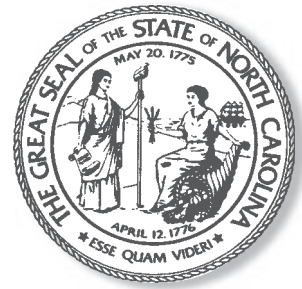


# NORTH CAROLINA BOARD of MASSAGE & BODYWORK THERAPY

Regulating the practice of massage and bodywork therapy,  
and its educational institutions, for the protection of the public



NEWSLETTER

MARCH 2005

## MESSAGE FROM THE BOARD CHAIR

In a recent interview with Board Chair, Bob Ward, we spoke about some of the issues, of which he has been a part, while on this Board. Following are excerpts from that interview.



ROBERT M WARD

**Q. Having been a part of this Board, almost from the beginning, what difference do you see that the Board has made with regard to protecting the public?**

A. The Practice Act provides general provisions relating to the governance and regulation of the practice of massage and bodywork therapy. Included among the Practice Act's broad mandates to the Board are the licensure of massage and bodywork therapists and approval of massage and bodywork therapy schools. By adopting and effectively implementing the rules and processes to carry out these mandates, the Board has protected and is protecting the public by assuring that only competent, fit and qualified therapists practice in the State of North Carolina.

**Q. What do you see as the most important function of the Board?**

A. The licensure of massage therapists. This is our primary responsibility. When we issue a license we are certifying or stating to the public that these individuals are competent and fit to provide massage and bodywork therapy.

(continued on page 2)

## Proposed Practice Act Amendments Presented to The 2004 Legislature

### Controversy Stalls Process

During the process of proposing amendments to the rules of the North Carolina Board of Massage and Bodywork Therapy (Board), it was brought to the attention of the Board that two of its temporary rules (Rules .0605 and .0606) had expired December 28, 2001 due to the failure of the Board to make them permanent. Rule .0605 provided for Board approval of massage and bodywork therapy schools. Rule .0606 specifically authorized the Board to charge fees for its school approval process. This oversight was brought to the attention of the Administrative Procedures Oversight Committee of the Legislature (Committee) and a hearing was held at the Legislature in April, 2004. Two school directors advised the

Committee of the Board's failure to make the rules permanent. The Board advised the Committee it was an oversight that needed to be corrected so the Board could continue its legislated duty to approve massage and bodywork therapy schools in North Carolina. It was agreed the issue would be presented to the Legislature when it convened in May 2004.

The 2004 Legislature convened May 10, 2004. The Committee introduced a bill that stated the Board could not continue to charge schools fees to approve programs unless approved by the Legislature. The Committee chairs told the affected parties they needed to

(continued on page 6)

## Status of Proposed Rules Revisions

### Rule .0600 Withdrawn from Amendments

The North Carolina Board of Massage and Bodywork Therapy (Board) was of the opinion its Rules needed to be amended to take into consideration the Board's experience with its initial Rules over the past four years. In 2003 the Policy Committee of the Board began drafting suggested changes to its Rules. After many months of work, the Committee submitted proposed changes to the Board at its December 2003 meeting.

The Board considered the Committee's suggestions, adopted proposed changes and directed that

they be submitted to the Office of Administrative Hearings (OAH) for publication in the North Carolina Register (NCR).

On January 9, 2004, the Board's Notice of Text, setting forth the suggested amendments to the Rules, was submitted to the OAH; and on February 2, 2004 the proposed amendments were published in the NCR. The Notice of Text identified the Rules proposed to be changed and scheduled a Public Hearing for

(continued on page 6)

### IN THIS ISSUE

Board Contact Information .....	2
Disciplinary Actions .....	3
News from the Board .....	4
Rules Adoption Process .....	4
Code of Ethics .....	7

(continued from page 1)

**Q. What would help the Board be more effective?**

A. It would be extremely helpful for the Board to have the resources to set up or establish a more comprehensive investigatory/enforcement function. It is my understanding that a number of other regulatory Boards have qualified staff designated to handle these responsibilities which are necessary to address violations of the Practice Act. This will better help protect the public.

