Chapter 90.

Medicine and Allied Occupations.

Article 1.

Practice of Medicine.

§ 90-1. North Carolina Medical Society incorporated.

The association of regularly graduated physicians, calling themselves the State Medical Society, is hereby declared to be a body politic and corporate, to be known and distinguished by the name of The Medical Society of the State of North Carolina. The name of the society is now the North Carolina Medical Society. (1858-9, c. 258, s. 1; Code, s. 3121; Rev., s. 4491; C.S., s. 6605; 1981, c. 573, s. 1.)

§ 90-1.1. Definitions.

The following definitions apply in this Article:

(1) Board. – The North Carolina Medical Board.

(2) Hearing officer. – Any current or past member of the Board who is a physician, physician assistant, or nurse practitioner and has an active license or approval to practice medical acts, tasks, or functions issued by the Board, or any current or retired judge of the Office of Administrative Hearings, a State district court, a State superior court, the North Carolina Court of Appeals, the North Carolina Supreme Court, or of the federal judiciary who has an active license to practice law in North Carolina and who is a member in good standing of the North Carolina State Bar.

(2a) Inactive license. – A license that no longer grants the authorization to perform medical acts, tasks, or functions. A license can become inactive upon a licensee's request, a licensee's failure to register annually, a licensee's voluntary surrender, or based on any disciplinary order issued by the Board.

(3) Integrative medicine. – A diagnostic or therapeutic treatment that may not be considered a conventionally accepted medical treatment and that a licensed physician in the physician's professional opinion believes may be of potential benefit to the patient, so long as the treatment poses no greater risk of harm to the patient than the comparable conventional treatments.

(4) License. – An authorization issued by the Board to a physician, physician assistant, or anesthesiologist assistant to perform medical acts, tasks, or functions.

(4a) Licensee. – Any person issued a license by the Board, whether the license is active or inactive, including an inactive license by means of surrender.

(4b) Reserved.

(4c) Modality. – A method of medical treatment.

(5) The practice of medicine or surgery. – Except as otherwise provided by this subdivision, the practice of medicine or surgery, for purposes of this Article, includes any of the following acts:

a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.

b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.

c. Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.

d. Offering or undertaking to perform any surgical procedure on any individual.

e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of Osteopathy," "Doctor of Osteopathic Medicine," "Physician," "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of or reference to another branch of the healing arts for which the individual holds a valid license in this State or the use of the designation "Doctor" or "Physician" is otherwise specifically permitted by law.

f. The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone.

The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of medicine or surgery. (2007-346, s. 1; 2009-558, s. 1.1; 2013-154, s. 1(b); 2019-191, s. 1.)

§ 90-2. Medical Board.

(a) There is established the North Carolina Medical Board to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina. The Board shall consist of 13 members:

(1) Six of the members shall be duly licensed physicians recommended by the Review Panel and appointed by the Governor as set forth in G.S. 90-3.

(2) Five members shall all be appointed by the Governor as follows:

a. One shall be a member of The Old North State Medical Society. This Board position shall be subject to recommendations of the Review Panel pursuant to G.S. 90-3.

b. One shall be a public member, and this Board position shall not be subject to recommendation of the Review Panel pursuant to G.S. 90-3.

c. One shall be a physician assistant as defined in G.S. 90-18.1 as recommended by the Review Panel pursuant to G.S. 90-3.

d. One shall be a nurse practitioner as defined in G.S. 90-18.2 as recommended by the Review Panel pursuant to G.S. 90-3.

e. One shall be a duly licensed physician who is a doctor of osteopathic medicine or a full-time faculty member of one of the medical schools in North Carolina who utilizes integrative medicine in that person's clinical practice, as recommended by the Review Panel pursuant to G.S. 90-3.

(3) Two public members appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the Speaker of the House of

Representatives and one upon the recommendation of the President Pro Tempore of the Senate.

(a1) Each appointing and nominating authority shall endeavor to see, insofar as possible, that its appointees and nominees to the Board reflect the composition of the State with regard to gender, ethnic, racial, and age composition.

(b) No member shall serve more than two complete three-year terms in a lifetime, except that each member shall serve until a successor is chosen and qualifies.

(b1) A public member appointed pursuant to sub-subdivision (a)(2)b. and subdivision (a)(3) of this section shall not be a health care provider nor the spouse of a health care provider. For the purpose of Board membership, "health care provider" means any licensed health care professional, agent, or employee of a health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program as preparation to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(c) Repealed by Session Laws 2003-366, s. 1, effective October 1, 2003.

(d) Any member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the physician, physician assistant, or nurse practitioner membership of the Board shall be filled for the period of the unexpired term by the Governor from a list submitted by the Review Panel pursuant to G.S. 90-3. Any vacancy in the public membership of the Board shall be filled by the appropriate appointing authority for the unexpired term.

(e) The North Carolina Medical Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as any private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. (1858-9, c. 258, ss. 3, 4; Code, s. 3123; Rev., s. 4492; C.S., s. 6606; Ex. Sess. 1921, c. 44, s. 1; 1981, c. 573, s. 2; 1991 (Reg. Sess., 1992), c. 787, s. 1; 1993, c. 241, s. 2; 1995, c. 94, s. 1; c. 405, s. 1; 1997-511, s. 1; 2003-366, s. 1; 2007-346, s. 2; 2015-213, s. 1; 2016-117, s. 2(a); 2017-206, s. 5(a); 2018-92, s. 2(a); 2019-191, ss. 2(a), 2(b).)

§ 90-2.1: Repealed by Session Laws 2007-346, s. 3, effective October 1, 2007.

§ 90-3. Review Panel recommends certain Board members; criteria for recommendations.

(a) There is created a Review Panel to review all applicants for the physician positions, the physician assistant position, and the nurse practitioner position on the Board. The Review Panel shall consist of nine members, including four from the Medical Society, one from the Old North State Medical Society, one from the North Carolina Osteopathic Medical Association, one from the North Carolina Academy of Physician Assistants, one from the North Carolina Nurses Association Council of Nurse Practitioners, and one public

member currently serving on the Board. All physicians, physician assistants, and nurse practitioners serving on the Review Panel shall be actively practicing in North Carolina.

The Review Panel shall contract for the independent administrative services needed to complete its functions and duties. The Board shall provide funds to pay the reasonable cost for the administrative services of the Review Panel. The Board shall convene the initial meeting of the Review Panel. The Review Panel shall elect a chair, and all subsequent meetings shall be convened by the Review Panel.

The Governor shall appoint Board members as provided in G.S. 90-2. The Review Panel shall attempt to make its recommendations to the Governor reflect the composition of the State with regard to gender, ethnic, racial, and age composition.

The Review Panel and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law.

(b) To be considered qualified for a physician position, the physician assistant position, or nurse practitioner position on the Board, an applicant shall meet each of the following criteria:

(1) Hold an active, nonlimited license to practice medicine in North Carolina, or in the case of a physician assistant and nurse practitioner, hold an active license or approval to perform medical acts, tasks, and functions in North Carolina.

(2) Have an active clinical or teaching practice. For purposes of this subdivision, the term "active" means patient care, or instruction of students in an accredited medical school or residency, or clinical research program, for 20 hours or more per week.

(3) Have actively practiced in this State for at least five consecutive years immediately preceding the appointment.

(4) Intend to remain in active practice in this State for the duration of the term on the Board.

(5) Submit at least three letters of recommendation, either from individuals or from professional or other societies or organizations.

(6) Have no public disciplinary history with the Board or any other licensing board in this State or another state over the past 10 years before applying for appointment to the Board.

(7) Have no history of felony convictions of any kind.

(8) Have no misdemeanor convictions related to the practice of medicine.

(9) Indicate, in a manner prescribed by the Review Panel, that the applicant: (i) understands that the primary purpose of the Board is to protect the public; (ii) is willing to take appropriate disciplinary action against his or her peers for misconduct or violations of the standards of medical care; and (iii) is aware of the time commitment needed to be a constructive member of the Board.

(10) Have not served more than 72 months as a member of the Board.

(c) The Review Panel shall recommend at least two qualified nominees for each open position on the Board. If the Governor chooses not to appoint either of the recommended nominees, the Review Panel shall recommend at least two new qualified nominees.

(d) Notice of open physician, physician assistant, or nurse practitioner positions on the Board shall be sent to all physicians currently licensed to practice medicine in North

Carolina and all physician assistants and nurse practitioners currently licensed or approved to perform medical acts, tasks, and functions in this State.

(e) Applicants for positions on the Board shall not be required to be members of any professional association or society, except as provided in G.S. 90-2(a)(2)a.

(f) Notwithstanding any provision of G.S. 90-16, the Board may provide confidential and nonpublic licensing and investigative information in its possession to the Review Panel regarding applicants.

(g) All applications, records, papers, files, reports, and all investigative and licensing information received by the Review Panel from the Board and other documents received or gathered by the Review Panel, its members, employees, agents, and consultants as a result of soliciting, receiving, and reviewing applications and making recommendations as required in this section shall not be considered public records within the meaning of Chapter 132 of the General Statutes. All such information shall be privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Review Panel, the Board, and their employees, agents, or consultants, except as provided in this section. The Review Panel shall publish on its Internet Web site the names and practice addresses of all applicants within 10 days after the application deadline. The Review Panel shall publish on its Internet Web site the names and practice addresses of the nominees recommended to the Governor within 10 days after notifying the Governor of those recommendations and not less than 30 days prior to the expiration of the open position on the Board.

(h) The Review Panel is a public body within the meaning of Article 33C of Chapter 143 of the General Statutes. In addition to the provisions contained in Article 33C of Chapter 143 of the General Statutes permitting a public body to conduct business in a closed session, the Review Panel shall meet in closed session to review applications; interview applicants; review and discuss information received from the Board; and discuss, debate, and vote on recommendations to the Governor. (1858-9, c. 258, s. 9; Code, s. 3126; Rev., s. 4493; C.S., s. 6607; 1981, c. 573, s. 3; 2007-346, s. 4; 2015-213, s. 2; 2016-117, s. 2(b)-(d); 2019-191, s. 3.)

§ 90-4. Board elects officers; quorum.

The North Carolina Medical Board is authorized to elect all officers and adopt all bylaws as may be necessary. A majority of the membership of the Board shall constitute a quorum for the transaction of business. (1858-9, c. 258, s. 11; Code, s. 3128; Rev., s. 4494; C.S., s. 6608; 1981, c. 573, s. 4; 1995, c. 94, s. 7.)

§ 90-5. Meetings of Board.

The North Carolina Medical Board shall meet at least once quarterly within the State of North Carolina and may hold any other meetings necessary to conduct the business of the Board. (Rev., s. 4495; 1915, c. 220, s. 1; C.S., s. 6609; 1935, c. 363; 1981, c. 573, s. 5; 1995, c. 94, s. 8; 2019-191, s. 4.)

§ 90-5.1. Powers and duties of the Board.

(a) The Board shall have the following powers and duties:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt, amend, or repeal rules as may be necessary to carry out and enforce the provisions of this Article.

(4) Require an applicant or licensee to submit to the Board evidence of the applicant's or licensee's continuing competence in the practice of medicine.

(5) Regulate the retention and disposition of medical records, whether in the possession of a licensee or nonlicensee. In the case of the death of a licensee, the rules may provide for the disposition of the medical records by the estate of the licensee. This subsection shall not apply to records created or maintained by persons licensed under other Articles of this Chapter or to medical records maintained in the normal course of business by licensed health care institutions.

(6) Appoint a temporary or permanent custodian for medical records abandoned by a licensee.

(7) Develop educational programs to facilitate licensee awareness of provisions contained in this Article and public awareness of the role and function of the Board.

(8) Develop and implement methods to identify dyscompetent licensees and licensees who fail to meet acceptable standards of care.

(9) Develop and implement methods to assess and improve licensee practice.

(10) Develop and implement methods to ensure the ongoing competence of licensees.

(b) Nothing in subsection (a) of this section shall restrict or otherwise limit powers and duties conferred on the Board in other sections of this Article.

(c) Notwithstanding any other provision of law, the North Carolina Medical Board shall not set fees pursuant to rules. Any fees set pursuant to rules adopted by the Board and applicable on June 1, 2019, remain valid. (2007-346, s. 5; 2019-191, ss. 5, 45.)

§ 90-5.2. Board to collect and publish certain data.

(a) The Board shall require all licensees to report to the Board certain information, including, but not limited to, the following:

(1) The names of any schools of medicine or osteopathy attended and the year of graduation.

(2) Any graduate medical or osteopathic education.

(3) Any specialty board of certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.

(4) Specialty area of practice.

(5) Hospital affiliations.

(6) Address and telephone number of the primary practice setting.

(7) A current, active e-mail address, which shall not be considered a public record within the meaning of Chapter 132 of the General Statutes. This information may be used or made available by the Board for the purpose of disseminating or soliciting information affecting public health or the practice of medicine.

(8) Any final disciplinary order or other action required to be reported to the Board pursuant to G.S. 90-14.13 that results in a suspension or revocation of privileges.

(9) Any final disciplinary order or action of any regulatory board or agency including other state medical boards, the United States Food and Drug Administration, the United States Drug Enforcement Administration, Medicare, or the North Carolina Medicaid program.

(10) Conviction of a felony.

(11) Conviction of certain misdemeanors, occurring within the last 10 years, in accordance with rules adopted by the Board.

(12) Any medical license, active or inactive, granted by another state or country.

(13) Certain malpractice information received pursuant to G.S. 90-5.3, G.S. 90-14.13, or from other sources in accordance with rules adopted by the Board.

(a1) The Board shall make e-mail addresses reported pursuant to G.S. 90-5.2(a)(7) available to the Department of Health and Human Services for use in the North Carolina Controlled Substance Reporting System established by Article 5E of this Chapter.

(b) Except as provided, the Board shall make information collected under G.S. 90-5.2(a) available to the public.

(c) The Board may adopt rules to implement this section.

(d) Failure to provide information as required by this section and in accordance with Board rules or knowingly providing false information may be considered unprofessional conduct as defined in G.S. 90-14(a)(6). (2007-346, s. 6; 2009-217, s. 2; 2013-152, s. 5; 2016-117, s. 2(e), (f); 2019-191, s. 6.)

§ 90-5.3. Reporting and publication of medical judgments, awards, payments, and settlements.

(a) All applicants and licensees shall report the following to the Board:

(1) All medical malpractice judgments or awards affecting or involving the applicant or licensee.

(2) All settlements in the amount of seventy-five thousand dollars ($75,000) or more related to an incident of alleged medical malpractice affecting or involving the applicant or licensee where the settlement occurred on or after May 1, 2008.

(3) All settlements in the aggregate amount of seventy-five thousand dollars ($75,000) or more related to any one incident of alleged medical malpractice affecting or involving the applicant or licensee not already reported pursuant to subdivision (2) of this subsection where, instead of a single payment of seventy-five thousand dollars ($75,000) or more occurring on or after May 1, 2008, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed seventy-five thousand dollars ($75,000).

(b) The report required under subsection (a) of this section shall contain the following information:

(1) The date of the judgment, award, payment, or settlement.

(2) The specialty in which the applicant or licensee was practicing at the time the incident occurred that resulted in the judgment, award, payment, or settlement.
(3) The city, state, and country in which the incident occurred that resulted in the judgment, award, payment, or settlement.
(4) The date the incident occurred that resulted in the judgment, award, payment, or settlement.

(c) The Board shall publish on the Board's Web site or other publication information collected under this section. The Board shall publish this information for seven years from the date of the judgment, award, payment, or settlement. The Board shall not release or publish individually identifiable numeric values of the reported judgment, award, payment, or settlement. The Board shall not release or publish the identity of the patient associated with the judgment, award, payment, or settlement. The Board shall allow the applicant or licensee to publish a statement explaining the circumstances that led to the judgment, award, payment, or settlement, and whether the case is under appeal. The Board shall ensure these statements:

(1) Conform to the ethics of the medical profession.
(2) Not contain individually identifiable numeric values of the judgment, award, payment, or settlement.
(3) Not contain information that would disclose the patient's identity.

