient, but not excessive, to cover expenses of each respective board.

**Figure 1. Fee Table**

**Fee Original Amount New Amount**

Initial license application fee $50 $150

Continuing education provider fee $50 $100

Initial licensure fee $100 N/A

Endorsement application fee N/A $250

Reexamination fee $250 N/A

Application and provisional

licensure fee $200 N/A

Establishment initial license

application fee N/A $150

Biennial establishment license

renewal fee N/A $200

Establishment license reinstatement

Fee N/A $250

Sole practitioner establishment initial

license application fee N/A $50

Biennial sole practitioner

establishment initial license

renewal fee N/A $100

Sole practitioner establishment license

reinstatement fee N/A $150

In addition, the board will fall under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2020-21 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures.

The revenue impact of this bill on the general fund and the other funds of LLR is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** This bill may increase the number of state criminal records checks that SLED is required to perform. Pursuant to Section 23-3-115(A), revenue generated by

state criminal records checks performed by SLED up to an amount of $4,461,000 must be deposited in the general fund. Any revenue over that amount is retained by SLED. The revenue impact of this bill on the general fund and the other funds of SLED is pending, contingent upon a response from the agency.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO ENACT THE “MASSAGE THERAPY PRACTICE ACT”; TO AMEND CHAPTER 30, TITLE 40 OF THE 1976 CODE, RELATING TO MASSAGE THERAPY PRACTICE, TO PROVIDE THAT IT IS IN THE INTEREST OF PUBLIC HEALTH, SAFETY, AND WELFARE TO REGULATE THE PRACTICE OF MASSAGE THERAPY, TO PROVIDE FOR THE COMPOSITION AND DUTIES OF THE BOARD OF MASSAGE THERAPY, TO PROVIDE THAT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION SHALL PUBLISH A ROSTER OF LICENSED MASSAGE THERAPISTS AND ESTABLISHMENTS, TO PROVIDE FOR LICENSURE FEES, TO REMOVE THE REQUIREMENT FOR AN ANNUAL REPORT ON THE ADMINISTRATION OF THE MASSAGE THERAPY PRACTICE ACT BY THE DEPARTMENT, TO PROVIDE FOR EXEMPTIONS TO THE MASSAGE THERAPY PRACTICE ACT, TO PROVIDE CERTAIN REQUIREMENTS FOR THE TEMPORARY PRACTICE OF MASSAGE THERAPY, TO PROVIDE THAT NO PERSON MAY PRACTICE OR OFFER TO PRACTICE MASSAGE THERAPY WITHOUT A LICENSE, TO PROVIDE THAT NO PERSON OR ENTITY MAY OPEN, OPERATE, MAINTAIN, USE, OR ADVERTISE AS A MASSAGE THERAPY ESTABLISHMENT OR A SOLE PRACTITIONER ESTABLISHMENT WITHOUT OBTAINING A LICENSE, TO PROVIDE PENALTIES, TO CLARIFY LICENSURE REQUIREMENTS FOR A MASSAGE THERAPIST LICENSE, TO PROVIDE LICENSURE REQUIREMENTS FOR A MASSAGE THERAPY ESTABLISHMENT OR SOLE PRACTITIONER ESTABLISHMENT, TO PROVIDE THAT THE BOARD MAY GRANT A LICENSE BY ENDORSEMENT TO A MASSAGE THERAPIST WHO HOLDS AN ACTIVE MASSAGE THERAPIST LICENSE AND IS IN GOOD STANDING IN ANOTHER STATE, THE DISTRICT OF COLUMBIA, OR ANY OTHER UNITED STATES TERRITORY, TO CLARIFY REQUIREMENTS RELATED TO APPLYING FOR AND OBTAINING A LICENSE, TO PROVIDE FOR PERIODIC INSPECTIONS OF MASSAGE THERAPY ESTABLISHMENTS AND SOLE PRACTITIONER ESTABLISHMENTS, TO PROVIDE THAT CERTAIN REQUIREMENTS RELATING TO LICENSES SHALL BE COMPLETED BIENNIALLY, TO PROVIDE THAT RENEWAL OF LICENSES SHALL BE COMPLETED IN A MANNER PROVIDED BY THE BOARD, TO PROVIDE THAT CONTINUING EDUCATION REPORTS ARE SUBJECT TO AUDITS, TO CLARIFY CERTAIN REQUIREMENTS RELATED TO LAPSED LICENSES, TO PROVIDE THAT A LICENSEE MAY PROVIDE A WRITTEN REQUEST TO THE BOARD TO PLACE A LICENSE IN INACTIVE STATUS, TO PROVIDE THAT A LICENSEE MUST BIENNIALLY RENEW ITS LICENSE TO REMAIN IN INACTIVE STATUS, TO PROVIDE THAT A LICENSE MAY BE REACTIVATED IN A MANNER PROVIDED BY THE BOARD, TO PROVIDE THAT INACTIVE STATUS DOES NOT STAY ANY DISCIPLINARY ACTIONS FOR VIOLATIONS THAT OCCURRED DURING THE COURSE OF AN ACTIVE LICENSE, TO CLARIFY REGULATIONS THAT SHALL BE PROMULGATED BY THE BOARD, TO PROVIDE THAT THE DEPARTMENT SHALL INVESTIGATE COMPLAINTS AND VIOLATIONS, TO PROVIDE THAT THE PRESIDING OFFICER OF THE BOARD MAY ADMINISTER OATHS, TO PROVIDE FOR APPEALS OF THE BOARD’S DECISIONS, TO PROVIDE THAT SERVICE OF A NOTICE OF AN APPEAL DOES NOT STAY THE BOARD’S OR THE DEPARTMENT’S DECISION PENDING COMPLETION OF THE APPELLATE PROCESS, TO CLARIFY GROUNDS FOR DENYING A LICENSE, TO CLARIFY THE INVESTIGATION PROCESS AND CERTAIN DISCIPLINARY ACTIONS, TO PROVIDE THAT AN INDIVIDUAL OR ESTABLISHMENT THAT VOLUNTARILY SURRENDERS A LICENSE MAY NOT PRACTICE AS A MASSAGE THERAPIST OR OPERATE AS A MASSAGE THERAPY ESTABLISHMENT OR SOLE PRACTITIONER ESTABLISHMENT UNTIL THE BOARD REINSTATES THE LICENSE, TO PROVIDE THAT SERVICE OF NOTICE MAY BE MADE BY LEAVING A COPY OF THE NOTICE WITH THE DIRECTOR OF THE DEPARTMENT OR HIS DESIGNEE IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT COSTS AND FINES IMPOSED ARE DUE AND PAYABLE AS REQUIRED BY THE BOARD, TO PROVIDE THAT A LICENSEE FOUND IN VIOLATION OF THE MASSAGE THERAPY PRACTICE ACT OR RELATED REGULATIONS MAY BE REQUIRED TO PAY COSTS ASSOCIATED WITH THE INVESTIGATION OF HIS CASE, TO MAKE CONFORMING CHANGES, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Massage Therapy Practice Act”.