**Q. You are not a massage therapist but an attorney. Why would you have an interest in serving on this Board?**

A. My interest in massage therapy and serving on this Board boils down to desire to have the practice of massage and bodywork therapy legally and otherwise properly recognized as a healthcare profession. In my position as attorney for the City of Burlington, I, early in my career, was charged with writing ordinances to regulate "massage parlors". It appeared to me that the legitimate practice of massage therapy was often improperly associated with establishments known as "massage parlors" or referred to on occasion as "adult entertainment establishments". This seemed extremely unfair and clearly unjustified. I prepared an ordinance (predating the Practice Act) in the mid '80s that attempted to do two things: (1) establish educational requirements for massage therapists and (2) recognize massage therapy as a legitimate, legal healthcare profession. In 2000, I believe the City of Burlington was the first to repeal its massage therapy ordinance, because with the adoption of the Practice Act, it was no longer necessary or needed.

**Q. What was the most difficult thing the Board has overcome?**

A. The most difficult thing this Board has had to overcome was setting up and implementing an approval process for massage and bodywork therapy schools. The authority for the approval of massage and bodywork therapy schools was originally vested in the North Carolina Community College System. While there are many details to this story and therefore too long to recount, the Board, nonetheless, acted responsibly by assuming this very daunting task; and the Board has, I believe, done a very commendable job in this regard.

**Q. What is the most difficult thing you see facing the Board today?**

A. Probably the issue of how or by what process massage and bodywork schools and/or programs should be approved. Whether it is done by the Board, by an outside accrediting agency or by some other method, this Board clearly needs to carefully consider this matter and take the appropriate actions to assure that the high quality of schools that we enjoy today are maintained.

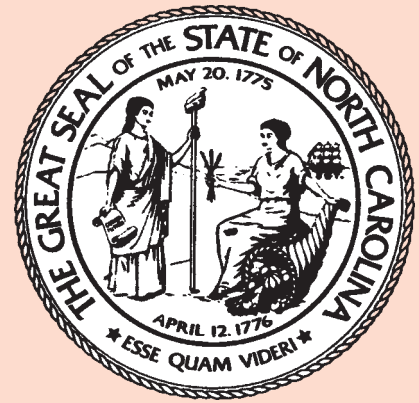
**Q. What is the most striking thing you have seen while serving on this Board?**

A. Probably how fast this Board was up and running. In short order, the rules for licensure of massage therapists and the regulations for approving schools were adopted and implemented. I have been very pleased with how quickly this Board put in place the necessary rules and guidelines to govern the practice of massage and bodywork therapy.

**Q. Where do you see the next six years taking the Board?**

A. This Board will face a number of challenges; first in terms of immediacy and not the least of which will be the issue of how massage schools and/or programs will be approved. Second, to protect the public, I believe it is necessary for this Board to play a more active role in assuring that those individuals that violate the Practice Act and/or the Board's rules are held accountable and that appropriate legal sanctions are imposed. I believe this is needed in order to protect the public, which is our primary goal.

Finally, over the next 6 years we need to persuade local governmental officials that the local regulation of the massage and bodywork therapy is not necessary; simply stated the massage and bodywork therapy profession can govern itself. In this connection, we need to continue our efforts to educate these officials on this issue and encourage them to repeal these unnecessary local ordinances. The Massage and Bodywork Therapy Practice Act along with the rules adopted by the Board provide a very effective and comprehensive means of regulating the practice of massage and bodywork therapy.