(d) The term "settlement" for the purpose of this section includes a payment made from personal funds, a payment by a third party on behalf of the applicant or licensee, or a payment from any other source of funds.

(e) Nothing in this section shall limit the Board from collecting information needed to administer this Article. (2009-217, s. 3; 2019-191, s. 7.)

§ 90-5.4. Duty to report.

(a) Every licensee has a duty to report in writing to the Board within 30 days any incidents that licensee reasonably believes to have occurred involving any of the following:

(1) Sexual misconduct of any person licensed by the Board under this Article with a patient. Patient consent or initiation of acts or contact by a patient shall not constitute affirmative defenses to sexual misconduct. For purposes of this section, the term "sexual misconduct" means vaginal intercourse, or any sexual act or sexual contact or touching as described in G.S. 14-27.20. Sexual misconduct shall not include any act or contact that is for an accepted medical purpose.
(2) Fraudulent prescribing, drug diversion, or theft of any controlled substances by another person licensed by the Board under this Article. For purposes of this section, "drug diversion" means transferring controlled substances or prescriptions for controlled substances to (i) the licensee for personal use; (ii) a licensee's immediate family member; (iii) any other person living in the same residence as the licensee; (iv) any person with whom the licensee is having a sexual relationship; or (v) any individual unless for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. For the purposes of this section, the term "immediate

family member" means a spouse, parent, child, sibling, and any step-family member or in-law coextensive with the preceding identified relatives.

(b) For persons issued a license to practice by the Board under this Article, failure to report under this section shall constitute unprofessional conduct and shall be grounds for discipline under G.S. 90-14(a)(6). However, persons licensed by the Board who are employed by or serving as a director or agent of the North Carolina Physicians Health Program and who obtain information exclusively while functioning in their role as employee, director, or agent of the North Carolina Physicians Health Program that causes them reasonably to believe that incidents referred to in subdivisions (1) and (2) of subsection (a) of this section occurred shall not be required to report pursuant to this section but shall comply with the reporting provisions contained in G.S. 90-21.22.

(c) Any person who reports under this section in good faith and without fraud or malice shall be immune from civil liability. Reports made in bad faith, fraudulently, or maliciously shall constitute unprofessional conduct and shall be grounds for discipline under G.S. 90-14(a)(6).

(d) The Board may adopt rules to implement this section. (2019-191, s. 8.)

§ 90-6: Recodified as G.S. 90-8.1 and G.S. 90-8.2, by Session Laws 2007-346, s. 7, effective October 1, 2007.

§ 90-7: Repealed by Session Laws 2019-191, s. 9, effective October 1, 2019.

§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other materials.

The president and secretary of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any patient records, documents or other material concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any physician-patient privilege with respect to such records, documents or other material. All records, documents, or other material compiled by the Board are subject to the provisions of G.S. 90-16. Notwithstanding the provisions of G.S. 90-16, in any proceeding before the Board, in any record of any hearing before the Board, and in the notice of charges against any licensee, the Board shall withhold from public disclosure the identity of a patient including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason in law the subpoena is invalid. (1913, c. 20, s. 7; C.S., s. 6612; Ex. Sess. 1921, c. 44, s. 3; 1953, c. 1248, s. 1; 1975, c. 690, s. 1; 1979, c. 107, s. 8; 1987, c. 859, s. 5; 1991, c. 348.)

§ 90-8.1. Rules governing applicants for licensure.

(a) The North Carolina Medical Board is empowered to adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements and application procedures.

(b) The Board shall not deny an application for licensure based solely on the applicant's failure to become board certified.

(c) By submitting an application for licensure, the applicant submits to the jurisdiction of the Board. (C.S., s. 6610; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 2; 1973, c. 92, s. 2; 1981, c. 665, s. 1; 1983, c. 53; 1995, c. 94, s. 9; c. 405, s. 2; 1999-290, s. 1; 2007-346, ss. 7, 8; 2016-117, s. 2(g); 2019-191, s. 10.)

§ 90-8.2. Appointment of subcommittees.

(a) The North Carolina Medical Board shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of approval not to exceed fifty dollars ($50.00). Rules developed by this subcommittee from time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the North Carolina Medical Board and the Board of Nursing. The North Carolina Medical Board shall have responsibility for securing compliance with these rules.

(b) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist practitioners, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of approval not to exceed fifty dollars ($50.00). Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Board of Pharmacy and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules. (C.S., s. 6610; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 2; 1973, c. 92, s. 2; 1981, c. 665, s. 1; 1983, c. 53; 1995, c. 94, s. 9; c. 405, s. 2; 1999-290, s. 1; 2007-346, s. 7; 2007-418, s. 3.)

§ 90-9: Repealed by Session Laws 2007-418, s. 2, effective October 1, 2007.

§ 90-9.1. Requirements for licensure as a physician under this Article.

(a) Except as provided in G.S. 90-9.2, to be eligible for licensure as a physician under this Article, an applicant shall submit proof satisfactory to the Board that the applicant meets all of the following criteria:

(1) The applicant has passed each part of an examination described in G.S. 90-10.1.

(2) The applicant has completed at least 130 weeks of medical education and satisfies any of the following:

a. The applicant is a graduate of a medical college approved by the Liaison Commission on Medical Education, the Committee for the Accreditation of Canadian Medical Schools, or an osteopathic college approved by the American Osteopathic Association and has successfully completed one year of training in a medical education

program approved by the Board after graduation from medical school; or

b. The applicant is a graduate of a medical college approved or accredited by the Liaison Committee on Medical Education, the Committee on Accreditation of Canadian Medical Schools, or an osteopathic college approved by the American Osteopathic Association, is a dentist licensed to practice dentistry under Article 2 of Chapter 90 of the General Statutes, and has been certified by the American Board of Oral and Maxillofacial Surgery after having completed a residency in an Oral and Maxillofacial Surgery Residency program approved by the Board before completion of medical school.

c. The applicant may satisfy the education and graduation requirements of subdivision (2) of this subsection by providing proof of current certification by a specialty board recognized by the American Board of Medical Specialties, Certificate of the College of Family Physicians, Fellowship of the Royal College of Physicians of Canada, Fellowship of the Royal College of Surgeons of Canada, American Osteopathic Association, the American Board of Oral and Maxillofacial Surgery, or any other specialty board the Board recognizes pursuant to rules.

(3) The applicant is of good moral character.

(b) No license may be granted to any applicant who graduated from a medical or osteopathic college that has been disapproved by the Board pursuant to rules adopted by the Board.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate. (2007-346, s. 9; 2019-191, s. 11.)

§ 90-9.2. Requirements for graduates of international medical schools.

(a) To be eligible for licensure under this section, an applicant who is a graduate of a medical school not approved by the Liaison Commission on Medical Education, the Committee for the Accreditation of Canadian Medical Schools, or the American Osteopathic Association shall submit proof satisfactory to the Board that the applicant has met all of the following:

(1) The applicant has successfully completed two years of training in a medical education program approved by the Board after graduation from medical school, or provides proof of current certification by a specialty board recognized by the American Board of Medical Specialties, Certificate of the College of Family Physicians, Fellowship of the Royal College of Physicians of Canada, Fellowship of the Royal College of Surgeons of Canada, American Osteopathic Association, the American Board of Oral and Maxillofacial Surgery, or any specialty board the Board recognizes pursuant to rules.

(2) The applicant has good moral character.

(3) The applicant has a currently valid standard certificate of Educational Commission for Foreign Medical Graduates.

(4) The applicant has the ability to communicate in English.

(5) The applicant has successfully passed each part of an examination described in G.S. 90-10.1.

(b) The Board may waive ECFMG certification if the applicant:

(1) Has passed the ECFMG examination and successfully completed an approved Fifth Pathway Program. The applicant is required to provide the original ECFMG Certification Status Report from the ECFMG; or

(2) Has been licensed in another state on the basis of written examination before the establishment of ECFMG in 1958.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate. (2007-346, s. 9; 2019-191, s. 12.)

§ 90-9.3. Requirements for licensure as a physician assistant.

(a) To be eligible for licensure as a physician assistant, an applicant shall submit proof satisfactory to the Board that the applicant has met all of the following:

(1) The applicant has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor entities.

(2) The applicant has a current or previous certification issued by the National Commission on Certification of Physician Assistants or its successor.

(3) The applicant is of good moral character.

(b) Before initiating practice of medical acts, tasks, or functions as a physician assistant, the physician assistant shall provide the Board the name, address, and telephone number of the physician who will supervise the physician assistant in the relevant medical setting.

(c) The Board may, by rule, require an applicant to comply with other requirements or submit additional information the Board deems appropriate. (2007-346, s. 9; 2019-191, s. 13.)

§ 90-9.4. Requirements for licensure as an anesthesiologist assistant.

Every applicant for licensure as an anesthesiologist assistant in the State shall meet the following criteria:

(1) Satisfy the North Carolina Medical Board that the applicant is of good moral character.

(2) Submit to the Board proof of completion of a graduate level training program accredited by the Commission of Accreditation of Allied Health Education Programs or its successor organization.

(3) Submit to the Board proof of current certification from the National Commission of Certification of Anesthesiologist Assistants (NCCAA) or its successor organization. The applicant shall take the certification exam within 12 months after completing training.

(4) Meet any additional qualifications for licensure pursuant to rules adopted by the Board. (2007-346, s. 9; 2019-191, s. 14.)

§ 90-9.5. Inactive licenses.

The Board retains jurisdiction over an inactive license, regardless of how it became inactive, including a request for inactivation, surrender of a license, or by operation of an order entered by the Board. The Board's jurisdiction over the licensee extends for all matters, known and unknown to the Board, at the time of the inactivation or surrender of the license. (2019-191, s. 15.)

§ 90-10: Repealed by Session Laws 2007-418, s. 2, effective October 1, 2007.

§ 90-10.1. Examinations accepted by the Board.

The Board may administer or accept the following examinations for licensure:

(1) Repealed by Session Laws 2019-191, s. 16, effective October 1, 2019.

(2) The National Board of Medical Examiners (NBME) examination or its successor.

(3) The United States Medical Licensing Examination (USMLE) of this section or its successor.

(4) The Federation Licensing Examination (FLEX) or its successor.

(5) Other examinations the Board deems equivalent to the examinations described in subdivisions (1) through (3) of this section pursuant to rules adopted by the Board. (2007-346, s. 10; 2019-191, s. 16.)

§ 90-11. Criminal background checks.

(a) Repealed by Session Laws 2007-346, s. 11, effective October 1, 2007.

(a1) Repealed by Session Laws 2007-346, s. 9.1, effective October 1, 2007.

(b) The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. The Board has the authority to collect this fee from each applicant and remit it to the Department of Public Safety. (C.S., s. 6615; 1921, c. 47, s. 3; Ex. Sess. 1921, c. 44, s. 5; 1971, c. 1150, s. 3; 1981, c. 573, s. 7; 1995, c. 94, s. 12; 1997-511, s. 2; 2002-147, s. 6; 2007-146, s. 1; 2007-346, ss. 9.1, 11; 2014-100, s. 17.1(o); 2019-191, s. 17.)

§ 90-12: Repealed by Session Laws 2007-346, s. 12, effective October 1, 2007.

§ 90-12.01. Limited license to practice in a medical education and training program.

(a) As provided in rules adopted by the Board, the Board may issue a limited license known as a "resident's training license" to a physician not otherwise licensed by the Board who is participating in a graduate medical education training program.

(b) A resident's training license shall become inactive at the time its holder ceases to be a resident in a training program or obtains any other license to practice medicine issued by the Board. The Board shall retain jurisdiction over the holder of the inactive license.

(c) The program director of every graduate medical education program shall report to the Board the following actions involving a physician participating in a graduate medical education training program within 30 days of the date that the action takes effect:

(1) Any revocation or termination, including, but not limited to, any nonrenewal or dismissal of a physician from a graduate medical education training program.

(2) A resignation from, or completion of, a graduate medical education program or a transfer to another graduate medical education training program. (2007-418, s. 4; 2019-191, s. 18.)

§ 90-12.1: Recodified as G.S. 90-12.4, by Session Laws 2007-346, s. 7, effective October 1, 2007.

§ 90-12.1A. Limited volunteer license.

(a) The Board may issue a "limited volunteer license" to an applicant who does all of the following:

(1) Has a license to practice medicine and surgery in another state.

(2) Produces a verification from the state of licensure indicating the applicant's license is active and in good standing.

(3) Repealed by Session Laws 2011-355, s. 1, effective June 27, 2011.

(b), (c) Repealed by Session Laws 2011-355, s. 1, effective June 27, 2011.

(d) The Board shall issue a limited license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a limited license under this section may practice medicine and surgery only in association with clinics that specialize in the treatment of indigent patients. The holder of the limited license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(e1) The holder of a limited volunteer license shall practice medicine and surgery within this State for no more than 30 days per calendar year.

(f) The holder of a limited license issued pursuant to this section who practices medicine or surgery outside of an association with clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(g) The Board may, by rule, require an applicant for a limited license under this section to comply with other requirements or submit additional information the Board deems appropriate. (2007-418, s. 5; 2011-183, s. 54; 2011-355, ss. 1, 8; 2019-191, s. 19.)

§ 90-12.1B. Retired limited volunteer license.

(a) The Board may issue a "retired limited volunteer license" to an applicant who is a physician and who has allowed his or her license to practice medicine and surgery in this State or another state to become inactive.

(b) A physician holding a limited license under this section shall comply with the continuing medical education requirements pursuant to rules adopted by the Board.

(c) The holder of a limited license under this section may practice medicine and surgery only in association with clinics that specialize in the treatment of indigent patients. The holder of the limited license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(d) The Board shall issue a limited license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a limited license issued pursuant to this section who practices medicine or surgery outside of an association with clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(f) The Board may, by rule, require an applicant for a limited license under this section to comply with other requirements or submit additional information the Board deems appropriate. (2011-355, s. 2; 2019-191, s. 20.)

§ 90-12.2: Recodified as G.S. 90-12.5, by Session Laws 2007-346, s. 7, effective October 1, 2007.

§ 90-12.2A. Special purpose license.

(a) The Board may issue a special purpose license to practice medicine to an applicant who does all of the following:

(1) Holds a full and unrestricted license to practice in at least one other jurisdiction.

(2) Does not have any current or pending disciplinary or other action against him or her by any medical licensing agency in any state or other jurisdiction.

(b) The holder of the special purpose license practicing medicine or surgery beyond the limitations of the license shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, at its discretion, may revoke the special license after due notice is given to the holder of the special purpose license.

(c) The Board may adopt rules and set fees as appropriate to implement the provisions of this section. (2007-418, s. 6; 2019-191, s. 21.)

§ 90-12.3. Medical school faculty license.

(a) The Board may issue a medical school faculty license to practice medicine and surgery to a physician who has met all of the following:

(1) The applicant holds a full-time faculty appointment as either an instructor, lecturer, assistant professor, associate professor, or full professor at a North Carolina medical school that is certified by the Liaison Committee on Medical Education or the Commission of Osteopathic College Accreditation of the American Osteopathic Association.

(2) The applicant is not subject to disciplinary order or other action by any medical licensing agency in any state or other jurisdiction.

(b) The holder of the medical school faculty license issued under this section shall not practice medicine or surgery outside the confines of the medical school or its affiliates. The holder of the medical school faculty license practicing medicine or surgery beyond the limitations of the license shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, at its discretion, may revoke the special license after due notice is given to the holder of the medical school faculty license.

(b1) A medical school faculty license shall become inactive at the time its holder does one or more of the following:

(1) Ceases to hold a full-time appointment as an instructor, lecturer, assistant professor, or full professor at a certified North Carolina medical school.

(2) Ceases to be employed in a full-time capacity by a certified North Carolina medical school.

(3) Obtains any other license to practice medicine issued by the Board.

The Board shall retain jurisdiction over the holder of the inactive license.

(c) The Board may adopt rules and set fees related to issuing medical school faculty licenses. The Board may, by rule, set a time limit for the term of a medical school faculty license. (2007-418, s. 7; 2019-191, s. 22.)

§ 90-12.4. Physician assistant limited volunteer license.