SECTION 2. Chapter 30, Title 40 of the 1976 Code is amended to read:

“CHAPTER 30

~~Massage/Bodywork~~ Massage Therapy Practice ~~Act~~

~~Section 40‑30‑10. This chapter may be cited as the Massage/Bodywork Practice Act.~~

Section ~~40‑30‑20~~ 40-30-10. The General Assembly recognizes that the practice of ~~massage/bodywork~~ massage therapy is potentially harmful to the public in that ~~massage/bodywork~~ massage 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~~ Massage therapy is therapeutic, and regulations are necessary to protect the public from unqualified ~~practitioners~~ massage therapists and unsafe establishments. It is, therefore, necessary in the interest of public health, safety, and welfare to regulate the practice of ~~massage/bodywork~~ massage therapy and the operation of massage therapy establishments and sole practitioner establishments 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 to the public through legal remedies provided for in this chapter.

Section 40-30-20. Unless otherwise provided in this chapter, Article 1, Chapter 1, Title 40 applies to massage therapists, massage therapy establishments, and sole practitioner establishments licensed pursuant to this chapter; however, if there is a conflict between this chapter and Article 1, Chapter 1, Title 40, then the provisions of this chapter control.

Section 40-30-30. As used in this chapter:

(1) ‘Approved massage therapy education program’ means a supervised educational program in a school approved by the Commission on Higher Education. The program must meet minimum qualifications, including course content as approved by the board in regulation.

(2) ‘Approved ~~massage/bodywork~~ massage therapy school’ means a facility that offers an educational program that meets minimum ~~standards~~ requirements for training and curriculum as determined by ~~regulation of the department~~ the board pursuant to this chapter and related regulations.

(3) ‘Board’ means the South Carolina Massage Therapy Board under the administration of the department.

(4) ‘Client’ means a person who receives massage therapy from a licensed massage therapist in exchange for compensation.

(5) ‘Client-therapist relationship’ means a relationship between a licensed massage therapist and a client in which the licensed massage therapist owes a continuing duty to the client to render massage therapy services consistent with the licensed massage therapist’s training, experience, and scope of practice.

(6) ‘Currently enrolled student’ means a student who is enrolled and actively participating in an approved massage therapy school or an approved massage therapy education program.