Official Newsletter  
of the  
NORTH CAROLINA BOARD of  
MASSAGE & BODYWORK  
THERAPY

POST OFFICE BOX 2539  
RALEIGH, NC 27602

Phone: 919-546-0050

Fax: 919-833-1059

email: admin@bmbt.org

web: www.bmbt.org

Offices located at the  
Wachovia Capitol Center  
150 Fayetteville Street Mall  
Suite 1900  
Raleigh, NC 27601

**Members of the Board**

Robert M. Ward, JD, EdD  
Chair

Daisy Millett, LMBT  
Vice-chair

Wayne Saville, LMBT  
Treasurer

Susan Ehrlich, MD, LMBT  
Rosemary Hill, LMBT  
Scott Sanitate, MD  
Susan Beam, LMBT

**Board Staff**

Charles P. Wilkins  
Legal Counsel

Nita Lykins  
Administrator

# DISCIPLINARY ACTIONS OF THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY FROM JANUARY THROUGH DECEMBER 2004

Due to the extraordinary amount of time the Board and Board staff devoted to issues surrounding the proposed amendments to the Board's rules and the proposed amendments to the Practice Act in the 2004 Legislature, fewer disciplinary investigations were completed and hearings held the past year. Currently there are 30 therapists and 2 schools being investigated by Board staff for various alleged violations of the Practice Act and Rules of the Board.

The investigations are proceeding and, in some cases, hearings will be scheduled. As the time required to resolve the conflicts in the amendment of the Rules process lessens, it is anticipated that the investigation and prosecution of violations will occur more efficiently.

The Board is authorized to investigate complaints and take a range of disciplinary actions, as set forth in Section .0900 of the Rules. This authority has not been affected by the Rules amendment process. The following is a summary of disciplinary actions taken by the Board in 2004:

## LETTERS OF REPRIMAND:

*A letter of reprimand is an expression of displeasure; the mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request.*

Letters of Reprimand were issued for various Rules violations ranging from failing to notify the Board of unlicensed practitioners to writing a bad check to the Board.

## CEASE AND DESIST ORDERS:

*A Cease and Desist Order is an Order entered by the Board directing a person or entity to cease and desist from a certain activity, such as practicing massage and bodywork therapy without a North Carolina license. This is published.*

There were twenty two (22) Cease and Desist Orders served on persons and nine (9) Cease and Desist Orders served on businesses that were practicing massage and bodywork therapy in North Carolina after April 1, 2000 without a North Carolina license.

### Individuals:

John Balyoz ..... Wilmington  
 Ralph Bender ..... Durham  
 Mari Bennett-Mabe ..... Rockingham  
 Jaqueline Bright ..... Elizabeth City  
 William Bright ..... Elizabeth City

Kimberly Brown ..... Winston-Salem  
 Jason Carney ..... Candler  
 Kim Connors ..... Kitty Hawk  
 Llyona Cross ..... Franklin  
 Andrea Ford ..... Sylva  
 Cora Green ..... Asheville  
 J. Guy ..... Elizabeth City  
 Kimberly Haas ..... Lenoir  
 Victoria Havel ..... Asheville  
 Mia Luong ..... Concord  
 Clyde Parker ..... Troutman  
 Pete Nowack ..... Greensboro  
 Debra Powell ..... Durham  
 Erica Smith ..... Hubert  
 LaShondia Spears ..... Holly Springs  
 Rose Spiral ..... Black Mountain  
 Heidi Zellie ..... Asheville

### Businesses:

Mike's Body Work ..... Winston-Salem  
 The Structure House ..... Durham  
 Dr. Daniel Goldberg ..... Kitty Hawk  
 Hair Gallery ..... South Sparta  
 Main Gate Salon ..... Havelock  
 Mountain Fitness ..... Highlands  
 Spa Luxuries Salon ..... Lenoir  
 Utopia Tanning ..... Elizabeth City  
 Village Salon & Spa ..... Holly Springs

## CONSENT ORDERS

**LYNDA CLAY** (license number 388) of Mecklenburg County violated G.S. 90-623, 634 and 633(6) and (8) for practicing without a license, failing to timely renew her license, and Rule .0602(e)(1) for teaching the theory and practice of massage and bodywork therapy without a valid North Carolina license. Ms. Clay entered into a Consent Order with the Board on January 19, 2004 and was issued a Conditional License. Her Conditional License was suspended for one year; however, the suspension was stayed, and Ms. Clay was placed on probation for one year, on the conditions that she complete an additional fifteen (15) hours of approved continuing education, pay a civil penalty of \$1,000, and not violate the Practice Act or Rules during her probation.