(a) The Board shall issue a limited volunteer license to an applicant who:

(1) Holds a current license or registration in another state; and

(2) Produces a letter from the state of licensure indicating the applicant's license or registration is active and in good standing.

(b) The Board shall issue a limited license under this section within 30 days after the applicant provides the Board with information satisfying the requirements of this section.

(c) The holder of a limited license may perform medical acts, tasks, or functions as a physician assistant only in association with clinics that specialize in the treatment of indigent patients. The holder of a limited license may not receive payment or other compensation for services rendered at clinics specializing in the care of indigent patients. The holder of a limited volunteer license shall practice as a physician assistant within this State for no more than 30 days per calendar year.

(d) Before initiating the performance of medical acts, tasks, or functions as a physician assistant licensed under this section, the physician assistant shall provide the

Board the name, address, and telephone number of the physician licensed under this Article who will supervise the physician assistant in the clinic specializing in the care of indigent patients.

(e) The holder of a limited license issued pursuant to this section who practices as a physician assistant outside an association with clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(f) The Board may, by rule, require an applicant for a limited license under this section to comply with other requirements or submit additional information the Board deems appropriate. (1997-511, s. 3; 2007-346, s. 7; 2011-355, s. 3; 2019-191, s. 23.)

§ 90-12.4A. Reserved for future codification purposes.

§ 90-12.4B. Physician Assistant retired limited volunteer license.

(a) The Board may issue a "retired limited volunteer license" to an applicant who is a physician assistant and who has allowed his or her license to become inactive.

(b) A physician assistant holding a retired limited volunteer license under this section shall comply with the continuing medical education requirements pursuant to rules adopted by the Board.

(c) The holder of a retired limited volunteer license under this section may perform medical acts, tasks, or functions as a physician assistant only in association with clinics that specialize in the treatment of indigent patients. The holder of a retired limited volunteer license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(d) The Board shall issue a retired limited volunteer license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a retired limited volunteer license issued pursuant to this section who practices as a physician assistant outside an association with clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not more than five hundred dollars ($500.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.

(f) The Board may, by rule, require an applicant for a retired limited volunteer license under this section to comply with other requirements or submit additional information the Board deems appropriate. (2011-355, s. 4; 2019-191, s. 24.)

§ 90-12.5. Disasters and emergencies.

In the event of an occurrence which the Governor of the State of North Carolina has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S.

166A-19.31, or to protect the public health, safety, or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of emergency health services to the public. (2002-179, s. 20(a); 2007-346, s. 7; 2012-12, s. 2(ff).)

§ 90-12.7. Treatment of overdose with opioid antagonist; immunity.

(a) As used in this section, "opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(b) The following individuals may prescribe an opioid antagonist in the manner prescribed by this subsection:

(1) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

a. The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

b. The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:

1. A family member, friend, or other person.

2. In the position to assist a person at risk of experiencing an opiate-related overdose.

(2) The State Health Director or a designee may prescribe an opioid antagonist pursuant to subdivision (1) of this subsection by means of a statewide standing order.

(3) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to any governmental or nongovernmental organization, including a local health department, a law enforcement agency, or an organization that promotes scientifically proven ways of mitigating health risks associated with substance use disorders and other high-risk behaviors, for the purpose of distributing, through its agents, the opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose.

(c) A pharmacist may dispense an opioid antagonist to a person or organization pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

(c1) A governmental or nongovernmental organization, including a local health department, a law enforcement agency, or an organization that promotes scientifically

proven ways of mitigating health risks associated with substance use disorders and other high-risk behaviors may, through its agents, distribute an opioid antagonist obtained pursuant to a prescription issued in accordance with subdivision (3) of subsection (b) of this section to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. An organization, through its agents, shall include with any distribution of an opioid antagonist pursuant to this subsection basic instruction and information on how to administer the opioid antagonist.

(d) A person who receives an opioid antagonist that was prescribed pursuant to subsection (b) of this section or distributed pursuant to subsection (c1) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.

(e) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

(1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.
(2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (c) of this section.
(3) Any person who administers an opioid antagonist pursuant to subsection (d) of this section.
(4) The State Health Director acting pursuant to subsection (b) of this section.
(5) Any organization, or agent of the organization, that distributes an opioid antagonist pursuant to subsection (c1) of this section. (2013-23, s. 2; 2015-94, s. 3; 2016-17, s. 2; 2017-74, s. 2; 2017-102, ss. 37(a), (b).)

§ 90-13: Repealed by Session Laws 2007-418, s. 2, effective October 1, 2007.

§ 90-13.1. License fees.

(a) Each applicant for a license to practice medicine and surgery in this State under either G.S. 90-9.1 or G.S. 90-9.2 shall pay to the North Carolina Medical Board an application fee of four hundred dollars ($400.00).

(b) Each applicant for a limited license to practice in a medical education and training program under G.S. 90-12.01 shall pay to the Board a fee of one hundred dollars ($100.00).

(c) An applicant for a limited volunteer license under G.S. 90-12.1A or G.S. 90-12.1B shall not pay a fee.

(d) A fee of twenty-five dollars ($25.00) shall be paid for the issuance of a duplicate license.

(e) All fees shall be paid in advance to the North Carolina Medical Board, to be held in a fund for the use of the Board.

(f) For the initial and annual licensure of an anesthesiologist assistant, the Board may require the payment of a fee not to exceed one hundred fifty dollars ($150.00). (1858-9, c. 258, s. 13; Code, s. 3130; Rev., s. 4501; 1913, c. 20, ss. 4, 5; C.S., s. 6619; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; 1953, c. 187; 1969, c. 929, s. 4; 1971, c. 817, s. 2; c. 1150, s. 5; 1977, c. 838, s. 4; 1979, c. 196, s. 1; 1981, c. 573, s. 15; 1983 (Reg. Sess., 1984), c. 1063, s. 1; 1985, c. 362, ss. 1-3; 1987, c. 859, ss. 13, 14; 1993 (Reg. Sess., 1994), c. 566, s. 2; 1995, c. 94, s. 15; c. 509, s. 37; 2000-5, s. 2; 2005-402, s. 5; 2007-146, s. 2; 2007-346, ss. 7, 13(a); 2007-418, s. 8; 2011-355, s. 5; 2016-117, s. 2(h).)

§ 90-13.2. Registration every year with Board.

(a) Every licensee shall register annually with the Board no later than 30 days after the person's birthday.

(b) A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay an annual registration fee of two hundred fifty dollars ($250.00), except those who have a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training shall pay a registration fee of one hundred twenty-five dollars ($125.00), and those who have a retired limited volunteer license pursuant to G.S. 90-12.1B or a limited volunteer license pursuant to G.S. 90-12.1A shall pay no annual registration fee. However, licensees who have a limited license to practice for the purpose of education and training under G.S. 90-12.01 shall not be required to pay more than one annual registration fee for each year of training.

(c) Repealed by Session Laws 2016-117, s. 2(i), effective October 1, 2016.

(d) A licensee who is not actively engaged in the performance of medical acts, tasks, or functions in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status.

(e) A physician who fails to register as required by this section shall pay an additional fee of fifty dollars ($50.00) to the Board. The license of any physician who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive. The Board shall retain jurisdiction over the holder of the inactive license.

(f) Except as provided in G.S. 90-12.1B, a person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee.

(g) Upon payment of all accumulated fees and penalties, the license of the licensee may be reinstated, subject to the Board requiring the licensee to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the applicable maximum fee for a license under G.S. 90-13.1.

(h) The Board shall not deny a licensee's annual registration based solely on the licensee's failure to become board certified. (1957, c. 597; 1969, c. 929, s. 5; 1979, c. 196, s. 2; 1983 (Reg. Sess., 1984), c. 1063, s. 2; 1987, c. 859, s. 12; 1993 (Reg. Sess., 1994), c. 566, s. 1; 1995, c. 94, s. 16; 1995 (Reg. Sess., 1996), c. 634, s. 1(a); 1997-481, s. 3; 2000-5, s. 3; 2001-493, s. 3; 2005-402, s. 6; 2007-346, s. 7; 2007-418, s. 9; 2011-355, s. 6; 2016-117, s. 2(i); 2019-191, s. 25.)

§ 90-13.3. Salaries, fees, expenses of the Board.

(a) The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board.

(b) The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per member for time spent in the performance and discharge of duties as a member. Any unexpended sum of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office. (2007-346, s. 13(b).)

§ 90-14. Disciplinary Authority.

(a) The Board shall have the power to place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or willfully concealed from the Board material information in connection with an application for a license, an application, request or petition for reinstatement or reactivation of a license, an annual registration of a license, or an investigation or inquiry by the Board.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require an applicant or licensee to submit to a mental or physical examination by physicians or physician assistants, or mental examinations by other licensed health care providers acting within the scope of their practice as allowed by law designated by the Board during the pendency of a license application and before or after charges may be presented against the applicant or licensee, and the results of the examination shall be admissible in evidence in a hearing before the Board. Failure to comply with an order pursuant to this subsection may be considered unprofessional conduct as defined in G.S. 90-14(a)(6).

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within or without

North Carolina. The Board shall not revoke the license of or deny a license to a person, or discipline a licensee in any manner, solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which the physician has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients or failing to maintain acceptable standards of care. In this connection the Board may consider repeated acts of an applicant or licensee's failure to treat a patient properly. The Board may, upon reasonable grounds, require an applicant or licensee to submit to inquiries or examinations, written or oral, as the Board deems necessary to determine the professional qualifications of that applicant or licensee. Failure to comply with an order pursuant to this subsection may be considered unprofessional conduct as defined in G.S. 90-14(a)(6). In order to annul, suspend, deny, or revoke a license of an accused person, the Board shall find by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered.

(11a) Not actively practiced as a licensee, or having not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for an initial license from the Board or the filing of a request, petition, motion, or application to reactivate or reinstate an inactive, suspended, or revoked license previously issued by the Board. The Board is authorized to adopt any rules or regulations it deems necessary to carry out the provisions of this subdivision.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order the licensee pay restitution to the payer of the bill, whether the patient or the insurer, provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license revoked, suspended, restricted, or acted against or having a license to practice denied by the licensing authority of any jurisdiction, including Canada, the United Kingdom, and Australia. For purposes of this subdivision, the licensing authority's acceptance of a license to practice

voluntarily relinquished by a licensee or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the licensee's license, or an inactivation or voluntary surrender of a license while under investigation is an action against a license to practice.

(14) The failure to comply with an order issued under this Article or the failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

(16) A violation of any provision of this Article.

(17) Failure to make reports as required by this Article.

(b) The Board shall refer to the North Carolina Physicians Health Program all licensees whose health and effectiveness have been significantly impaired by alcohol, drug addiction or mental illness. Sexual misconduct shall not constitute mental illness for purposes of this subsection.

(c) Except as provided in subsection (c1) of this section, a felony conviction shall result in the automatic revocation of a license issued by the Board, unless the Board orders otherwise or receives a request for a hearing from the person within 60 days of receiving notice from the Board, after the conviction, of the provisions of this subsection. If the Board receives a timely request for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

(c1) A felony conviction under Article 7B of Chapter 14 of the General Statutes shall result in the automatic denial or revocation of a license issued by the Board, and that denial or revocation shall be permanent, and the applicant or licensee shall be ineligible for reapplication, relicensure, reinstatement, or restoration under subsection (c2) of this section.

(c2) Except as provided in subsection (c1) of this section, where the Board has exercised its authority pursuant to this section to revoke a license, the holder of the revoked license will not be eligible to make an application for reinstatement before two years from the effective date of the revocation.

(d) Repealed by Session Laws 2006-144, s. 4, effective October 1, 2006, and applicable to acts or omissions that occur on or after that date.

(e) The Board and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law.

(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, assessing, monitoring, or providing an expert medical opinion to the Board regarding the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good

faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice.

(g) Prior to taking action against any licensee for providing care not in accordance with the standards of care for the procedures or treatments administered, the Board shall whenever practical consult with a licensee who routinely utilizes or is familiar with the same modalities and who has an understanding of the standards of practice for the modality administered. Information obtained as result of the consultation shall be available to the licensee at the informal nonpublic precharge conference.

(h) No investigation of a licensee shall be initiated upon the direction of a single member of the Board without another Board member concurring. A Board member shall not serve as an expert in determining the basis for the initiation of an investigation.

(i) At the time of first communication from the Board or agent of the Board to a licensee regarding a complaint or investigation, the Board shall provide notice in writing to the licensee that informs the licensee: (i) of the existence of any complaint or other information forming the basis for the initiation of an investigation; (ii) that the licensee may retain counsel; (iii) how the Board will communicate with the licensee regarding the investigation or disciplinary proceeding in accordance with subsections (m) and (n) of this section; (iv) that the licensee has a duty to respond to inquiries from the Board concerning any matter affecting the license, and all information supplied to the Board and its staff will be considered by the Board in making a determination with regard to the matter under investigation; (v) that the Board will complete its investigation within six months or provide an explanation as to why it must be extended; and (vi) that if the Board makes a decision to initiate public disciplinary proceedings, the licensee may request in writing an informal nonpublic precharge conference.

(j) After the Board has made a nonpublic determination to initiate disciplinary proceedings, but before public charges have been issued, the licensee requesting so in writing, shall be entitled to an informal nonpublic precharge conference. At least five days prior to the informal nonpublic precharge conference, the Board will provide to the licensee the following: (i) all relevant information obtained during an investigation, including exculpatory evidence except for information that would identify an anonymous complainant; (ii) the substance of any written expert opinion that the Board relied upon, not including information that would identify an anonymous complainant or expert reviewer; (iii) notice that the licensee may retain counsel, and if the licensee retains counsel all communications from the Board or agent of the Board regarding the disciplinary proceeding will be made through the licensee's counsel; (iv) notice that if a Board member initiated the investigation then that Board member will not participate in the adjudication of the matter before the Board or hearing committee; (v) notice that the Board may use an administrative law judge or designate hearing officers to conduct hearings as a hearing committee to take evidence; (vi) notice that the hearing shall proceed in the manner prescribed in Article 3A of Chapter 150B of the General Statutes and as otherwise provided

in this Article; and (vii) any Board member who serves as a hearing officer in this capacity shall not serve as part of the quorum that determines the final agency decision. The provisions of this section do not apply where the Board has exercised its authority under G.S. 150B-3(c) and issued an order of summary suspension.

(k) When the Board has made a determination that the public health, safety, or welfare requires emergency action, the Board may seek to require of a licensee the taking of any action adversely impacting the licensee's medical practice or license without first giving notice of the proposed action, the basis for the proposed action, and information required under subsection (i) of this section.

(*l*) The Board shall complete any investigation initiated pursuant to this section no later than six months from the date of first communication required under subsection (i) of this section, unless the Board provides to the licensee a written explanation of the circumstances and reasons for extending the investigation.

(m) If a licensee retains counsel to represent the licensee in any matter related to a complaint, investigation, or proceeding, the Board shall communicate to the licensee through the licensee's counsel.

(n) Notwithstanding subsection (m) of this section, if the licensee has retained counsel, the Board may serve to both the licensee and the licensee's counsel orders to produce, appear, submit to assessment, examination, or orders following a hearing, or provide notice that the Board will not be taking any further action against a licensee. (C.S., s. 6618; 1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; 1953, c. 1248, s. 2; 1969, c. 612, s. 4; c. 929, s. 6; 1975, c. 690, s. 4; 1977, c. 838, s. 3; 1981, c. 573, ss. 9, 10; 1987, c. 859, ss. 6-10; 1993, c. 241, s. 1; 1995, c. 405, s. 4; 1997-443, s. 11A.118(a); 1997-481, s. 1; 2000-184, s. 5; 2003-366, ss. 3, 4; 2006-144, s. 4; 2007-346, s. 14; 2009-363, ss. 2, 3; 2009-558, ss. 1.2, 1.3, 1.4; 2016-117, s. 2(j); 2019-191, s. 26.)

§ 90-14.1. Judicial review of Board's decision denying issuance of a license.