~~(2)~~(7) ‘Department’ means the Department of Labor, Licensing and Regulation.

~~(3)~~(8) ‘Director’ means the Director of the Department of Labor, Licensing and Regulation.

(9) ‘Entity’ means a sole proprietorship, partnership, limited liability partnership, limited liability company, or other business entity or association as approved by the board.

~~(4)~~(10) ‘Hydrotherapy’ means the use of water, vapor, or ice for treatment of superficial tissues.

(11) ‘Licensed massage therapy supervisor’ means a licensed massage therapist who has been in good standing for at least two years and who supervises a currently enrolled student. The licensed massage therapy supervisor shall be on premises observing the student and shall be available to the student for consultation and instruction.

~~(5)~~(12) ‘Licensure’ means the procedure by which an individual applies to the department and is granted approval to practice ~~massage/bodywork~~ massage therapy, or the procedure by which an establishment applies to the department and is granted approval to operate as a massage therapy establishment or a sole practitioner establishment.

~~(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.~~

(13) ‘Massage device’ means a mechanical device that mimics or enhances the action of the hands by means of vibration.

~~(7)~~(14) ‘~~Massage/bodywork~~ Massage therapist’ means an individual licensed as required by this chapter, who administers ~~massage/bodywork~~ massage therapy for compensation.

(15) ‘Massage therapy’ means the application of a system of structured touch to the soft tissues of the human body with the hand, foot, knee, arm, or elbow, whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage therapy device, or application to the human body of an herbal preparation. Massage therapy includes, but is not limited to, bodywork modalities as approved by the board.

(16) ‘Massage therapy establishment’ means an entity with a physical site or premise, licensed as required by this chapter, in which licensed massage therapists are employees or contractors practicing massage therapy on clients.

~~(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.~~

(17) ‘Sole practitioner establishment’ means a licensed massage therapist who is licensed pursuant to this chapter, who is not an employee or contractor of the sole practitioner establishment, and who provides massage therapy to clients at a specific location, including, but not limited to, a rental space, home office space, or outcall or onsite space.

~~(10)~~(18) ‘Thermal therapy’ means the use of ice or a heat lamp or moist heat on superficial tissues.

Section 40‑30‑40. (A) There is created the ~~Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The panel consists~~ Board of Massage Therapy under the administration of the department. The board shall be composed of seven members appointed by the Governor. Six members must be licensed ~~massage/bodywork~~ massage therapists in good standing and must have been engaged in the practice of ~~massage/bodywork~~ massage therapy for ~~not~~ no fewer than three consecutive years before appointment to the ~~panel~~ board. 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~~ massage therapy. A ~~panel~~ board 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~~ no fewer than five years. Nominations for appointment to the ~~panel~~ board may be submitted to the Governor from any individual, group, or association.

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

(C) ~~Members of the panel~~ Board members 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~~ board in accordance with Section 1‑3‑240.

(E) The board must meet at least twice a year.

(F) Any business conducted by the board must be conducted by a majority vote of the entire membership of the board, reduced by any vacancies existing at the time.

Section 40-30-50. (A) The department shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board, pursuant to Section 40-1-50.

(B) The ~~Panel for Massage/Bodywork~~ board shall administer and enforce this chapter and related regulations. In addition to the powers and duties enumerated in Section 40-1-70, the board’s powers and duties include, but are not limited to:

(1) ~~advise~~ advising and ~~recommend~~ recommending action to the department in the development of ~~regulations,~~ statutory revisions, legislation, and ~~such~~ any other ~~matters~~ matter related to the provisions of this chapter ~~as the department may request in regard to the administration of this chapter~~;

(2) promulgating the regulations necessary to carry out the provisions of this chapter, including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals and establishments licensed pursuant to this chapter;

(3) determining the standards and qualifications for licensure pursuant to this chapter;

(4) ~~conduct~~ conducting hearings:

(a) on alleged violations of this chapter and regulations promulgated pursuant to this chapter and to recommend discipline for individuals and establishments in any manner provided for in this chapter; or

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

~~(3)~~ ~~mediate consumer complaints if appropriate~~

~~(4)~~(5) ~~recommend discipline for individuals licensed pursuant to this chapter in any manner provided for in this chapter~~ providing recommendations to the South Carolina Commission on Higher Education concerning minimum qualifications for approved massage therapy schools and approved massage therapy education programs.

~~(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.~~

(C) The board has jurisdiction over the actions committed or omitted by current and former licensed massage therapists as provided in Section 40-1-115.

Section 40‑30‑60. (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~~ department shall prepare and publish a current roster on its website, updated annually, containing:

(1) ~~maintaining and preserving records~~ the names and places of business of individuals licensed pursuant to this chapter; and

(2) ~~receiving and accounting for all monies received by the panel;~~ the names of establishments licensed pursuant to this chapter and the names of their owners.