**THERAPEUTIC MASSAGE TRAINING INSTITUTE** of Mecklenburg County violated G.S. 90-633(6) and Rule .0602(e)(1)(c) by employing an unlicensed person to teach courses related to the theory and practice of massage and bodywork therapy. TMTI entered into a Consent Order with the Board on January 19, 2004 that suspended the school's approval to operate for one year; however, the suspension was stayed, and the school was placed on probation for one year, on the conditions that the school pay a civil penalty of \$1,000 and not violate the Practice Act or Rules during the probation period.

## NEWS FROM THE BOARD

### 2004 Board Meeting Schedule

The Board meets in downtown Raleigh at the Wachovia Capitol Center at 150 Fayetteville Street Mall; meetings are open to the public and begin at 10:00 AM.

The schedule for 2005 is on the following Thursdays: February 17; April 21; June 16; August 18; October 20; December 15. There is a 15 minute period of Public Comment at each meeting; those interested must sign up in person before the start of a meeting.

### New Member Joins the Board

Susan Beam, BA, LMFT, of Wilmington, became the newest member of the Board at the August 19, 2004 meeting. Ms. Beam, a therapist member, was appointed by Governor Mike Easley. She replaces Terrie Bellairs.

Ms. Bellairs, a founding member of the Board, had served the maximum of two consecutive terms of office allowed under the practice act. She served as the Board's Treasurer during her entire term.

### Ethics Requirement for License Renewal

The new requirement that three (3) hours of ethics be a part of the 25 hours of continuing education for license renewal begins this year (2005) and must be submitted when you are scheduled to renew to keep your license in good standing.

### Licenses Granted and Renewed

Licenses granted through February 16, 2005 .....	5295
Licenses in good standing.....	4127
Licenses required to renew	
by December 31, 2004 .....	3352
Licenses renewed as of February 16, 2005 .....	2359
Licenses not renewed .....	1168
Licenses permanently expired	
December 31, 2004 .....	390
Licenses scheduled to renew in 2005 cycle .....	1618
Licenses not renewed in 2005 cycle .....	30%
Licenses not renewed in 2004 cycle .....	28%
Licenses not renewed in 2003 cycle .....	19%

### Name and Address Changes

**Please remember to inform us within thirty days when you have a name and/or address change so that we can keep information and newsletters coming to you.**

## THE RULES ADOPTION PROCESS

### How It Works

*This information is taken from the Office of Administrative Hearings (OAH) website and can be viewed at [www.ncoah.com/rules](http://www.ncoah.com/rules). See flow chart on opposite page.*

An agency intending to adopt, amend, or repeal a rule must publish a notice of text in the *North Carolina Register*. The notice must include the text of the proposed rule, a short explanation of the reason for the proposed rule, a citation to the law that gives the agency the authority to adopt the rule, the proposed effective date of the rule, the date, time, and place of any public hearing schedule on the rule or instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule, the period of time during which and the person to whom written comments may be submitted on the proposed rule, whether a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency, the procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct any public hearing and at least 60 days must elapse before the agency may take action on the proposed rule. An agency may not