Whenever an applicant fails to satisfy the Board of the applicant's qualifications to be issued a license, the Board shall immediately notify such person of its decision, and indicate in what respect the applicant has so failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the secretary of the Board within 10 days after receipt of the Board's decision, stating the reasons for such request. The Board shall within 20 days of receipt of such request notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of the applicant's qualifications for licensure shall be upon the applicant. Following such hearing, the Board shall determine whether the applicant is entitled to be licensed. Any decision of the Board shall be subject to judicial review upon appeal to the superior court of the county where the Board is located upon the filing with the Board of a written notice of appeal with exceptions taken to the decision of the Board within 20 days after service of notice of the Board's final decision. Within 30 days after receipt of notice of appeal, the secretary of the Board shall certify to the clerk of the superior court of the county where the Board is located the record of the case which shall include a copy of the notice of hearing, a transcript of

the testimony and evidence received at the hearing, a copy of the decision of the Board, and a copy of the notice of appeal and exceptions. Upon appeal the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony may be taken by the court. The decision of the Board shall be upheld unless the substantial rights of the applicant have been prejudiced because the decision of the Board is in violation of law or is not supported by any evidence admissible under this Article, or is arbitrary or capricious. (1953, c. 1248, s. 3; 1995, c. 94, s. 14; 2019-191, s. 27.)

§ 90-14.2. Hearing before disciplinary action.

(a) Before the Board shall take disciplinary action against any license granted by it, the licensee shall be given a written notice indicating the charges made against the licensee and stating that the licensee will be given an opportunity to be heard concerning the charges at a time and place stated in the notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of notice upon the licensee, at which the licensee may appear personally and through counsel, may cross examine witnesses and present evidence in the licensee's own behalf. A licensee who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the licensee resides. The licensee may file written answers to the charges within 30 days after the service of the notice, which answer shall become a part of the record but shall not constitute evidence in the case.

(b) Once charges have been issued, neither counsel for the Board nor counsel for the respondent shall communicate ex parte, directly or indirectly, pertaining to a matter that is an issue of fact or a question of law with a hearing officer or Board member who is permitted to participate in a final decision in a disciplinary proceeding. In conducting hearings, the Board shall retain independent counsel to provide advice to the Board or any hearing committee constituted under G.S. 90-14.5(a) concerning contested matters of procedure and evidence.

(c) Once charges have been issued, the parties may engage in discovery as provided in G.S. 1A-1, the North Carolina Rules of Civil Procedure. Additionally, pursuant to any written request by the respondent or respondent's counsel, the Board shall provide information obtained during an investigation, except for the following:

(1) Information that is subject to attorney-client privilege or is attorney work product.

(2) Information that would identify an anonymous complainant.

(3) Information generated during an investigation that will not be offered into evidence by the Board and is related to:

a. Advice, opinions, or recommendations of the Board staff, consultants, or agents.

b. Deliberations by the Board and its committees during an investigation. (1953, c. 1248, s. 3; 1975, c. 690, s. 5; 2007-346, s. 15; 2009-558, s. 2; 2016-117, s. 2(k); 2019-191, s. 28.)

§ 90-14.3. Service of notices.

Any notice required by this Chapter may be served either personally by an employee of the Board or by an officer authorized by law to serve process, or by registered or certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer or employee of the Board delivers the notice to the person addressed or delivers the notice at the licensee's or applicant's last known address as shown by records of the Board with a person of suitable age and discretion then residing therein. Where notice is served by registered or certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the licensee's or applicant's last known address as shown by the records of the Board, regardless of whether the notice was actually received or whether the notice was unclaimed or undeliverable for any reason. (1953, c. 1248, s. 3; 1995, c. 405, s. 5; 2007-346, s. 16.)

§ 90-14.4: Repealed by Session Laws 2007-346, s. 17, effective October 1, 2007.

§ 90-14.5. Use of recommended decisions; appointment of hearing officers.

(a) Except as provided in subsection (a1) of this section, the Board, in its discretion, may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. A majority of hearing officers participating in a hearing committee shall be licensees of the Board. The Board shall make a reasonable effort to include on the panel at least one physician licensed in the same or similar specialty as the licensee against whom the complaint has been filed. If a current or retired judge as described in G.S. 90-1.1(2) who is not a current or past Board member participates as a hearing officer, the Board may elect not to retain independent counsel for the hearing committee.

(a1) The Board may use an administrative law judge consistent with Article 3A of Chapter 150B of the General Statutes in lieu of a hearing committee so long as the Board has not solely alleged that the licensee failed to meet an applicable standard of care. Notwithstanding this subsection, the Board may use an administrative law judge consistent with Article 3A of Chapter 150B of the General Statutes if the licensee is a current or former Board member.

(b) Repealed by Session Laws 2019-191, s. 29, effective October 1, 2019.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. A quorum of the Board will issue a final decision. No member of the Board who served as a member of the hearing committee described in subsection (a) of this section may participate as a member of the quorum of the Board that issues a final agency decision.

(d) Hearing officers are entitled to receive per diem compensation and reimbursement for expenses as authorized by the Board. The per diem compensation shall not exceed the amount allowed by G.S. 90-13.3. (1953, c. 1248, s. 3; 2006-144, s. 5; 2007-346, s. 18; 2009-558, s. 3; 2019-191, s. 29.)

§ 90-14.6. Evidence admissible.

(a) Except as otherwise provided in proceedings held pursuant to this Article the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions. A complete record of such evidence shall be made, together with the other proceedings incident to the hearing.

(b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in proceedings held pursuant to this Article, the individual under investigation may call witnesses, including medical practitioners licensed in the United States with training and experience in the same field of practice as the individual under investigation and familiar with the standard of care among members of the same health care profession in North Carolina. Witnesses shall not be restricted to experts certified by the American Board of Medical Specialties. A Board member shall not testify as an expert witness.

(c) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, statements contained in medical or scientific literature shall be competent evidence in proceedings held pursuant to this Article. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c1) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court.

(d) When evidence is not reasonably available under the Rules of Civil Procedure and Rules of Evidence to show relevant facts, then the most reliable and substantial evidence available shall be admitted. At the discretion of the presiding officer of the hearing, the Board may receive witness testimony at a hearing by means of telephone or videoconferencing.

(e) Any final agency decision of the Board shall be based upon a preponderance of the evidence admitted in the hearing. (1953, c. 1248, s. 3; 2003-366, s. 5; 2007-346, s. 19; 2009-558, s. 4; 2019-191, s. 30.)

§ 90-14.7. Procedure where person fails to request or appear for hearing.

If a person who has requested a hearing does not appear, and no continuance has been granted, the Board or its trial examiner or committee may hear the evidence of such witnesses as may have appeared, and the Board may proceed to consider the matter and dispose of it on the basis of the evidence before it. For good cause, the Board may reopen any case for further hearing. (1953, c. 1248, s. 3.)

§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.

(a) A licensee against whom the Board imposes any public disciplinary sanction, as authorized under G.S. 90-14(a), may appeal such action.

(b) A licensee against whom any public disciplinary sanction is imposed by the Board may obtain a review of the decision of the Board in the superior court of the county

where the Board is located or the county in which the licensee resides, upon filing with the secretary of the Board a written notice of appeal within 30 days after the date of the service of the decision of the Board, stating all exceptions taken to the decision of the Board and indicating the court in which the appeal is to be heard. The court shall schedule and hear the case within six months of the filing of the appeal.

(c) Within 30 days after the receipt of a notice of appeal as herein provided, the Board shall prepare, certify and file with the clerk of the Superior Court in the county where the notice of appeal has been filed the record of the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of documents or other written evidence produced at the hearing, decision of the Board, and notice of appeal containing exceptions to the decision of the Board. (1953, c. 1248, s. 3; 1981, c. 573, s. 12; 2007-346, s. 20; 2009-558, s. 5; 2019-191, s. 31.)

§ 90-14.9. Appeal bond; stay of Board order.

(a) The person seeking the review shall file with the clerk of the reviewing court a copy of the notice of appeal and an appeal bond of two hundred dollars ($200.00) at the same time the notice of appeal is filed with the Board. Subject to subsection (b) of this section, at any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the Board decision pending the outcome of the review, which the court may grant or deny in its discretion.

(b) No stay shall be granted under this section unless the Board is given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision. (1953, c. 1248, s. 3; 1995, c. 405, s. 6.)

§ 90-14.10. Scope of review.

Upon the review of the Board's decision taking disciplinary action on a license, the case shall be heard by the judge without a jury, upon the record, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the Board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the accused physician have been prejudiced because the findings or decisions of the Board are in violation of substantive or procedural law, or are not supported by competent, material, and substantial evidence admissible under this Article, or are arbitrary or capricious. At any time after the notice of appeal has been filed, the court may remand the case to the Board for the hearing of any additional evidence which is material and is not cumulative and which could not reasonably have been presented at the hearing before the Board. (1953, c. 1248, s. 3; 2007-346, s. 21.)

§ 90-14.11. Appeal; appeal bond.

(a) Any party to the review proceeding, including the Board, may appeal from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the Board. Subject to subsection (b) of this section, the appealing party may apply to the superior court for a stay of that court's decision or a stay of the Board's decision, whichever shall be appropriate, pending the outcome of the appeal.

(b) No stay shall be granted unless all parties are given prior notice and an opportunity to be heard in response to the application for an order staying the operation of the Board decision. (1953, c. 1248, s. 3; 1989, c. 770, s. 75.1; 1995, c. 405, s. 7.)

§ 90-14.12. Injunctions.

The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business or in which the alleged acts occurred, or in the case of an action against a nonresident, in the district where the Board resides. (1953, c. 1248, s. 3; 1981, c. 573, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 100; 2001-27, s. 1.)

§ 90-14.13. Reports of disciplinary action by health care institutions; reports of professional liability insurance awards or settlements; immunity from liability.

(a) The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-56, and all other provider organizations that issue credentials to persons licensed under this Article shall, after consultation with the chief of staff of that institution, report to the Board the following actions involving a physician's privileges to practice in that institution within 30 days of the date that the action takes effect:

(1) A summary revocation, summary suspension, or summary limitation of privileges, regardless of whether the action has been finally determined.

(2) A revocation, suspension, or limitation of privileges that has been finally determined by the governing body of the institution.

(3) A resignation from practice or voluntary reduction of privileges while under investigation or threat of investigation.

(4) Any action reportable pursuant to Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, not otherwise reportable under subdivisions (1), (2), or (3) of this subsection.

(a1) A hospital is not required to report any of the following:

(1) The suspension or limitation of a licensee's privileges for failure to complete medical records in a timely manner.

(2) A resignation from practice due solely to the licensee's completion of a medical residency, internship, or fellowship.

The Board is authorized to adopt rules limiting the reporting requirements of subsection (a) of this section.

(a2) The Board shall report all violations of subsection (a) of this section known to it to the licensing agency for the institution involved. The licensing agency for the institution involved is authorized to order the payment of a civil penalty of two hundred fifty dollars ($250.00) for a first violation and five hundred dollars ($500.00) for each subsequent violation if the institution fails to report as required under subsection (a) of this section.

(b) Any licensee who does not possess professional liability insurance, or possess professional liability insurance from entities not owned and operated within this State, shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

(c) The chief administrative officer of each insurance company providing professional liability insurance for persons licensed under this Article, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund or other fund operated or administered by a hospital authority, group, or provider shall report to the Board within 30 days any of the following:

(1) Any award of damages or settlement of any claim or lawsuit affecting or involving a licensee that it insures.

(2) Any cancellation or nonrenewal of its professional liability coverage of a licensee, if the cancellation or nonrenewal was for cause.

(3) A malpractice payment that is reportable pursuant to Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, not otherwise reportable under subdivision (1) or (2) of this subsection.

For the purposes of this subsection, a "claim" means an oral or written request for compensation made by a patient or a patient's representative, or an offer of compensation to a patient or a patient's representative, based on a belief that the patient was injured due to care affecting or involving a licensee. The Board shall determine whether the patient's care affected or involved a licensee under this Article.

(d) The Board shall report all violations of this section to the Commissioner of Insurance. The Commissioner of Insurance is authorized to order the payment of a civil penalty of two hundred fifty dollars ($250.00) for a first violation and five hundred dollars ($500.00) for each subsequent violation against an insurer for failure to report as required under this section.

(e) The Board may request details about any action covered by this section, and the licensees or officers shall promptly furnish the requested information. The reports required by this section are privileged, not open to the public, confidential and are not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or its employees or agents involved in application for license or discipline, except as provided in G.S. 90-16. Any officer making a report required by this section, providing additional information required by the Board, or testifying in any proceeding as a result of the report or required information shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false. (1981, c. 573, s. 14; 1987, c. 859, s. 11; 1995, c. 405, s. 8; 1997-481, s. 2; 1997-519, s. 3.14; 2006-144, s. 6; 2016-117, s. 2(*l*); 2019-191, s. 32.)

§ 90-15: Recodified as G.S. 90-13.1, by Session Laws 2007-346, s. 7, effective October 1, 2007.

§ 90-15.1: Recodified as G.S. 90-13.2, by Session Laws 2007-346, s. 7, effective October 1, 2007.

§ 90-16. Self-reporting requirements; confidentiality of Board investigative information; cooperation with law enforcement; patient protection; Board to keep public records.

(a) The North Carolina Medical Board shall keep a regular record of its proceedings with the names of the members of the Board present and other information as to its actions. The North Carolina Medical Board shall publish the names of those licensed within 30 days after granting the license.

(b) The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence.

(c) All records, papers, investigative files, investigative reports, other investigative information and other documents containing information in the possession of or received or gathered by the Board, or its members or employees or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a licensing, complaint, assessment, potential impairment matter, disciplinary matter, or report of professional liability insurance awards or settlements pursuant to G.S. 90-14.13, shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board, its employees or consultants involved in the application for license, impairment assessment, or discipline of a license holder, except as provided in subsection (e1) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician or other person performing an expert review for the Board and transcripts of any deposition taken by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(d) Repealed by Session Laws 2016-117, s. 2(o), effective October 1, 2016.

(e) Information furnished to a licensee or applicant, or counsel for a licensee or applicant, under G.S. 90-14.2(c) shall be subject to discovery or subpoena between and among the parties in a civil case in which the licensee is a party.

(e1) When the Board receives a complaint regarding the care of a patient, the Board shall provide the licensee with a copy of the complaint as soon as practical and inform the complainant of the disposition of the Board's inquiry into the complaint and the Board's basis for that disposition. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care. Any information furnished to the patient or complainant pursuant to this subsection shall be inadmissible in evidence in any civil proceeding. However, information, documents, or

records otherwise available are not immune from discovery or use in a civil action merely because they were included in the Board's review or were the subject of information furnished to the patient or complainant pursuant to this subsection.

(f) Any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

(g) In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician.

(h) If investigative information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency, the North Carolina Department of Justice, the United States Department of Justice, the United States Attorney, or the district attorney of the district in which the offense was committed.

(i) The Board shall cooperate with and assist a law enforcement agency, the North Carolina Department of Justice, the United States Department of Justice, the United States Attorney, or the district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the agency or attorney as required by this subsection. Information disclosed by the Board to an investigative agency or attorney pursuant to this subsection or subsection (h) of this section remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation or prosecution.

(j) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

(1) Any felony arrest or indictment.
(2) Any arrest for driving while impaired or driving under the influence.
(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(k) The Board, its members and staff, may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about the issuance, denial, annulment, suspension, or revocation of a license, or the voluntary surrender of a license by a licensee of the Board, including the reasons for the action, or an investigative report made by the Board. The Board shall notify the licensee within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee

requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information so transmitted. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities. (1858-9, c. 258, s. 12; Code, s. 3129; Rev., s. 4500; C.S., s. 6620; 1921, c. 47, s. 6; 1977, c. 838, s. 5; 1993 (Reg. Sess., 1994), c. 570, s. 6; 1995, c. 94, s. 17; 1997-481, s. 4; 2006-144, s. 7; 2007-346, s. 22; 2009-363, s. 4; 2009-558, s. 6; 2016-117, s. 2(o); 2019-191, s. 33.)

§ 90-17. Repealed by Session Laws 1967, c. 691, s. 59.