~~(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.~~

(B) A copy of the roster must be provided upon request and the payment of a fee.

Section 40‑30‑80. The department shall charge and collect the following fees:

(1) ~~massage/bodywork~~ massage therapist initial license application fee, not to exceed one hundred fifty dollars;

(2) ~~massage/bodywork~~ massage therapist ~~initial licensure~~ endorsement application fee, not to exceed ~~one~~ two hundred fifty dollars;

(3) biennial ~~massage/bodywork~~ massage 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)~~ reinstatement application ~~and reactivation for inactive~~ fee from lapsed status of a ~~massage/bodywork~~ massage therapist license ~~fee~~, not to exceed two hundred fifty dollars;

~~(7)~~(5) renewal fee for inactive status of a massage therapist license, not to exceed two hundred fifty dollars;

~~(8)~~(6) continuing education course provider fee, not to exceed one hundred dollars and continuing education course provider renewal fee, not to exceed ~~fifty~~ one hundred dollars;

(7)massage therapy establishment initial license application fee for each location, not to exceed one hundred fifty dollars;

(8) biennial massage therapy establishment license renewal fee for each location, not to exceed two hundred dollars;

(9) massage therapy establishment license reinstatement fee from lapsed status for each location, not to exceed two hundred fifty dollars;

(10) sole practitioner establishment initial license application fee, not to exceed fifty dollars;

(11) biennial sole practitioner establishment license renewal fee, not to exceed one hundred dollars; and

(12) sole practitioner establishment license reinstatement fee from lapsed status, not to exceed one hundred fifty dollars.

Section 40-30-90. (A) ~~The department shall prepare and submit to the Governor an annual report on the administration of this chapter~~ This chapter shall not be construed to apply to or restrict:

(1) a currently enrolled student from engaging in the practice of massage therapy, provided that the practice, conduct, activities, or services are part of a required course of study and that the currently enrolled student clearly identifies himself as a student. A currently enrolled student shall not be compensated for work experience and must be supervised on site by a licensed massage therapy supervisor;

(2) student clinics operated by an approved massage therapy school or an approved massage therapy education program;

(3) massage therapy establishments and sole practitioner establishments located within the confines of a hospital, long-term health care facility, or other establishment or facility that must comply with the provisions of law and the regulation of a licensing scheme or supervising authority or agency having jurisdiction over operation and licensing;

(4) an unlicensed individual from providing massage therapy services related to the domestic care of any family member or household member, as long as the individual does not offer, hold out, or claim to be a massage therapist and does not receive compensation for the massage therapy services;

(5) an individual currently licensed and in good standing to practice massage therapy in another jurisdiction from engaging in the practice of massage therapy in this State on a temporary basis during a professional event for a period of no more than thirty days, or no longer than the time period of the event, whichever is less, provided that:

(a) the individual must submit a written application prior to engaging in the temporary practice of massage therapy pursuant to this item, in a manner prescribed by the board. Upon the board’s approval, the individual may engage in the practice of massage therapy on a temporary basis; and

(b) any temporary practice beyond thirty days requires a massage therapist license, pursuant to this chapter; or

(6) an individual currently licensed and in good standing to practice massage therapy in another jurisdiction from engaging in the practice of massage therapy if the individual is responding to a disaster or emergency declared by the appropriate authority or the Governor of this State. An individual practicing massage therapy pursuant to this item must provide notice to the board in a manner prescribed by the board prior to providing massage therapy services in this State and is only eligible to practice during the time of the declared emergency.

(B) Individuals engaging in the practice of massage therapy in this State under subsection (A)(5) and (6) are deemed to have submitted to the jurisdiction of the board and are bound by the applicable laws and regulations of this State.

(C) While a practitioner licensed in another jurisdiction may participate in a continuing education program in this State, he is not authorized to practice massage therapy on the general public without proper approval or licensure from the board.

Section 40‑30‑100. (A) No person may practice or offer to practice massage therapy ~~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~~ massage therapy is not also required to be licensed under this chapter unless the person holds himself out to be a ~~practitioner of massage/bodywork~~ massage therapist.

(B) Unless otherwise exempt from licensure, no person or entity may open, operate, maintain, use, or advertise as a massage therapy establishment or a sole practitioner establishment without obtaining a massage therapist license, massage therapy establishment license, or sole practitioner establishment license, as applicable, pursuant to this chapter.

(C) Nothing in this chapter may be construed to authorize ~~a massage/bodywork therapist~~ an individual or establishment 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~~ massage therapy, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic.