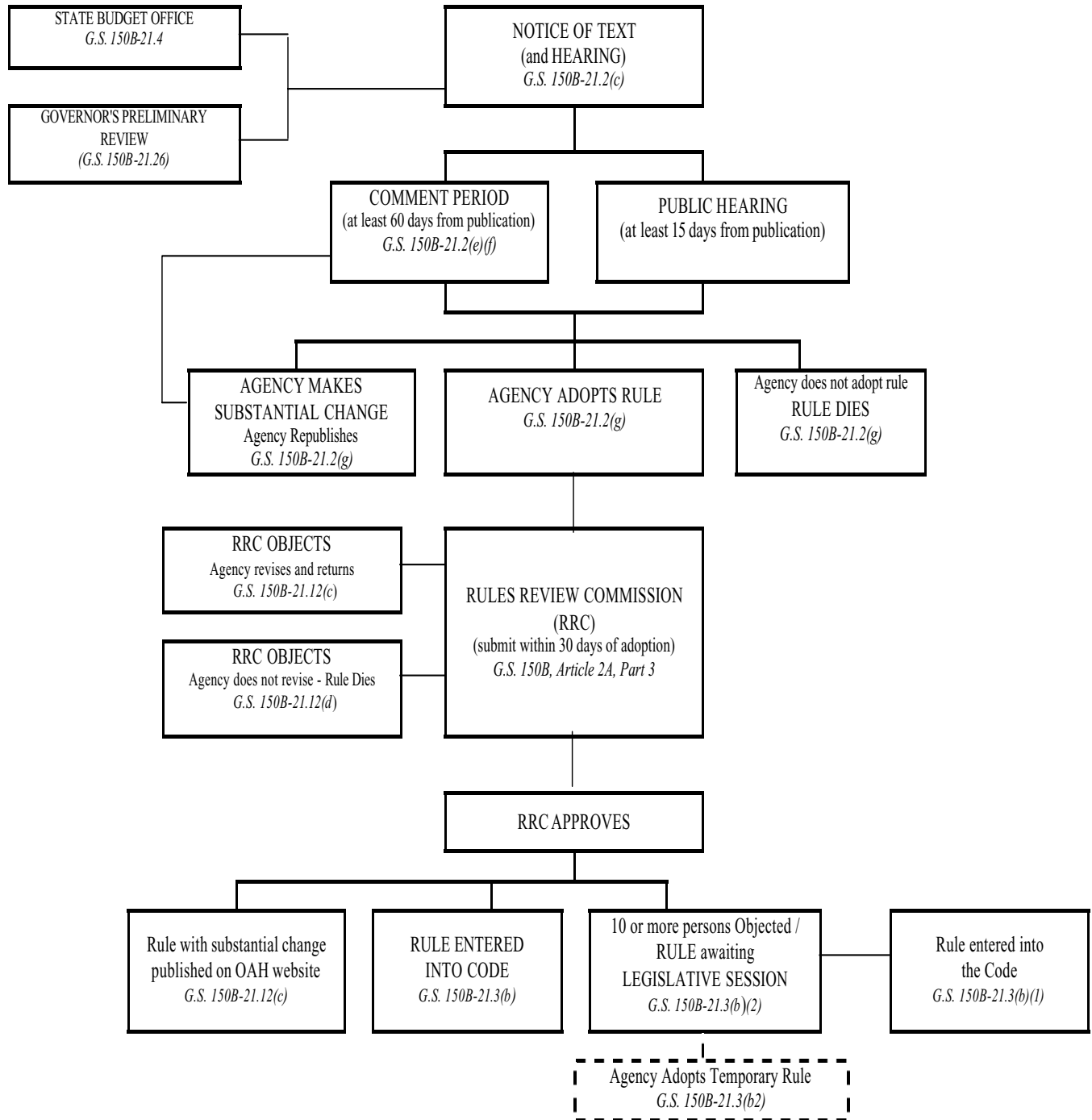
adopt a rule that differs substantially from the proposed form published as part of the public notice until the adopted version has been published in the *North Carolina Register* for an additional 60 day comment period.

When final action is taken, the adopting agency must file the rule with the Rules Review Commission (RRC) within 30 days of the adoption. After approval by RRC, the adopted rule becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission receives 10 or more written objections to the rule. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, the rule is sent to the General Assembly. The rule then becomes effective no earlier than the 31st legislative day of the next regular session of the General Assembly that begins at least 25 days after RRC approves the rule unless a legislative bill is introduced to disapprove that specific rule. If a bill is introduced, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session adjourns without ratifying the bill to disapprove the rule. A permanent rule disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective and is not entered into the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

# PERMANENT RULEMAKING PROCESS

(See accompanying article, page 4)