§ 90-18. Practicing without license; penalties.

(a) No person shall perform any act constituting the practice of medicine or surgery, as defined in this Article, or any of the branches thereof, unless the person shall have been first licensed and registered so to do in the manner provided in this Article. Any person who practices medicine or surgery without being duly licensed and registered, as provided in this Article, shall not be allowed to maintain any action to collect any fee for such services. Any person so practicing without being duly licensed and registered in this State shall be guilty of a Class 1 misdemeanor. Any person so practicing without being duly licensed and registered in this State and who is falsely representing himself or herself in a manner as being licensed or registered under this Article or any Article of this Chapter shall be guilty of a Class I felony. Any person so practicing without being duly licensed and registered in this State and who is an out-of-state practitioner shall be guilty of a Class I felony. Any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion as required by this Article or any person who is licensed, registered, and practicing under any other Article of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) Repealed by Session Laws 2007-346, s. 23, effective October 1, 2007.

(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

(1) The administration of domestic or family remedies.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug

dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific.

(4) The practice of medicine and surgery by any surgeon or physician of the United States Army, Navy, or Public Health Service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of podiatric medicine and surgery by any legally licensed podiatric physician when engaged in the practice of podiatry as defined in Article 12A of this Chapter.

(9) Repealed by Session Laws 2019-191, s. 34, effective October 1, 2019.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon who comes into this State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(11a) The practice of medicine or surgery by any physician who comes into this State to practice medicine or surgery so long as:

a. The physician or surgeon has an oral or written agreement with a sports team to provide general or emergency medical care to the team members, coaching staff, or families traveling with the team for a specific sporting event taking place in this State; and

b. The physician or surgeon does not provide care or consultation to any person residing in this State other than an individual described in sub-subdivision a. of this subdivision.

The exemption shall remain in force while the physician or surgeon is traveling with the team. The exemption shall not exceed 10 days per individual sporting event. However, the executive director of the Board may grant a physician or surgeon additional time for exemption of up to 20 additional days per individual sporting event.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" is a specialty branch of the practice of medicine in which illness or disease is diagnosed or treated using various techniques or modalities, including radiant energy or ionizing radiation, and ultrasound and magnetic resonance. The education and training for the practice of radiology includes extensive study in the physics of radiant energy and medical imaging, radiation

protection, and the application of ionizing radiation in the diagnosis and treatment of disease.

(13) The performance of any medical acts, tasks, and functions by a licensed physician assistant at the direction or under the supervision of a physician in accordance with rules adopted by the Board. This subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks, and functions that are otherwise permitted by law or established by custom. The Board shall authorize physician assistants licensed in this State or another state to perform specific medical acts, tasks, and functions during a disaster.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter.

(17) The use of an automated external defibrillator as provided in G.S. 90-21.15.

(18) The practice of medicine by any nonregistered physician residing in another state or foreign country who is contacted by one of the physician's regular patients for treatment by use of any method of communication while the physician's patient is temporarily in this State.

(19) The practice of medicine or surgery by any physician who comes into this State to practice medicine or surgery at a camp that specializes in providing therapeutic recreation for individuals with chronic illnesses, as long as all the following conditions are satisfied:

a. The physician provides documentation to the medical director of the camp that the physician is licensed and in good standing to practice medicine in another state.

b. The physician provides services only at the camp or in connection with camp events or camp activities that occur off the grounds of the camp.

c. The physician receives no compensation for the services.

d. The physician provides those services within this State for no more than 30 days per calendar year.

e. The camp has a medical director who holds an unrestricted license to practice medicine and surgery issued under this Article.

(20) The provision of anesthesia services by a licensed anesthesiologist assistant under the supervision of an anesthesiologist licensed under Article 1 of this Chapter in accordance with rules adopted by the Board. (1858-9, c. 258, s. 2; Code, s. 3122; 1885, c. 117, s. 2; c. 261; 1889, c. 181, ss. 1, 2; Rev., ss. 3645, 4502; C.S., s. 6622; 1921, c. 47, s. 7; Ex. Sess. 1921, c. 44, s. 8; 1941, c. 163; 1967, c. 263, s. 1; 1969, c. 612, s. 5; c. 929, s. 3; 1971, c. 817, s. 1; c. 1150, s. 6; 1973, c. 92, s. 1; 1983, c. 897, s. 2; 1993, c. 303, s. 2; c. 539, s. 615; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 94, ss. 18, 19; 1997-511, s. 4; 1997-514, s. 1; 1999-290, s. 2; 2000-113, s. 2; 2001-27,

s. 2; 2003-109, s. 1; 2005-415, s. 2; 2007-146, s. 3; 2007-346, s. 23; 2011-183, s. 127(b); 2011-194, s. 1; 2019-191, s. 34.)

§ 90-18.1. Limitations on physician assistants.

(a) Any person who is licensed under the provisions of G.S. 90-9.3 to perform medical acts, tasks, and functions as a physician assistant may use the title "physician assistant" or "PA." Any other person who uses the title in any form or holds out to be a physician assistant or to be so licensed, shall be deemed to be in violation of this Article.

(b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and safety.

(2) The physician assistant holds a current license issued by the Board.

(3) Repealed by Session Laws 2019-191, s. 35, effective October 1, 2019.

(4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(5) A physician assistant shall personally consult with the supervising physician prior to prescribing a targeted controlled substance as defined in Article 5 of this Chapter when all of the following conditions apply:

a. The patient is being treated by a facility that primarily engages in the treatment of pain by prescribing narcotic medications or advertises in any medium for any type of pain management services.

b. The therapeutic use of the targeted controlled substance will or is expected to exceed a period of 30 days.

When a targeted controlled substance prescribed in accordance with this subdivision is continuously prescribed to the same patient, the physician assistant shall consult with the supervising physician at least once every 90 days to verify that the prescription remains medically appropriate for the patient.

(c) Physician assistants are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed pharmacist.

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(3) The physician assistant holds a current license issued by the Board.

(d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes, and other health facilities under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to order medications, tests, and treatments with such limitations as the Board may determine to be in the best interest of patient health and safety.

(2) The physician assistant holds a current license issued by the Board.

(3) The supervising physician has provided to the physician assistant written instructions about ordering medications, tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test, or treatment is ordered.

(4) The hospital or other health facility has adopted a written policy about ordering medications, tests, and treatments, including procedures for verification of the physician assistants' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a physician assistant or order given by a physician assistant for medications, tests, or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and the supervising physician shall be responsible for authorizing the prescription or order.

(e1) Any medical certification completed by a physician assistant for a death certificate shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant, and the supervising physician shall be responsible for authorizing the completion of the medical certification.

(f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, tests, or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician.

(g) Any person who is licensed under G.S. 90-9.3 to perform medical acts, tasks, and functions as a physician assistant shall comply with each of the following:

(1) Maintain a current and active license to practice in this State.

(2) Maintain an active registration with the Board.

(3) Have a current Intent to Practice form filed with the Board.

(h) A physician assistant serving active duty in the Armed Forces of the United States is exempt from the requirements of subdivision (g)(3) of this section.

(i) A physician assistant's license shall become inactive any time the holder fails to comply with the requirements of subsection (g) of this section. A physician assistant with an inactive license shall not practice medical acts, tasks, or functions. The Board shall retain jurisdiction over the holder of the inactive license. (1975, c. 627; 1977, c. 904, s. 1; 1977, 2nd Sess., c. 1194, s. 1; 1995, c. 94, s. 20; 1997-511, s. 5; 2007-346, ss. 24, 25; 2011-183, s. 56; 2011-197, s. 1; 2017-74, s. 4; 2019-191, s. 35.)

§ 90-18.2. Limitations on nurse practitioners.

(a) Any nurse approved under the provisions of G.S. 90-18(c)(14) to perform medical acts, tasks or functions may use the title "nurse practitioner." Any other person who uses the title in any form or holds out to be a nurse practitioner or to be so approved, shall be deemed to be in violation of this Article.

(b) Nurse practitioners are authorized to write prescriptions for drugs under all of the following conditions:

(1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of

individual nurse practitioners to write prescriptions with such limitations as the boards may determine to be in the best interest of patient health and safety.

(2) The nurse practitioner has current approval from the boards.

(3) Repealed by Session Laws 2019-191, s. 36, effective October 1, 2019.

(4) The supervising physician has provided to the nurse practitioner written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(5) A nurse practitioner shall personally consult with the supervising physician prior to prescribing a targeted controlled substance as defined in Article 5 of this Chapter when all of the following conditions apply:

a. The patient is being treated by a facility that primarily engages in the treatment of pain by prescribing narcotic medications or advertises in any medium for any type of pain management services.

b. The therapeutic use of the targeted controlled substance will or is expected to exceed a period of 30 days.

When a targeted controlled substance prescribed in accordance with this subdivision is continuously prescribed to the same patient, the nurse practitioner shall consult with the supervising physician at least once every 90 days to verify that the prescription remains medically appropriate for the patient.

(c) Nurse practitioners are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed pharmacist; and

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(d) Nurse practitioners are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes and other health facilities under all of the following conditions:

(1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to order medications, tests and treatments with such limitations as the boards may determine to be in the best interest of patient health and safety.

(2) The nurse practitioner has current approval from the boards.

(3) The supervising physician has provided to the nurse practitioner written instructions about ordering medications, tests and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test or treatment is ordered.

(4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests and treatments, including procedures for verification of the nurse practitioners' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a nurse practitioner or order given by a nurse practitioner for medications, tests or treatments shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner and such supervising physician shall be responsible for authorizing such prescription or order.

(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification.

(f) Any registered nurse or licensed practical nurse who receives an order from a nurse practitioner for medications, tests or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician. (1977, 2nd Sess., c. 1194, s. 2; 1995, c. 94, s. 21; 2011-197, s. 2; 2017-74, s. 5; 2019-191, s. 36.)

§ 90-18.2A. Physician assistants receiving, prescribing, or dispensing prescription drugs without charge or fee.

The North Carolina Medical Board shall have sole jurisdiction to regulate and license physician assistants receiving, prescribing, or dispensing prescription drugs under the supervision of a licensed physician without charge or fee to the patient. The provisions of G.S. 90-18.1(c)(1), (c)(2), and G.S. 90-85.21(b), shall not apply to the receiving, prescribing, or dispensing of prescription drugs without charge or fee to the patient. (2004-124, s. 10.2E(a).)

§ 90-18.3. Medical or physical examination by nurse practitioners and physician assistants.

(a) Whenever a statute or State agency rule requires that a medical or physical examination shall be conducted by a physician, the examination may be conducted and the form signed by a nurse practitioner or a physician assistant, and a physician need not be present. Nothing in this section shall otherwise change the scope of practice of a nurse practitioner or a physician assistant, as defined by G.S. 90-18.1 and G.S. 90-18.2, respectively.

(b) This section shall not apply to physical examinations conducted pursuant to G.S. 1A-1, Rule 35; G.S. 15B-12; G.S. 90-14 unless those statutes or rules are amended to make the provisions of this section applicable. (1999-226, s. 1; 2004-124, s. 18.2(f); 2019-191, s. 37.)

§ 90-18.4. Limitations on clinical pharmacist practitioners.

(a) Any pharmacist who is approved under the provisions of G.S. 90-18(c)(3a) to perform medical acts, tasks, and functions may use the title "clinical pharmacist practitioner". Any other person who uses the title in any form or holds himself or herself out to be a clinical pharmacist practitioner or to be so licensed shall be deemed to be in violation of this Article.

(b) Clinical pharmacist practitioners are authorized to implement predetermined drug therapy, which includes diagnosis and product selection by the patient's physician, modify prescribed drug dosages, dosage forms, and dosage schedules, and to order laboratory tests pursuant to a drug therapy management agreement that is physician, pharmacist, patient, and disease specific under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules developed by a joint subcommittee governing the approval of individual clinical pharmacist practitioners to practice drug therapy management with such limitations that the Boards determine to be in the best interest of patient health and safety.
(2) The clinical pharmacist practitioner has current approval from both Boards.
(3) The North Carolina Medical Board has assigned an identification number to the clinical pharmacist practitioner which is shown on written prescriptions written by the clinical pharmacist practitioner.
(4) The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist for the product prescribed by the physician without the explicit consent of the physician and includes a policy for periodic review by the physician of the drugs modified pursuant to the agreement or changed with the consent of the physician.

(c) Clinical pharmacist practitioners in hospitals and other health facilities that have an established pharmacy and therapeutics committee or similar group that determines the prescription drug formulary or other list of drugs to be utilized in the facility and determines procedures to be followed when considering a drug for inclusion on the formulary and procedures to acquire a nonformulary drug for a patient may order medications and tests under the following conditions:
(1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and tests with such limitations as the Boards determine to be in the best interest of patient health and safety.
(2) The clinical pharmacist practitioner has current approval from both Boards.
(3) The supervising physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing, or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.
(4) The hospital or health facility has adopted a written policy, approved by the medical staff after consultation with nursing administrators, concerning the ordering of medications and tests, including procedures for verification of the clinical pharmacist practitioner's orders by nurses and other facility employees and such other procedures that are in the best interest of patient health and safety.
(5) Any drug therapy order written by a clinical pharmacist practitioner or order for medications or tests shall be deemed to have been authorized by the physician approved by the Boards as the supervisor of the clinical pharmacist practitioner and the supervising physician shall be responsible for authorizing the prescription order.

(d) Any registered nurse or licensed practical nurse who receives a drug therapy order from a clinical pharmacist practitioner for medications or tests is authorized to perform that order in the same manner as if the order was received from a licensed physician. (1999-290, s. 3.)

§ 90-18.5. Limitations on anesthesiologist assistants.

(a) Any person who is licensed to provide anesthesia services as an assistant to an anesthesiologist licensed under Article 1 of this Chapter may use the title "anesthesiologist

assistant." Any other person who uses the title in any form or holds himself or herself out to be an anesthesiologist assistant or to be so licensed without first obtaining a license shall be deemed in violation of this Article. A student in any anesthesiologist assistant training program shall be identified as a "student anesthesiologist assistant" or an "anesthesiologist assistant student," but under no circumstances shall the student use or permit to be used on the student's behalf the terms "intern," "resident," or "fellow."

(b) Anesthesiologist assistants are authorized to provide anesthesia services under the supervision of an anesthesiologist licensed under Article 1 of this Chapter under the following conditions:

(1) The North Carolina Medical Board has adopted rules governing the provision of anesthesia services by an anesthesiologist assistant consistent with the requirements of subsection (c) of this section.

(2) The anesthesiologist assistant holds a current license issued by the Board or is a student anesthesiologist assistant participating in a training program leading to certification by the National Commission for Certification of Anesthesiologist Assistants and licensure as an anesthesiologist assistant under G.S. 90-9.4.

(c) The North Carolina Medical Board shall adopt rules to implement this section that include requirements and limitations on the provision of anesthesia services by an anesthesiologist assistant as determined by the Board to be in the best interests of patient health and safety. Rules adopted by the Board pursuant to this section shall include the following requirements:

(1) That an anesthesiologist assistant be supervised by an anesthesiologist licensed under this Article who is actively engaged in clinical practice and immediately available on-site to provide assistance to the anesthesiologist assistant.

(2) That an anesthesiologist may supervise no more than two anesthesiologist assistants or student anesthesiologist assistants at one time. The limitation on the number of anesthesiologist assistants and student anesthesiologist assistants that an anesthesiologist may supervise in no way restricts the number of other qualified anesthesia providers an anesthesiologist may concurrently supervise. After January 1, 2010, the Board may allow an anesthesiologist to supervise up to four licensed anesthesiologist assistants concurrently and may revise the supervision limitations of student anesthesiologist assistants such that the supervision requirements for student anesthesiologist assistants are similar to the supervision requirements for student nurse anesthetists.

(3) That anesthesiologist assistants comply with all continuing education requirements and recertification requirements of the National Commission for Certification of Anesthesiologist Assistants or its successor organization.

(d) Nothing in this section shall limit or expand the scope of practice of physician assistants under existing law. (2007-146, s. 4; 2008-187, s. 14.)