(D) A person who practices or offers to practice massage therapy or a person or entity who operates a massage therapy establishment or sole practitioner establishment without a license as required by this chapter, or who knowingly submits false information for the purpose of obtaining a license, is guilty of a misdemeanor and, upon conviction, must be imprisoned for no more than one year, fined no more than fifty thousand dollars, or both. Each violation constitutes a separate offense.

(E) In addition to the penalties provided in this chapter, a person may be subject to sanctions pursuant to Chapter 1, Title 40.

Section 40‑30‑110. (A) To be licensed ~~by the department~~ as a ~~massage/bodywork~~ massage therapist, an individual must:

(1) ~~must~~ be at least eighteen years of age and have either received a high school diploma or graduate equivalency diploma, or completed a program that has been approved by the board to satisfy this requirement;

(2) ~~shall~~ have successfully completed:

(a) ~~a five~~ six hundred fifty hours of an approved massage therapy education program ~~hour course of classroom study~~ at an approved ~~massage/bodywork~~ massage therapy school having a curriculum that ~~meets the standards set forth in regulation by the department~~ includes course content approved by the board; ~~and~~ or

(b) an approved massage therapy education program that is substantially equivalent to the education required in subitem (a);

(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~~ have successfully passed the Federation of State Massage Therapy Board (FSMTB) or any other board-approved examination; and

(4) speak the English language as a native language or demonstrate an effective proficiency in the English language, in the manner prescribed by and to the satisfaction of the board. If English is not an individual’s native language, or if an individual does not demonstrate an effective proficiency of the English language in a manner prescribed by and to the satisfaction of the board, then the board may require proof that the applicant has received a passing score from the Test of English as a Foreign Language (TOEFL), Test of Spoken English (TSE) offered by TOEFL/TSE Services, or another service approved by the board. The costs of the TOEFL, TSE, or other service approved by the board shall be paid by the applicant.

(B) If an individual qualifies to be licensed as a massage therapist under subsection (A), then the individual must submit:

(1) a completed application on a form prescribed by the board, accompanied by a two inch by two inch current photograph, and all applicable fees;

(2) an official transcript demonstrating successful completion of the education required pursuant to subsection (A) and proof of passing the FSMTB or other board-approved examination; and

(3) evidence of an effective proficiency in the English language, if applicable.

(C) In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure to practice massage therapy, the board shall require a state criminal history records check, supported by fingerprints, by the South Carolina Law Enforcement Division, and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the board. The South Carolina Law Enforcement Division is authorized to retain fingerprints for certification purposes and for notification to the board regarding criminal charges. The costs of conducting a state criminal history records check and national criminal records check shall be paid by the applicant.

(D) Information received pursuant to this section shall be kept confidential, except that information relied upon in denying licensure may be disclosed as necessary to support administrative action.

Section 40-30-113. (A) To apply for licensure as a massage therapy establishment or a sole practitioner establishment, an applicant must submit:

(1) a completed application on a form prescribed by the board, accompanied by all applicable fees for each massage therapy establishment or sole practitioner establishment location;

(2) the name, address, and telephone number of each owner of the massage therapy establishment or sole practitioner establishment; and

(3) the physical address, mailing address, and telephone number of the premises of the massage therapy establishment or sole practitioner establishment.

(B) A massage therapy establishment or sole practitioner establishment must be organized or registered under applicable South Carolina law as an entity, as defined in this chapter.

(C) Upon the board’s receipt and approval of the information required by this section, the department shall conduct a pre‑licensing inspection of the proposed establishment to determine whether the establishment may be licensed as a massage therapy establishment or a sole practitioner establishment. The department shall provide its determination on a form approved by the board.

Section 40-30-117. The board may grant a license by endorsement to a massage therapist who holds an active massage therapist license and is in good standing in another state, the District of Columbia, or any other United States territory if the board determines that the standards for licensure are at least substantially equivalent to the licensing standards provided for in this chapter. The board may require the applicant to provide additional information or meet certain requirements provided for in this chapter as it deems necessary for issuing a license by endorsement. A National Certification Board for Therapeutic Massage and Bodywork examination taken prior to November 1, 2014 shall be acceptable.

Section 40‑30‑120. (A) ~~An application for licensure must be made in writing under oath on a form prescribed by the department and accompanied by all applicable fees~~ A licensed establishment shall only employ or contract with a massage therapist holding an active license in good standing in this State to perform massage therapy.

(B) A licensed establishment may operate in the residence of a licensed massage therapist in accordance with procedures approved by the board.

(C) If an establishment’s license is revoked, then no new license may be issued to operate on the same premises for one year after the date of revocation.

(D) The board may promulgate regulations to establish additional requirements and prohibitions regarding the operation of massage therapy establishments and sole practitioner establishments.