## Proposed Practice Act

*(Continued from page one)*

come to a consensus about the changes necessary to solve the issues of differences in opinion on fees and the regulation of schools. The Board and at least one other interested party presented proposals to the attorney for the Committee. The proposals did not agree; therefore, a meeting was scheduled with representatives of the interested parties to see if a consensus could be reached. The meeting was held in June 2004. Those present reviewed the Board's proposed amendments to the Practice Act. The Board proposed that the schools would be required to be accredited by an agency recognized by the U. S. Department of Education, as well as meet ongoing standards for curriculum, instructional staff and learning resources set by the Board. The changes would require nonaccredited schools to become accredited in 24 months; would require new schools to become accredited within 42 months; and would keep school approval fees close to current levels. The Board's proposal, if agreed upon, would have reduced the work and expense of the Board

necessary to approve the schools and the work and expense to the accredited schools in obtaining approval. Of the approved schools of massage and bodywork therapy in the State, all 13 community colleges and 4 proprietary schools are currently accredited by an agency recognized by the USDE. There are 9 proprietary schools not currently accredited. The meeting ended with no consensus, and the Committee was notified. The Committee again stated the bill would not go forward without a consensus as they were not considering any controversial bills during the 2004 Session.

The Board also presented a proposed bill that would make Rule .0606 effective from December 28, 2001 through June 30, 2005 to correct the oversight of failing to make the rule permanent. This proposed bill was opposed therefore no amendments to the Practice Act and no curative statute was passed during the 2004 Session of the Legislature. The issue was referred back to Board committees for further work toward consensus and resolution.

## Status of Proposed

*(Continued from page one)*

February 18, 2004 to receive verbal comments on the proposed Rules. The Notice of Text also provided that the Board would receive written comments on the proposed Rules until April 2, 2004.

The Public Hearing was held February 18, 2004 at which time the Board received verbal comments. The comments were recorded, transcribed and made available to the Board and public. In addition, written comments received through April 2, 2004 were reviewed and discussed by the Board. Prior to the Board's April 2004 meeting, the Policy Committee considered and discussed all verbal and written comments. Additional changes were suggested to the proposed Rules. The Policy Committee also met with representatives from the AMTA-NC Chapter (Chapter) to review in detail each of the comments it had made to the proposed Rules. As a result of this meeting, additional changes were made to the proposed Rules.

At its April meeting, the Board agreed to postpone formal adoption of the proposed Rules and asked the Policy Committee to review and again consider the comments and changes suggested. This review continued through the summer of 2004, due in part to proposed changes being considered by the Legislature to the North Carolina Massage and Bodywork Therapy Practice Act. (See accompanying article in this Newsletter.) The Legislature adjourned in July 2004 without amending the Practice Act. The Board at its August 19, 2004 meeting made additional changes to its proposed Rules based on comments from interested parties present and Board members. The Board then formally adopted its proposed amendments to its Rules and directed that they be filed with the Rules Review Commission (RRC) for its review.

The RRC is charged with reviewing proposed rules of governmental agencies to determine if the rules (1) have statutory authority, (2) are clear and unambiguous, and (3)

*(Please refer to Pages 4 & 5 for more information)*

are necessary. After its review, the RRC asked the Board to make technical changes to some rules and objected to some rules. The Board attorney met with the RRC attorney, and agreements were made to comply with the requested technical changes. In addition, the RRC objections were also resolved. The RRC met September 16, 2004 to review the proposed Rules, but adjourned the meeting before completing their review. The proposed Rules were again considered by the Board at its November, 2004 meeting at which time the Board voted to withdraw from consideration by the RRC the Section .0600 rules relating to school approvals. The RRC met on Thursday, November 18, 2004 and gave approval to the remaining Rules.

If the RRC receives more than ten (10) written objections to any rule, the rule becomes subject to Legislative scrutiny before it can go into effect. The RRC received more than ten (10) objections to the Rules passed by the RRC and all of the proposed rules are subject to scrutiny by the Legislature. The Legislature must act on the Rules within 30 legislative days after it convened on January 26, 2005 or the proposed rules will go into effect on the 31<sup>st</sup> legislative day.