§ 90-18.6. Requirements for certain nicotine replacement therapy programs.

The Health and Wellness Trust Fund ("Trust Fund") or the Department of Health and Human Services ("Department") may contract for the operation of a tobacco-use cessation program through which the Trust Fund or the Department, as applicable, may engage agents or contractors for the purpose of (i) recommending to individuals over-the-counter nicotine replacement therapy products and supplying the products free of charge to the individual and (ii) discussing with the

individual contraindications and all other aspects of over-the-counter nicotine replacement therapy. All medical aspects of the nicotine replacement therapy programs shall be supervised by a physician who is licensed under this Article to practice medicine and who is under contract to or employed by the Trust Fund or the Department, as applicable, for the purpose of supervising nicotine replacement therapy programs. The physician under contract with or employed by the Trust Fund or the Department, as applicable, shall be responsible for supervision of all agents or contractors of nicotine replacement therapy programs that provide nicotine replacement therapy services to members of the public. The Trust Fund or the Department, as contracting entity, shall report the name of the supervising physician to the North Carolina Medical Board. (2008-107, s. 10.4B.)

§ 90-18.7: Repealed by Session Laws 2019-191, s. 38, effective October 1, 2019.

§§ 90-19 through 90-20. Repealed by Session Laws 1967, c. 691, s. 59.

§ 90-21: Repealed by Session Laws 2007-346, s. 26, effective October 1, 2007.

Article 1A.

Treatment of Minors.

Part 1. General Provisions.

§ 90-21.1. When physician may treat minor without consent of parent, guardian or person in loco parentis.

It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in loco parentis to said child where:

(1) The parent or parents, the guardian, or a person standing in loco parentis to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized, or

(2) Where the identity of the child is unknown, or where the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor, or

(3) Where an effort to contact a parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen the physical condition of said minor, or

(4) Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. No treatment shall be administered to a child over the parent's objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that such procedure is necessary to prevent immediate harm to the child.

Provided, however, that the refusal of a physician to use, perform or render treatment to a minor without the consent of the minor's parent, guardian, or person standing in the position of

loco parentis, in accordance with this Article, shall not constitute grounds for a civil action or criminal proceedings against such physician. (1965, c. 810, s. 1; 1977, c. 625, s. 1.)

§ 90-21.2. "Treatment" defined.

The word "treatment" as used in G.S. 90-21.1 is hereby defined to mean any medical procedure or treatment, including X rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a physician licensed to practice medicine in the State of North Carolina that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where said physician administers treatment to said minor. (1965, c. 810, s. 2.)

§ 90-21.3. Performance of surgery on minor; obtaining second opinion as to necessity.

The word "treatment" as defined in G.S. 90-21.2 shall also include any surgical procedure which in the opinion of the attending physician is necessary under the terms and conditions set out in G.S. 90-21.1; provided, however, no surgery shall be conducted upon a minor as herein authorized unless the surgeon shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that said surgery is necessary under the conditions set forth in G.S. 90-21.1; provided further, that in any emergency situation that shall arise in a rural community, or in a community where it is impossible for the surgeon to contact any other physician for the purpose of obtaining his opinion as to the necessity for immediate surgery, it shall not be necessary for the surgeon to obtain approval from another physician before performing such surgery as is necessary under the terms and conditions set forth in G.S. 90-21.1. (1965, c. 810, s. 3.)

§ 90-21.4. Responsibility, liability and immunity of physicians.

(a) Any physician licensed to practice medicine in North Carolina providing health services to a minor under the terms, conditions and circumstances of this Article shall not be held liable in any civil or criminal action for providing such services without having obtained permission from the minor's parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment. The physician shall not be relieved on the basis of this Article from liability for negligence in the diagnosis and treatment of a minor.

(b) The physician shall not notify a parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment, without the permission of the minor, concerning the medical health services set out in G.S. 90-21.5(a), unless the situation in the opinion of the attending physician indicates that notification is essential to the life or health of the minor. If a parent, legal guardian[,] person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information. (1965, c. 810, s. 4; 1977, c. 582, s. 1; 1985, c. 589, s. 30.)

§ 90-21.5. Minor's consent sufficient for certain medical health services.

(a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i)

venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-223.

(b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child. (1971, c. 35; 1977, c. 582, s. 2; 1983, c. 302, s. 2; 1985, c. 589, s. 31; 1985 (Reg. Sess., 1986), c. 863, s. 4; 2009-570, s. 10.)

Part 2. Parental or Judicial Consent for Abortion.

§ 90-21.6. Definitions.

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

(1) "Unemancipated minor" or "minor" means any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.

(2) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child. (1995, c. 462, s. 1; 1998-202, s. 13(t).)

§ 90-21.7. Parental consent required.

(a) No physician licensed to practice medicine in North Carolina shall perform an abortion upon an unemancipated minor unless the physician or agent thereof or another physician or agent thereof first obtains the written consent of the minor and of:

(1) A parent with custody of the minor; or

(2) The legal guardian or legal custodian of the minor; or

(3) A parent with whom the minor is living; or

(4) A grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent.

(b) The pregnant minor may petition, on her own behalf or by guardian ad litem, the district court judge assigned to the juvenile proceedings in the district court where the minor resides or where she is physically present for a waiver of the parental consent requirement if:

(1) None of the persons from whom consent must be obtained pursuant to this section is available to the physician performing the abortion or the physician's agent or the referring physician or the agent thereof within a reasonable time or manner; or

(2) All of the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion; or

(3) The minor elects not to seek consent of the person from whom consent is required. (1995, c. 462, s. 1.)

§ 90-21.8. Procedure for waiver of parental consent.

(a) The requirements and procedures under Part 2 of this Article are available and apply to unemancipated minors seeking treatment in this State.

(b) The court shall ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept confidential.

(c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to appointed counsel, and counsel shall be provided upon her request in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Court proceedings under this section shall be confidential and shall be given precedence over other pending matters necessary to ensure that the court may reach a decision promptly. In no case shall the court fail to rule within seven days of the time of filing the application. This time limitation may be extended at the request of the minor. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the parental consent requirement shall be waived.

(e) The parental consent requirement shall be waived if the court finds:

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That it would be in the minor's best interests that parental consent not be required; or

(3) That the minor is a victim of rape or of felonious incest under G.S. 14-178.

(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 3 of Chapter 7B of the General Statutes.

(g) If the female petitioner so requests in her petition, no summons or other notice may be served upon the parents, guardian, or custodian of the minor female.

(h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection.

(i) No court costs shall be required of any minor who avails herself of the procedures provided by this section. (1995, c. 462, s. 1; 1998-202, s. 13(u); 2000-144, s. 35.)

§ 90-21.9. Medical emergency exception.

The requirements of parental consent prescribed by G.S. 90-21.7(a) shall not apply when, in the best medical judgment of the physician based on the facts of the case before the physician, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion, or when the conditions prescribed by G.S. 90-21.1(4) are met. (1995, c. 462, s. 1.)

§ 90-21.10. Penalty.

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of Part 2 of this Article shall be guilty of a Class 1 misdemeanor. (1995, c. 462, s. 1.)

Article 1B.

Medical Malpractice Actions.

§ 90-21.11. Definitions.

The following definitions apply in this Article:

(1) Health care provider. – Without limitation, any of the following:

a. A person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, or psychology.

b. A hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.

c. Any other person who is legally responsible for the negligence of a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.

d. Any other person acting at the direction or under the supervision of a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.

e. Any paramedic, as defined in G.S. 131E-155(15a).

(2) Medical malpractice action. – Either of the following:

a. A civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

b. A civil action against a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes for damages for personal injury or death, when the civil action (i) alleges a breach of administrative or corporate duties to the patient, including, but not limited to, allegations of negligent credentialing or negligent monitoring and supervision and (ii) arises from the same facts or circumstances as a claim under sub-subdivision a. of this subdivision. (1975, 2nd Sess., c. 977, s. 4; 1987, c. 859, s. 1; 1995, c. 509, s. 135.2(o); 2011-400, s. 5; 2017-131, s. 1.)

§ 90-21.12. Standard of health care.

(a) Except as provided in subsection (b) of this section, in any medical malpractice action as defined in G.S. 90-21.11(2)(a), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act giving rise to the cause of action; or in the case of a medical malpractice action as defined in G.S. 90-21.11(2)(b), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the action or inaction of such health care provider was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to furnish professional services in the treatment of an emergency medical condition, as the term "emergency medical condition" is defined in 42 U.S.C. § 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in subsection (a) of this section by clear and convincing evidence. (1975, 2nd Sess., c. 977, s. 4; 2011-283, s. 4.1(a); 2011-400, s. 6.)

§ 90-21.12A. Nonresident physicians.

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other media in this State. (1997-514, s. 2.)

§ 90-21.13. Informed consent to health care treatment or procedure.

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care

provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact. A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a).

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted.

(3) An agent, with powers to make health care decisions for the patient, appointed by the patient, to the extent of the authority granted.

(4) The patient's spouse.

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age.

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

(c1) If none of the persons listed under subsection (c) of this section is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is confirmation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of G.S. 35A-1245, 90-21.17, and 90-322, Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C of the General Statutes, the provisions of those sections and Articles shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4; 2003-13, s. 5; 2007-502, s. 13; 2008-187, s. 37(b); 2017-153, s. 2.5; 2018-142, s. 35(a).)

§ 90-21.14. First aid or emergency treatment; liability limitation.

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who voluntarily and without expectation of compensation renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.

(a1) Recodified as G.S. 90-21.16 by Session Laws 2001-230, s. 1(a), effective October 1, 2001.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4; 1985, c. 611, s. 2; 1989, cc. 498, 655; 1991, c. 655, s. 1; 1993, c. 439, s. 1; 1995, c. 85, s. 1; 2000-5, s. 4; 2001-230, ss. 1(a), 2; 2009-424, s. 1; 2014-120, s. 18.)

§ 90-21.15. Emergency treatment using automated external defibrillator; immunity.

(a) It is the intent of the General Assembly that, when used in accordance with this section, an automated external defibrillator may be used during an emergency for the purpose of attempting to save the life of another person who is in or who appears to be in cardiac arrest.

(b) For purposes of this section:

(1) "Automated external defibrillator" means a device, heart monitor, and defibrillator that meets all of the following requirements:
   a. The device has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to 21 U.S.C. § 360(k), as amended.
   b. The device is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention by an operator, whether defibrillation should be performed.
   c. Upon determining that defibrillation should be performed, the device automatically charges and requests delivery of, or delivers, an electrical impulse to an individual's heart.
(2) "Person" means an individual, corporation, limited liability company, partnership, association, unit of government, or other legal entity.
(3) "Training" means a nationally recognized course or training program in cardiopulmonary resuscitation (CPR) and automated external defibrillator use including the programs approved and provided by the:
   a. American Heart Association.
   b. American Red Cross.

(c) The use of an automated external defibrillator when used to attempt to save or to save a life shall constitute "first-aid or emergency health care treatment" under G.S. 90-21.14(a).

(d) The person who provides the cardiopulmonary resuscitation and automated external defibrillator training to a person using an automated external defibrillator, the person responsible for the site where the automated external defibrillator is located when the person has provided for a program of training, and a North Carolina licensed physician writing a prescription without compensation for an automated external defibrillator whether or not required by any federal or state law, shall be immune from civil liability arising from the use of an automated external defibrillator used in accordance with subsection (c) of this section.

(e) The immunity from civil liability otherwise existing under law shall not be diminished by the provisions of this section.

(f) Nothing in this section requires the purchase, placement, or use of automated external defibrillators by any person, entity, or agency of State, county, or local government. Nothing in this section applies to a product's liability claim against a manufacturer or seller as defined in G.S. 99B-1.

(g) In order to enhance public health and safety, a seller of an automated external defibrillator shall notify the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Office of Emergency Medical Services of the existence, location, and type of automated external defibrillator. (2000-113, s. 1; 2007-182, s. 1.1.)

§ 90-21.15A. Emergency treatment using epinephrine auto-injector; immunity.

(a) Definitions. – The following definitions apply in this section:

(1) Administer. – The direct application of an epinephrine auto-injector to the body of an individual.

(2) Authorized entity. – Any entity or organization, other than a school described in G.S. 115C-375.2A, at which allergens capable of causing anaphylaxis may be present, including, but not limited to, recreation camps, colleges, universities, day care facilities, youth sports leagues, amusement parks, restaurants, places of employment, and sports arenas. An authorized entity shall also include any person, corporation, or other entity that owns or operates any entity or organization listed.

(3) Epinephrine auto-injector. – A single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(4) Health care provider. – A health care provider licensed to prescribe drugs under the laws of this State.

(5) Provide. – To supply one or more epinephrine auto-injectors to an individual.

(b) Prescribing to Authorized Entities Permitted. – A health care provider may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists and health care providers may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity. A prescription issued pursuant to this section shall be valid for no more than two years.

(c) Authorized Entities Permitted to Maintain Supply. – An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. An authorized entity that acquires and stocks epinephrine auto-injectors shall make a good-faith effort to store the supply of epinephrine auto-injectors in accordance with the epinephrine auto-injector manufacturer's instructions for use and any additional requirements that may be established by the Department of Health and Human Services. An authorized entity that acquires and stocks a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section shall designate employees or agents to be responsible for the storage, maintenance, control, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(d) Use of Epinephrine Auto-Injectors by Authorized Entities. – An employee or agent of an authorized entity or other individual who has completed the training required by subsection (e) of this section may use epinephrine auto-injectors prescribed pursuant to G.S. 90-726.1 to do any of the following:

(1) Provide an epinephrine auto-injector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, or a person believed in good faith to be the parent, guardian, or caregiver of such individual, for immediate administration, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(2) Administer an epinephrine auto-injector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(e) Mandatory Training Program. – An authorized entity that elects to acquire and stock a supply of epinephrine auto-injectors as described in subsection (c) of this section shall designate employees or agents to complete an anaphylaxis training program. The training may be conducted online or in person and shall, at a minimum, include all of the following components:

(1) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis.
(2) Standards and procedures for the storage and administration of an epinephrine auto-injector.
(3) Emergency follow-up procedures.

In-person training shall cover the three components listed in this subsection and be conducted by (i) a physician, physician assistant, or registered nurse licensed to practice in this State; (ii) a nationally recognized organization experienced in training laypersons in emergency health treatment; or (iii) an entity or individual approved by the Department of Health and Human Services.

Online training shall cover the three components listed in this subsection and be offered (i) by a nationally recognized organization experienced in training laypersons in emergency health treatment; (ii) by an entity or individual approved by the Department of Health and Human Services; or (iii) by means of an online training course that has been approved by another state.

(f) Immunity. –

(1) The following persons are immune from criminal liability and from suit in any civil action brought by any person for injuries or related damages that result from any act or omission taken pursuant to this section:
    a. Any authorized entity that voluntarily and without expectation of payment possesses and makes available epinephrine auto-injectors.
    b. Any employee or agent of an authorized entity, or any other individual, who provides or administers an epinephrine auto-injector to an individual whom the employee, agent, or other individual believes in good faith is experiencing symptoms of anaphylaxis and has completed the required training set forth in subsection (e) of this section.
    c. A health care provider that prescribes epinephrine auto-injectors to an authorized entity.
    d. A pharmacist or health care provider that dispenses epinephrine auto-injectors to an authorized entity.
    e. Any individual or entity that conducts the training mandated by subsection (e) of this section.
(2) The immunity conferred by this section does not apply to acts or omissions constituting willful or wanton conduct as defined in G.S. 1D-5(7) or intentional wrongdoing.
(3) Nothing in this section creates or imposes any duty, obligation, or basis for liability on any authorized entity, any employee or agent of an authorized entity, or any other individual to acquire, possess, store, make available, or administer an epinephrine auto-injector.

(4) This section does not eliminate, limit, or reduce any other immunity or defense that may be available under State law, including the protections set forth in G.S. 90-21.14.