Section 40‑30‑130. (A) An applicant who fails an examination pursuant to Section 40‑30‑110 may be reexamined as provided by the board ~~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~~ Upon an applicant’s successful completion of an examination, the board shall be notified by the examination provider.

Section 40‑30‑140. (A) If an applicant satisfies the licensure requirements and pays the applicable fees, as provided ~~for~~ in this chapter, then the ~~department~~ board shall issue ~~a~~ the appropriate license to the applicant. A license issued pursuant to this chapter 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 as a massage therapist under this chapter shall display ~~the~~ his original license with a two inch by two inch current photo in a prominent and conspicuous place that is viewable by the general public in the ~~person's place of business and~~ massage therapy establishment or sole practitioner establishment. If a massage therapist provides massage therapy services outside of the massage therapy establishment or sole practitioner establishment, then the massage therapist must carry his original licensing card so that it is available at all times.

(C) A massage therapy establishment or sole practitioner establishment licensed pursuant to this chapter shall display its original license in a prominent and conspicuous place that is viewable to the general public.

(1) Establishment licenses are valid only for the owners named on the licensure applications. If there is a new owner or an ownership change, then the new owner must apply for an establishment license, and all applicable requirements of this chapter must be met.

(2) Establishment licenses are valid only for the location named on the initial and renewal licensure applications. If there is an address change, then the owner must notify the department within fifteen business days and must apply for an establishment license, and all applicable requirements of this chapter must be met.

(3) Establishment licenses are valid only for the name of the establishment provided on the licensure and renewal applications. If there is an establishment name change, then the owner must notify the department within fifteen business days of this change. No department inspection is required.

(D) A licensee must ~~shall~~ include the licensee’s license number ~~of the license~~ in ~~an~~ any advertisement ~~of massage/bodywork~~ for the licensee’s 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~~ Only a person licensed under this chapter may use the title of ‘massage therapist’. No person or entity shall use the words ‘massage therapy,’ ‘bodywork therapy,’ ‘massage‑bodywork therapist,’ ‘massage therapist,’ ‘bodywork therapist,’ ‘massage,’ or ‘licensed massage therapist’; the acronym ‘LMT’; or any other words identified by the board in regulation unless the person or entity is licensed pursuant to this chapter.

Section 40‑30‑150. (A) ~~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~~ The department may periodically inspect massage therapy establishments and sole practitioner establishments during business hours, without prior notice. The department shall document inspections on a form approved by the board.

(B) Such inspections may include, but are not limited to, confirmation that a site is being utilized for massage therapy in accordance with its license and a determination as to whether the establishment is in compliance with this chapter and other applicable laws and regulations.

(C) Failure to cooperate with departmental inspections may lead to disciplinary action, cease and desist orders, or temporary suspension pursuant to this chapter and the Administrative Procedures Act.

Section 40‑30‑160. (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~~ The board may issue administrative citations and cease and desist orders in person or by certified mail and may assess administrative penalties against an establishment or individual, including unlicensed persons, for violations of this chapter or Chapter 1, Title 40 and related regulations.

(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~~ For each violation, separate citations may be issued, and separate administrative penalties may be assessed; however, no more than five thousand dollars in administrative penalties may be assessed against an establishment or an individual per offense. Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal.

(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~~ An entity or individual that has been assessed administrative penalties may appeal those penalties to the board within ten days of receipt of a citation. If an appeal is filed, then the department shall schedule a hearing before the board, which shall make a determination on the matter. If no appeal is filed, then the citation is considered a final order, and the administrative penalties must be paid within thirty days of receipt of the citation or other written demand.

~~Section 40-30-170.~~ ~~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.~~

Section 40‑30‑180. (A) A person or entity ~~licensed under~~ holding a massage therapist license, massage therapy establishment license, or sole practitioner establishment license, pursuant to this chapter, ~~biennially~~ must biennially satisfy ~~these~~ the following 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~~ provided by the board;

(2) complete continuing education requirements prescribed by the ~~department~~ board in accordance with ~~Section 40‑30‑190~~ this chapter, if applicable, and submit evidence of compliance on a form prescribed by the board~~; 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~~. The submitted continuing education compliance reports may be subject to random audits by the board. A licensee that does not comply with a continuing education audit request or that provides an incomplete compliance report may be subject to disciplinary action.

(B)(1) A ~~massage/bodywork therapist's~~ license automatically reverts to ~~inactive~~ lapsed status if ~~the massage/body work therapist~~ the licensee fails to timely comply with ~~this subsection and only~~ the renewal requirements of this chapter. The license may be reinstated only upon application and payment of any fees and after having met any additional requirements which the ~~department~~ board may establish, ~~in regulation~~ including, but not limited to, an updated background check and continuing education requirements.