On December 6, 2004, the School Approval Committee of the Board met with owners and directors of the massage and bodywork therapy schools in North Carolina to discuss amendments to Rule Section .0600 that relates to the schools. The Board plans to begin the rules approval process for the school rules, Section .0600, following its February 17, 2005 Board meeting.

The Board proceeded in good faith to amend its Rules to better serve the massage and bodywork therapy profession, taking into consideration its experience over the past four years with the initial rules. The Board is still working towards consensus amongst all interested parties on these issues.

# CODE OF ETHICS

## FOR LICENSED MASSAGE AND BODYWORK THERAPISTS IN THE STATE OF NORTH CAROLINA

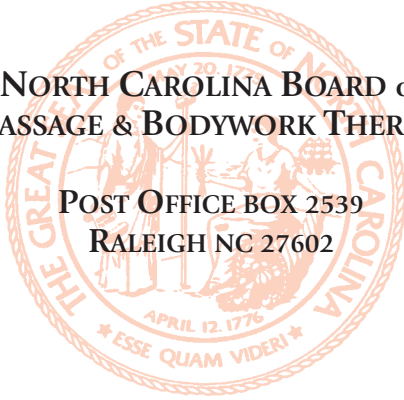
*This Code of Ethics establishes standards for the practice of massage and bodywork therapy which are intended to protect the public health, safety and welfare to preserve the integrity of the profession, and to allow for the proper discharge of responsibilities to those served. Licensees shall have a commitment to provide the highest quality of care to those who seek their professional services, and shall:*

1. Represent their qualifications, credentials and professional affiliations accurately, and provide only those services which they are qualified to perform.
2. Inquire as to the health status of each client before treatment to determine whether there are contraindications for the application of massage and bodywork therapy.
3. Inform clients, other health care practitioners and the public of the scope and limitations of the practice of massage and bodywork therapy, and refer clients to appropriate health care practitioners whenever indicated.
4. Maintain the confidentiality of all client information, unless disclosure is consented to by the client, required by law or by court order.
5. Obtain and document the informed consent of the client before providing treatment. Informed consent may be given in written or verbal form.
6. Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client.
7. Respect the client's right to refuse, modify or terminate treatment regardless of prior consent given.
8. Refrain from initiating or engaging in any sexual activity involving a client, as defined by Rule .012(8).
9. Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are primarily for personal gain and not for the good of the client.
10. Inform the Board of any violation of the Practice Act or Rules and Regulations.

*This Code of Ethics has been adopted by the  
North Carolina Board of Massage  
& Bodywork Therapy as Section .0501 of its Rules and Regulations.*

**NORTH CAROLINA BOARD of  
MASSAGE & BODYWORK THERAPY**

**POST OFFICE BOX 2539  
RALEIGH NC 27602**



**PRESORTED  
U S Postage  
PAID  
Raleigh NC  
PERMIT 537**

## www.bmbt.org

The Board Website is Your  
Online Source for Information



The website provides an easily accessible source for information on the licensing program and activities of the Board. There are individual pages which give you:

- An overview of the regulatory process
- Contact information for the Board
- List of Board members and professional staff
- Meeting schedule and map to the Board Office
- Information on how to apply for initial licensure
- List of Board-approved schools
- Frequently Asked Questions
- Look up a Licensee - search by last name or license number to verify license status
- How to file a complaint
- Links to other agencies and organizations

A feature, called the DOCUMENT CENTER, is a popular page on the site. From this location, you can view and/or download many of the important documents which are part of the licensing program. These include:

- |                                |   |
|--------------------------------|---|
| <i>Practice Act</i>            | <i>Request Form for Initial Application</i> |
| <i>Rules &amp; Regulations</i> | <i>Application for License Renewal</i>      |
| <i>Guidelines</i>              | <i>Orientation Handbook - New Licensees</i> |