(g) Liability for Acts Outside of This State. – An authorized entity located in this State shall not be liable under the laws of this State for any injuries or related damages resulting from the provision or administration of an epinephrine auto-injector outside of this State under either of the following circumstances:

(1) If the authorized entity would not have been liable for such injuries or related damages if the epinephrine auto-injector had been provided or administered within this State.

(2) If the authorized entity is not liable for such injuries or related damages under the laws of the state in which the epinephrine auto-injector was provided or administered.

(h) Does Not Constitute Practice of Medicine. – The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine or any other profession that otherwise requires licensure. (2015-274, s. 1.)

§ 90-21.16. Volunteer health care professionals; liability limitation.

(a) This section applies as follows:

(1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,

(2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5), nonprofit community health center, or nonprofit community health referral service at the provider's place of employment,

(3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency, or

(4) Repealed by Session Laws 2011-355, s. 7, effective June 27, 2011.

(5) Any volunteer medical or health care provider licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility, who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department, nonprofit community health center, or nonprofit community health referral service at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The free clinic, local health department facility, nonprofit community health center, nonprofit community health referral service, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the free clinic, health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his or her business or profession. Services provided by a medical or health care provider who receives no compensation for his or her services and who voluntarily renders such services at the provider's place of employment, facilities of free clinics, local health departments as defined in G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs.

(c1) For a volunteer medical or health care provider who provides services at a free clinic to receive the protection from liability provided in this section, the free clinic shall provide the following notice to the patient, or person authorized to give consent for treatment, for the patient's retention prior to the delivery of health care services:

"NOTICE

Under North Carolina law, a volunteer medical or health care provider shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the medical or health care provider's voluntary provision of health care services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the volunteer medical or health care provider."

(d) A nonprofit community health referral service that refers low-income patients to medical or health care providers for free services is not liable for the acts or omissions of the medical or health care providers in rendering service to that patient if the nonprofit community health referral service maintains liability insurance covering the acts and omissions of the nonprofit health referral service and any liability pursuant to subsection (a) of this section.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients. (1991, c. 655, s. 1,; 1993, c. 439, s. 1; 1995, c. 85, s. 1; 2000-5, s. 4; 2001-230, ss. 1(a), 1(b); 2009-435, s. 1; 2011-355, s. 7; 2013-49, s. 1.)

§ 90-21.17. Portable do not resuscitate order and Medical Order for Scope of Treatment.

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file".

(c) The Department of Health and Human Services shall develop a portable DNR order form and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; an advisory that a patient is not required to have a MOST; the name, telephone number, and signature of the physician, physician assistant, or nurse practitioner authorizing the order; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e., the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; patient or patient representative's name, contact information, and signature; effective date of the form and review dates; a prominent advisory that directions in a MOST form may suspend, while those MOST directions are in effect, any conflicting directions in a patient's previously executed declaration of an advance directive for a natural death ("living will"), health care power of attorney, or other legally authorized instrument; and an advisory that the MOST may be revoked by the patient or the patient's representative. The official MOST form shall also include the following statement written in boldface type directly above the signature line: "You are not required to sign this form to receive treatment." The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of life-prolonging measures pursuant to G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation or other life-prolonging measures from a patient in good faith reliance on an

original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section. (2001-445, s. 1; 2007-502, s. 14.)

§ 90-21.18. Medical directors; liability limitation.

A medical director of a licensed nursing home shall not be named a defendant in an action pursuant to this Article except under any of the following circumstances:

(1) Where allegations involve a patient under the direct care of the medical director.

(2) Where allegations involve willful or intentional misconduct, recklessness, or gross negligence in connection with the failure to supervise, or other acts performed or failed to be performed, by the medical director in a supervisory or consulting role. (2004-149, s. 2.9.)

§ 90-21.19. Liability limit for noneconomic damages.

(a) Except as otherwise provided in subsection (b) of this section, in any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars ($500,000). Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars ($500,000) for all claims brought by all parties arising out of the same professional services. On January 1 of every third year, beginning with January 1, 2014, the Office of State Budget and Management shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars ($500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. The Office of State Budget and Management shall inform the Revisor of Statutes of the reset limitation. The Revisor of Statutes shall publish this reset limitation as an editor's note to this section. In the event

that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) Notwithstanding subsection (a) of this section, there shall be no limit on the amount of noneconomic damages for which judgment may be entered against a defendant if the trier of fact finds both of the following:

(1) The plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death.

(2) The defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice.

(c) The following definitions apply in this section:

(1) Consumer Price Index. – The Consumer Price Index – All Urban Consumers, for the South urban area, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(2) Noneconomic damages. – Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage. "Noneconomic damages" does not include punitive damages as defined in G.S. 1D-5.

(3) Same professional services. – The transactions, occurrences, or series of transactions or occurrences alleged to have caused injury to the health care provider's patient.

(d) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit. (2011-400, s. 7; 2015-40, s. 9.)

§ 90-21.19A: Reserved for future codification purposes.

§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount, if any, is awarded for noneconomic damages. If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b). (2011-400, s. 8.)

Article 1C.

Physicians and Hospital Reports.

§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator,

or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(c1) In addition to the reporting requirements of subsection (b) of this section, cases involving recurrent illness or serious physical injury to any child under the age of 18 years where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma shall be reported by the physician as soon as it becomes practicable before, during, or after completion of treatment. If the case is treated in a hospital, sanitarium, or other medical institution or facility, the report shall be made by the Director, Administrator, or other person designated by the Director or Administrator of the medical institution or facility, or if the case is treated elsewhere, the report shall be made by the physician or surgeon treating the case to the chief of police or the police authorities of the city or town in this State in which the hospital or other institution or place of treatment is located. If the hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of the sheriff's deputies. This reporting requirement is in addition to the duty set forth in G.S. 7B-301 to report child abuse, neglect, dependence, or the death of any juvenile as the result of maltreatment to the director of the department of social services in the county where the juvenile resides or is found.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report. (1971, c. 4; 1977, c. 31; c. 843, s. 2; 2008-179, s. 1.)

§ 90-21.20A. Reporting by physicians of pilots' mental or physical disabilities or infirmities.

(a) A physician who reports to a government agency responsible for pilots' licenses or certificates or a government agency responsible for air safety that a pilot or an applicant for a pilot's license or certificate suffers from or probably suffers from a physical disability or infirmity that the physician believes will or reasonably could affect the person's ability to safely operate an aircraft shall have immunity, civil or criminal, that might otherwise be incurred or imposed as the result of making such a report.

(b) A physician who gives testimony about a pilot's or an applicant's mental or physical disability or infirmity in any administrative hearing or other proceeding held to consider the issuance, renewal, revocation, or suspension of a pilot's license or certificate shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of such testimony. (1997-464, s. 2.)

§ 90-21.20B. Access to and disclosure of medical information for certain purposes.

(a) Notwithstanding G.S. 8-53 or any other provision of law, a health care provider may disclose to a law enforcement officer protected health information only to the extent that the information may be disclosed under the federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 164.512(f) and is not specifically prohibited from disclosure by other state or federal law.

(a1) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

(1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.

(2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.

(3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11.

(e) Notwithstanding G.S. 8-53 or any other provision of law, a health care provider may disclose protected health information for purposes of treatment, payment, or health care operations to the extent that disclosure is permitted under 45 C.F.R. § 164.506 and is not specifically prohibited by other state or federal law. As used in this subsection, "treatment, payment, or health care operations" are as defined in the Standards for Privacy of Individually Identifiable Health Information. (2006-253, s. 17; 2007-115, s. 3.)

§ 90-21.21: Repealed by Session Laws 1979, c. 529, s. 1.

Article 1D.

Health Program for Medical Professionals.

§ 90-21.22. Health program for medical professionals.

(a) The North Carolina Medical Board (Board) may enter into agreements with the North Carolina Medical Society (Society), the North Carolina Academy of Physician

Assistants (Academy), and the North Carolina Physicians Health Program (Program) for the purposes of identifying, reviewing, and evaluating the ability of licensees of the Board who have been referred to the Program to function in their professional capacity and to coordinate regimens for treatment and rehabilitation. The agreement shall include guidelines for all items outlined below:

(1) The assessment, referral, monitoring, support, and education of licensees of the Board by reason of a physical or mental illness, a substance use disorder, or professional sexual misconduct.

(2) Procedures for the Board to refer licensees to the Program.

(3) Criteria for the Program to report licensees to the Board.

(4) A procedure by which licensees may obtain review of recommendations by the Program regarding assessment or treatment.

(5) Periodic reporting of statistical information by the Program to the Board, the Society, and the Academy.

(6) Maintaining the confidentiality of nonpublic information.

(b) Repealed by Session Laws 2016-117, s. 2(n), effective October 1, 2016.

(c) The North Carolina Physicians Health Program (Program) is an independent organization for medical professionals that provides screening, referral, monitoring, educational, and support services. The Board, Society, and the Academy may provide funds for the administration of the Program.

(d) The Program shall report immediately to the Board detailed information about any licensee of the Board who meets any of the following criteria:

(1) The licensee constitutes an imminent danger to patient care by reason of mental illness, physical illness, substance use disorder, professional sexual misconduct, or any other reason.

(2) The licensee refuses to submit to an assessment as ordered by the Board, has entered into a monitoring contract and fails to comply with the terms of the Program's monitoring contract, or is still unsafe to practice medicine after treatment.

(3) Repealed by Session Laws 2016-117, s. 2(n), effective October 1, 2016.

(e) Any information acquired, created, or used in good faith by the Program pursuant to this section is privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than to the Board, the Program, or their employees or consultants. No person participating in good faith in the Program shall be required in a civil case to disclose the fact of participation in the Program or any information acquired or opinions, recommendations, or evaluations acquired or developed solely in the course of participating in the Program pursuant to this section.

(f) Activities conducted in good faith pursuant to the agreement authorized by subsection (a) of this section shall not be grounds for civil action under the laws of this State.

(g) Upon the written request of a licensee, the Program shall provide the licensee and the licensee's legal counsel with a copy of a written assessment of the licensee prepared as part of the licensee's participation in the Program. In addition, the licensee shall be entitled to a copy of any written assessment created by a treatment provider or facility at

the recommendation of the Program, to the extent permitted by State and federal laws and regulations. Any information furnished to a licensee pursuant to this subsection shall be inadmissible in evidence and shall not be subject to discovery in any civil proceeding. However, this subsection shall not be construed to make information, documents, or records otherwise available for discovery or use in a civil action immune from discovery or use in a civil action merely because the information, documents, or records were included as part of the Program's assessment of the licensee or were the subject of information furnished to the licensee pursuant to this subsection. For purposes of this subsection, a civil action or proceeding shall not include administrative actions or proceedings conducted in accordance with Article 1 of Chapter 90 and Chapter 150B of the General Statutes.

(h) The Board has authority to adopt, amend, or repeal rules as may be necessary to carry out and enforce the provisions of this section. (1987, c. 859, s. 15; 1993, c. 176, s. 1; 1995, c. 94, s. 23; 2006-144, s. 8; 2016-117, s. 2(n).)

§ 90-21.22A. Medical review and quality assurance committees.

(a) As used in this section, the following terms mean:

(1) "Medical review committee." – A committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. "Medical review committee" does not mean a medical review committee established under G.S. 131E-95.

(2) "Quality assurance committee." – Risk management employees of an insurer licensed to write medical professional liability insurance in this State, who work in collaboration with health care providers licensed under this Chapter, and insured by that insurer, to evaluate and improve the quality of health care services.

(b) A member of a duly appointed medical review or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review or quality assurance committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, 131E-309, or 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General Statutes, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its

members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles 1 through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62. (1997-519, s. 4.3; 1998-227, s. 3; 2002-179, s. 18; 2004-149, s. 2.6.)

§ 90-21.23. Election by State.

For the purpose of making applicable in the State the early opt-in provisions of Title 4 of the "Health Care Quality Improvement Act of 1986," P.L. 99-660, the State elects to exercise on October 1, 1987, the provisions of Title 4, Section 411(c)(2)(A) of that act to promote good faith professional review activities. (1987, c. 859, s. 19.)

Article 1E.

Certificate of Public Advantage.

§§ 90-21.24 through 90-21.36: Repealed by Session Laws 2015-288, s. 4, as amended by Session Laws 2016-94, s. 12G.4(a), effective September 30, 2016.

§§ 90-21.37 through 90-21.40. Reserved for future codification purposes.

Article 1F.

Psychotherapy Patient/Client Sexual Exploitation Act.

§ 90-21.41. Definitions.

The following definitions apply in this Article:

(1) Client. – A person who may also be called patient or counselee who seeks or obtains psychotherapy, whether or not the person is charged for the service. The term "client" includes a former client.

(2) Psychotherapist. – A psychiatrist licensed in accordance with Article 1 of Chapter 90 of the General Statutes, a psychologist as defined in G.S. 90-270.2(9), a licensed professional counselor as defined in G.S. 90-330(a)(2), a substance abuse professional as defined in G.S. 90-113.31(8), a social worker engaged in a clinical social work practice as defined in G.S. 90B-3(6), a fee-based pastoral counselor as defined in G.S. 90-382(4), a licensed marriage

and family therapist as defined in G.S. 90-270.47(3), or a mental health service provider, who performs or purports to perform psychotherapy.

(3) Psychotherapy. – The professional treatment or professional counseling of a mental or emotional condition that includes revelation by the client of intimate details of thoughts and emotions of a very personal nature to assist the client in modifying behavior, thoughts and emotions that are maladjustive or contribute to difficulties in living.

(4) Sexual exploitation. – Either of the following, whether or not it occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination:

a. Sexual contact which includes any of the following actions:

1. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the oral, genital, or anal openings of the client's body by any part of the psychotherapist's body or by any object used by the psychotherapist for the purpose of sexual stimulation or gratification of either the psychotherapist or the client; or any intrusion, however slight, into the oral, genital, or anal openings of the psychotherapist's body by any part of the client's body or by any object used by the client for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, if agreed to, or not resisted by the psychotherapist.

2. Kissing of, or the intentional touching by the psychotherapist of, the client's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, or kissing of, or the intentional touching by the client of, the psychotherapist's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, if agreed to or not resisted by the psychotherapist, for the purpose of sexual stimulation or gratification to either the psychotherapist or the client.

b. Any act done or statement made by the psychotherapist for the purpose of sexual stimulation or gratification of the client or psychotherapist which includes any of the following actions:

1. The psychotherapist's relating to the client the psychotherapist's own sexual fantasies or the details of the psychotherapist's own sexual life.

2. The uncovering or display of breasts or genitals of the psychotherapist to the client.

3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.

4. Statements containing sexual innuendo, sexual threats, or sexual suggestions regarding the relationship between the psychotherapist and the client.

(5) Sexual history. – Sexual activity of the client other than that conduct alleged by the client to constitute sexual exploitation in an action pursuant to this Article.

(6) Therapeutic deception. – A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment. (1998-213, s. 1.)

§ 90-21.42. Action for sexual exploitation.

Any client who is sexually exploited by the client's psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

(1) At any time between and including the first date and last date the client was receiving psychotherapy from the psychotherapist;

(2) Within three years after the termination of the psychotherapy; or

(3) By means of therapeutic deception. (1998-213, s. 1.)

§ 90-21.43. Remedies.

A person found to have been sexually exploited as provided under this Article may recover from the psychotherapist actual or nominal damages, and reasonable attorneys' fees as the court may allow. The trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes. (1998-213, s. 1.)

§ 90-21.44. Scope of discovery.

(a) In an action under this Article, evidence of the client's sexual history is not subject to discovery, except under the following conditions:

(1) The client claims impairment of sexual functioning.

(2) The psychotherapist requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

(b) The court shall allow the discovery only of specific information or examples of the client's conduct that are determined by the court to be relevant. The court order shall detail the information or conduct that is subject to discovery. (1998-213, s. 1.)

§ 90-21.45. Admissibility of evidence of sexual history.

(a) At the trial of an action under this Article, evidence of the client's sexual history is not admissible unless:

(1) The psychotherapist requests a hearing prior to trial and makes an offer of proof of the relevancy of the sexual history; and

(2) The court finds that, in the interest of justice, the evidence is relevant and that the probative value of the evidence substantially outweighs its prejudicial effect.