(2) If a massage therapy establishment license or a sole practitioner establishment license lapses, then the establishment must pass an inspection by the department prior to licensure reinstatement. The establishment licensee may also be subject to additional requirements, as determined by the board.

(3) A lapsed license status does not stay any disciplinary actions for violations that occurred during the course of an active license.

(4) An individual or establishment may not provide massage therapy services while a license is in lapsed status.

~~(B)~~(C)(1) A license that ~~which~~ has ~~been inactive~~ lapsed for more than ~~four years~~ one year shall be automatically canceled if the licensee has not submitted an application for reinstatement ~~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.~~

(2) If a license is canceled pursuant to this section, then an individual or entity may apply for a new license in accordance with this chapter and related regulations.

Section 40‑30‑185. (A) A licensee may provide a written request to the board to place a license in inactive status. If a license is placed in inactive status, then a licensee is not authorized to practice massage therapy in this State until the license is reinstated to active status.

(B) A licensee holding a license in inactive status must biennially renew the license to retain inactive status. A license may remain in inactive status for an indefinite time.

(C) A license may be reactivated from inactive status in a manner provided by the board.

(D) Inactive status does not stay any disciplinary actions for violations that occurred during the course of an active license.

Section 40‑30‑190. The ~~department~~ board shall promulgate regulations establishing the following:

(1) continuing education requirements and compliance procedures:

(a) for license renewal or reinstatement, not to exceed twelve ~~classroom~~ hours per biennium;

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

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

Section 40‑30‑200. (A) ~~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~~ The department shall investigate complaints and violations as provided in this chapter and Chapter 1, Title 40.

(B) The presiding officer of the board may administer oaths if taking testimony concerning any matters pertaining to the business or duties of the board. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the ~~panel~~ board 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.

(C) A person aggrieved by a final action of the board may seek an appeal of the decision in accordance with Section 40‑1‑160.

(D) Service of a notice of appeal does not stay the board’s or the department’s decision pending completion of the appellate process.

Section 40‑30‑220. (A) If the ~~panel~~ board or the department has reason to believe that an individual or an entity 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~~ board may order an individual or an entity to immediately cease and desist from engaging in the conduct. If the individual is practicing ~~massage/bodywork~~ massage therapy or an entity is operating a massage therapy establishment or sole practitioner establishment without being licensed pursuant to this chapter, then the ~~panel~~ board or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The board or the department may also 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 ~~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~~.

(B) A ~~panel~~ board member, the ~~Director~~ director of the ~~Department of Labor, Licensing or Regulation~~ department, 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.~~

Section 40‑30‑230. (A) In addition to the grounds provided in Section 40‑1‑110, the board may deny licensure to an applicant for a massage therapist license or may take ~~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~~ massage therapy 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~~ board;

(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~~ massage therapy or has made false, deceptive, or misleading statements in the practice of ~~massage/bodywork~~ massage therapy 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~~ massage therapy;

(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~~ forgery, obtaining money under false pretenses, burglary, or other like offense; to a felony; to the sale, manufacture, distribution, or transportation of a controlled substance, drug, or narcotic; to solicitation or prostitution, criminal sexual conduct, assault and battery, criminal domestic violence, or other like offense; to money laundering or other like offense; to a crime that directly relates to the practice or ability to practice massage therapy or to a crime involving moral turpitude; or to a violent crime as defined in Section 16‑1‑60, a felony that directly relates to the practice or ability to practice massage therapy during the previous five years, or a felony that reasonably relates to the ability to practice massage therapy and for which an essential element is dishonesty during the previous seven years;

(9) has practiced ~~massage/bodywork~~ massage therapy 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~~ massage therapy;

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

(11) has engaged in or has assisted another to engage in unlicensed practice as provided in this chapter;

(12) has presented another licensee’s license as his own or has falsely impersonated another license holder;

(13) has allowed the use of a license by an unlicensed individual or entity;

(14) has used or attempted to use a license that has been revoked, suspended, or otherwise restricted from active licensure; or

(15) has falsely impersonated another license holder.

(B) The board may not deny an individual a license under this chapter solely because of a prior criminal conviction unless the criminal conviction directly relates to the practice of massage therapy. However, the board may refuse to issue a license under this chapter based upon all information available, including the applicant’s record of prior convictions, if it finds that the applicant is unfit or unsuited to engage in the practice of massage therapy, pursuant to Section 40‑1‑140.

Section 40-30-235. In addition to the grounds provided in Section 40‑1‑110, the board may deny licensure to an applicant for a massage therapy establishment or sole practitioner establishment license or may take disciplinary action against an entity licensed as a massage therapy establishment or sole practitioner establishment that:

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

(2) has had a license, permit, certificate, or registration from South Carolina or another state or jurisdiction denied, 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 board;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation of or a 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 conduct of its establishment, or has made false, deceptive, or misleading statements in the conduct of its establishment or in related advertising;

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

(7) has engaged in unlicensed practice;

(8) has allowed an individual, employee, or independent contractor to practice massage therapy on the premises of the establishment without an active license to practice massage therapy pursuant to this chapter;

(9) has presented as its own license the license of another establishment;

(10) has allowed the use of a license by an unlicensed establishment;

(11) has falsely impersonated another license holder; or

(12) has used or has attempted to use a license that has been revoked, suspended, or otherwise restricted from active licensure.

Section 40‑30‑240. If investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40‑30‑230~~(10)~~(A)(9), or a physical or mental disability, as provided for in Section 40‑30‑230~~(11)~~(A)(10), the ~~panel~~ board upon reasonable grounds may:

(1) require an applicant or licensee to submit to a mental or physical examination including a drug test by ~~physicians~~ authorized practitioners designated by the ~~panel~~ board. The results of an examination are admissible in a hearing before the ~~panel~~ board, notwithstanding a claim of privilege pursuant to a contrary rule of law. An individual who accepts the privilege of practicing ~~massage/bodywork~~ massage therapy in this State or who files an application for a license to practice ~~massage/bodywork~~ massage therapy 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~~ board 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~~ board pursuant to this section, unless the failure was due to circumstances beyond the individual's control, then the ~~panel~~ board shall enter an order automatically denying or suspending the license pending compliance and further order of the ~~panel~~ board. 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~~ board the ability to resume or begin the practice of ~~massage/bodywork~~ massage therapy with reasonable skill and safety to ~~patients~~ clients;

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

Section 40‑30‑250. (A) Upon a determination by the ~~panel~~ board that one or more of the grounds for discipline exists, ~~as provided for in Section 40‑30‑230~~ in addition to sanctions provided in Section 40‑1‑120, the ~~panel~~ board 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~~ thousand dollars per violation;

(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; or

(6) temporarily or permanently revoke the license.

(B) A decision by the ~~panel~~ board to discipline a licensee as authorized pursuant to this section must be made by a majority vote of a quorum of the ~~total membership of the panel serving at the time the vote is taken~~ entire membership of the board, reduced by any vacancies existing at the time.

(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~~ board pursuant to this section is public information.

Section 40‑30‑260. (A) A licensee who is under investigation for misconduct, ~~as defined in~~ pursuant to Section 40‑30‑230 or Section 40-30-235, voluntarily may surrender its ~~his or her~~ license to the ~~department~~ board, invalidating the license at the time it is surrendered. An individual or establishment that ~~who~~ voluntarily surrenders ~~his or her~~ a license may not practice as a ~~massage/bodywork~~ massage therapist or operate as a massage therapy establishment or sole practitioner establishment until the ~~panel~~ board reinstates the ~~individual's~~ license. An individual or an establishment practicing as a ~~massage/bodywork~~ massage therapist or operating as a massage therapy establishment or sole practitioner establishment during the period of voluntary license surrender is deemed an ~~illegal~~ unlicensed practitioner or establishment and is subject to the applicable penalties ~~provided in this chapter~~.

(B) 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~~ board from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.

~~Section 40-30-270.~~ ~~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.~~

Section 40‑30‑280. (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~~ director of the department or his designee 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 or his designee must be mailed to the licensee at his last known address, return receipt requested. The director or his designee 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.

Section 40‑30‑290. (A) All costs and fines imposed under Section 40‑30‑250 or Section 40-30-160 are due and payable as required by the board. Failure to pay costs and fines may result in action pursuant to Section 40‑1‑180 ~~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~~ A licensee found to be in violation of this chapter or the regulations promulgated under this chapter may be required to pay costs associated with the investigation of its case, pursuant to Section 40‑1‑170.

Section 40‑30‑300. (A) Every communication, whether oral or written, made by or on behalf of an individual or an establishment, to the director, his designee, or the ~~panel~~ board, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual or establishment, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Investigations conducted under this chapter are confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

(C) Nothing in this chapter may be construed to prohibit the respondent or the respondent’s ~~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 the respondent ~~him or her~~.

~~Section 40-30-310.~~ ~~(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.~~

Section 40‑30‑320. Nothing in this chapter may be construed to prevent the teaching of ~~massage/bodywork~~ massage therapy in this State at an approved ~~massage/bodywork~~ massage therapy school or in an approved massage therapy education program.”

SECTION 3. This act takes effect upon approval by the Governor.

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