(b) The court shall allow the admission only of specific information or examples of instances of the client's conduct that are determined by the court to be relevant. The court's order shall detail the conduct that is admissible, and no other such evidence may be introduced.

(c) Sexual history otherwise admissible pursuant to this section may not be proved by reputation or opinion. (1998-213, s. 1.)

§ 90-21.46. Prohibited defense.

It shall not be a defense in any action brought pursuant to this Article that the client consented to the sexual exploitation or that the sexual contact with a client occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. (1998-213, s. 1.)

§ 90-21.47. Statute of limitations.

An action for sexual exploitation must be commenced within three years after the cause of action accrues. A cause of action for sexual exploitation accrues at the later of either:

(1) The last act of the psychotherapist giving rise to the cause of action.

(2) At the time the client discovers or reasonably should discover that the sexual exploitation occurred; however, no cause of action shall be commenced more than 10 years from the last act of the psychotherapist giving rise to the cause of action. (1998-213, s. 1.)

§ 90-21.48. Agreements to not pursue complaint before licensing entity void.

Any provision of a settlement agreement of a claim based in whole or part on an allegation of sexual exploitation as defined in this Article, which prohibits a party from initiating or pursuing a complaint before the regulatory entity responsible for overseeing the conduct or licensing of the psychotherapist, is void. (1998-213, s. 1.)

§ 90-21.49. Reserved for future codification purposes.

Article 1G

Health Care Liability.

§ 90-21.50. Definitions.

As used in this Article, unless the context clearly indicates otherwise, the term:

(1) "Health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a self-insured indemnity program or prepaid hospital and medical benefits plan offered under the State Health Plan for Teachers and State Employees and subject to the requirements of Article 3 of Chapter 135 of the General Statutes, a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. Except for the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes, "Health benefit plan" does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. "Health benefit plan" does not mean any of the following kinds of insurance:

a. Accident.

b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
m. Short-term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.

(2) "Health care decision" means a determination that is made by a managed care entity and is subject to external review under Part 4 of Article 50 of Chapter 58 of the General Statutes and is also a determination that:
a. Is a noncertification, as defined in G.S. 58-50-61, of a prospective or concurrent request for health care services, and
b. Affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(3) "Health care provider" means:
a. An individual who is licensed, certified, or otherwise authorized under this Chapter to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients;

"Health care provider" includes: (i) an agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services; (ii) the officers and directors of a health care facility; and (iii) an agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.

(4) "Health care service" means a health or medical procedure or service rendered by a health care provider that:
a. Provides testing, diagnosis, or treatment of a health condition, illness, injury, or disease; or
b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a health condition, illness, injury, or disease.

(5) "Insured or enrollee" means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(6) "Insurer" means an entity that writes a health benefit plan and that is an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a

health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, a self-insured health maintenance organization or managed care entity operated or administered by or under contract with the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees pursuant to Article 3 of Chapter 135 of the General Statutes, a multiple employer welfare arrangement subject to Article 50A of Chapter 58 of the General Statutes, or the State Health Plan for Teachers and State Employees.

(7) "Managed care entity" means an insurer that:

a. Delivers, administers, or undertakes to provide for, arrange for, or reimburse for health care services or assumes the risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

Except for the State Health Plan for Teachers and State Employees and the Health Insurance Program for Children, "managed care entity" does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer, or (ii) a health care provider.

(8) "Ordinary care" means that degree of care that, under the same or similar circumstances, a managed care entity of ordinary prudence would have used at the time the managed care entity made the health care decision.

(9) "Physician" means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

(10) "Successor external review process" means an external review process equivalent in all respects to G.S. 58-50-75 through G.S. 58-50-95 that is approved by the Department and implemented by a health benefit plan in the event that G.S. 58-50-75 through G.S. 58-50-95 are found by a court of competent jurisdiction to be void, unenforceable, or preempted by federal law, in whole or in part. (2001-446, s. 4.7; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2019-202, s. 8.)

§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.

(a) Each managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by decisions regarding whether or when the insured or enrollee would receive a health care service made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has exercised sufficient influence or control to reasonably affect the actual care and treatment of the insured or enrollee which results in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against a managed care entity for a health benefit plan that:

(1) The managed care entity and its agents or employees, or representatives for whom the managed care entity is liable under subsection (b) of this section, did not control or influence or advocate for the decision regarding whether or when the insured or enrollee would receive a health care service; or

(2) The managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrollee.

(d) In an action brought under this Article against a managed care entity, a finding that a physician or health care provider is an agent or employee of the managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the managed care entity's health benefit plan.

(e) An action brought under this Article is not a medical malpractice action as defined in Article 1B of this Chapter. A managed care entity may not use as a defense in an action brought under this Article any law that prohibits the corporate practice of medicine.

(f) A managed care entity shall not be liable for the independent actions of a health care provider, who is not an agent or employee of the managed care entity, when that health care provider fails to exercise the standard of care required by G.S. 90-21.12. A health care provider shall not be liable for the independent actions of a managed care entity when the managed care entity fails to exercise the standard of care required by this Article.

(g) Nothing in this Article shall be construed to create an obligation on the part of a managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

(h) A managed care entity shall not enter into a contract with a health care provider, or with an employer or employer group organization, that includes an indemnification or hold harmless clause for the acts or conduct of the managed care entity. Any such indemnification or hold harmless clause is void and unenforceable to the extent of the restriction. (2001-446, s. 4.7.)

§ 90-21.52. No liability under this Article on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a physician or health care provider; liability of State Health Plan under State Tort Claims Act.

(a) Except as otherwise provided in subsection (b) of this section, this Article does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees.

(b) Liability in tort of the State Health Plan for Teachers and State Employees for its health care decisions shall be under Article 31 of Chapter 143 of the General Statutes.

(c) This Article does not create any liability on the part of a physician or health care provider in addition to that otherwise imposed under existing law. No managed care entity held liable under this Article shall be entitled to contribution under Chapter 1B of the General Statutes. No managed care entity held liable under this Article shall have a right to indemnity against physicians, health care providers, or entities wholly owned by physicians or health care providers or any combination thereof, except when:

(1) The liability of the managed care entity is based on an administrative decision to approve or disapprove payment or reimbursement for, or denial, reduction, or termination of coverage, for a health care service and the physician organizations, health care providers, or entities wholly owned by physicians or health care providers or any combination thereof, which have made the decision at issue, have agreed explicitly, in a written addendum or agreement separate from the managed care organization's standard professional service agreement, to assume responsibility for making noncertification decisions under G.S. 58-50-61(13) with respect to certain insureds or enrollees; and

(2) The managed care entity has not controlled or influenced or advocated for the decision regarding whether or when payment or reimbursement should be made or whether or when the insured or enrollee should receive a health care service.

The right to indemnity set forth herein shall not apply to professional medical or health care services provided by a physician or health care provider, and shall only apply where the agreement to assume responsibility for making noncertification decisions for the managed care entity is shown to have been undertaken voluntarily and the managed care organization has not adversely affected the terms and conditions of the relationship with the health care provider based upon the willingness to execute or refusal to execute an agreement under G.S. 58-50-61(13). (2001-446, s. 4.7; 2001-508, s. 2; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

§ 90-21.53. Separate trial required.

Upon motion of any party in an action that includes a claim brought pursuant to this Article involving a managed care entity, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against any physician or other health care provider. (2001-446, s. 4.7.)

§ 90-21.54. Exhaustion of administrative remedies and appeals.

No action may be commenced under this Article until the plaintiff has exhausted all administrative remedies and appeals, including those internal remedies and appeals established under G.S. 58-50-61 through G.S. 58-50-62, and G.S. 58-50-75 through G.S. 58-50-95, and including those established under any successor external review process. (2001-446, s. 4.7.)

§ 90-21.55. External review decision.

(a) Either the insured or enrollee or the personal representative of the insured or enrollee or the managed care entity may use an external review decision made in accordance with G.S. 58-50-75 through G.S. 58-50-95, or made in accordance with any successor external review process, as evidence in any cause of action which includes an action brought under this Part, provided that an adequate foundation is laid for the introduction of the external review decision into evidence and the testimony is subject to cross-examination.

(b) Any information, documents, or other records or materials considered by the Independent Review Organization licensed under Part 4 of Article 50 of Chapter 58 of the General Statutes, or the successor review process, in conducting its review shall be admissible in any action commenced under this Article in accordance with Chapter 8 of the General Statutes and the North Carolina Rules of Evidence. (2001-446, s. 4.7.)

§ 90-21.56. Remedies.

(a) Except as provided in G.S. 90-21.52(b), an insured or enrollee who has been found to have been harmed by the managed care entity pursuant to an action brought under this Article may recover actual or nominal damages and, subject to the provisions and limitations of Chapter 1D of the General Statutes, punitive damages.

(b) This Article does not limit a plaintiff from pursuing any other remedy existing under the law or seeking any other relief that may be available outside of the cause of action and relief provided under this Article.

(c) The rights conferred under this Article as well as any rights conferred by the Constitution of North Carolina or the Constitution of the United States may not be waived, deferred, or lost pursuant to any contract between the insured or enrollee and the managed care entity that relates to a dispute involving a health care decision. Arbitration or mediation may be used to settle the controversy if, after the controversy arises, the insured or enrollee, or the estate of the insured or enrollee, voluntarily and knowingly consents in writing to use arbitration or mediation to settle the controversy. (2001-446, s. 4.7.)

Article 1H.

Voluntary Arbitration of Negligent Health Care Claims.

§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.

(a) Application of Article. – This Article applies to all claims for damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 where all parties have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) When Agreement Is Void. – Except as provided in G.S. 90-21.61(a), any contract provision or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article. (2007-541, s. 1.)

§ 90-21.61. Requirements for submitting to arbitration.

(a) Before Action Is Filed. – Before an action is filed, a person who claims damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 and the allegedly negligent health care provider may jointly submit their dispute to arbitration under this Article by, acting through their attorneys, filing a stipulation to arbitrate with the clerk of superior court in the county where the negligence allegedly occurred. The filing of such a stipulation provides jurisdiction to the superior court to enforce the provisions of this Article and tolls the statute of limitations.

(b) Once Action Is Filed. – The parties to an action for damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 may elect at any time during the pendency of the action to file a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this Article.

(c) Declaration Not to Arbitrate. – In the event that the parties do not unanimously agree to submit a dispute to arbitration under subsection (b) of this section, the parties shall file a declaration with the court prior to the discovery scheduling conference required by G.S. 1A-1, Rule 26(f1).

The declaration shall state that the attorney representing the party has presented the party with a copy of the provisions of this Article, that the attorneys representing the parties have discussed the provisions of this Article with the parties and with each other, and that the parties do not unanimously agree to submit the dispute to arbitration under this Article. The declaration is without prejudice to the parties' subsequent agreement to submit the dispute to arbitration. (2007-541, s. 1.)

§ 90-21.62. Selection of arbitrator.

(a) Selection by Agreement. – An arbitrator shall be selected by agreement of all the parties no later than 45 days after the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The parties may agree to select more than one arbitrator to conduct the arbitration. The parties may agree in writing to the selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to arbitrate.

(b) Selection From List. – If all the parties are unable to agree to an arbitrator by the time specified in subsection (a) of this section, the arbitrator shall be selected from emergency superior court judges who agree to be on a list maintained by the Administrative Office of the Courts. Each party shall alternately strike one name on the list, and the last remaining name on the list shall be the arbitrator. The emergency superior court judge serving as an arbitrator would be compensated at the same rate as an emergency judge serving in superior court. (2007-541, s. 1.)

§ 90-21.63. Witnesses; discovery; depositions; subpoenas.

(a) General Conduct of Arbitration; Experts. – The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall be entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Experts in Case of Multiple Parties. – Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(c) Discovery. – Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator determines that exceptional circumstances require additional discovery, each party shall be entitled to all of the following discovery from any other party:

(1) Twenty-five interrogatories, including subparts.

(2) Ten requests for admission.

(3) Whatever is allowed under applicable court rules for:

a. Requests for production of documents and things and for entry upon land for inspection and other purposes; and

b. Requests for physical and mental examinations of persons.

(d) Depositions. – Each party shall be entitled to all of the following depositions:

(1) Depositions of any party and any expert that a party expects to call as a witness. – Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness under this subdivision shall be limited to four hours.

(2) Depositions of other witnesses. – Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons under this subdivision shall be limited to five depositions per side, each of which shall last no longer than two hours and for which each side shall be entitled to examine for one hour.

(e) Subpoenas. – An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon the motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. (2007-541, s. 1.)

§ 90-21.64. Time limitations for arbitration.

(a) Time Frames. – The time frames provided in this section shall run from the date of the filing of the stipulation where the parties agreed to submit the dispute to arbitration under the Article. Any arbitration under this Article shall be conducted according to the time frames as follows:

(1) Within 45 days, the claimant shall provide a copy to the defendants of all relevant medical records. Alternatively, the claimant may provide to the defendants a release, in compliance with the federal Health Insurance Portability and Accountability Act, for all relevant medical records, along with the names and addresses of all health care providers who may have possession, custody, or control of the relevant medical records. The provisions of this subdivision shall not limit discovery conducted pursuant to G.S. 90-21.63(c).

(2) Within 120 days, the claimant shall disclose to each defendant the name and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(3) Within 140 days, each defendant shall disclose to the claimant the name and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(4) Within 160 days, each party shall disclose to each other party the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(5) Within 240 days, all discovery shall be completed.

(6) Within 270 days, the arbitration hearing shall commence.

(b) Scheduling Order. – The arbitrator shall issue a case scheduling order in every proceeding specifying the dates by which the requirements of subdivisions (2) through (6) of subsection (a) of this section shall be completed. The scheduling order also shall specify a deadline for the service of dispositive motions and briefs.

(c) Public Policy as to When Hearings Begin. – It is the express public policy of the General Assembly that arbitration hearings under this Article be commenced no later than 10 months after the parties file the stipulation where the parties agreed to submit the dispute to arbitration under this Article. The arbitrator may grant a continuance of the commencement of the arbitration hearing only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party or where all parties consent to the continuance. (2007-541, s. 1.)

§ 90-21.65. Written decision by arbitration.

(a) Issuing the Decision. – The arbitrator shall issue a decision in writing and signed by the arbitrator within 14 days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each party or the party's attorneys.

(b) Limit on Damages. – The arbitrator shall not make an award of damages that exceeds a total of one million dollars ($1,000,000) for any dispute submitted to arbitration under this Article, regardless of the number of claimants or defendants that are parties to the dispute.

(c) Finding if Damages Awarded. – If the arbitrator makes an award of damages to the claimant, the arbitrator shall make a finding as to whether the injury or death was caused by the negligence of the defendant.

(d) Paying the Arbitrator. – The fees and expenses of the arbitrator shall be paid equally by the parties.

(e) Attorneys' Fees and Costs. – Each party shall bear its own attorneys' fees and costs. (2007-541, s. 1.)

§ 90-21.66. Judgment by court.

After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in G.S. 90-21.68. (2007-541, s. 1.)

§ 90-21.67. Retention of jurisdiction by court.

The court shall retain jurisdiction over the action during the pendency of the arbitration proceeding. The court may, at the request of the arbitrator, enter orders necessary to enforce the provisions of this Article. (2007-541, s. 1.)

§ 90-21.68. Appeal of arbitrator's decision.

There is no right to a trial de novo on an appeal of the arbitrator's decision under this Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided under G.S. 1-569.23 or G.S. 1-569.24. (2007-541, s. 1.)

§ 90-21.69. Revised Uniform Arbitration Act not applicable.

The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to arbitrations conducted under this Article except to the extent specifically provided in this Article. (2007-541, s. 1.)

§ 90-21.70: Reserved for future codification purposes.

§ 90-21.71: Reserved for future codification purposes.

§ 90-21.72: Reserved for future codification purposes.

§ 90-21.73: Reserved for future codification purposes.

§ 90-21.74: Reserved for future codification purposes.

§ 90-21.75: Reserved for future codification purposes.

§ 90-21.76: Reserved for future codification purposes.

§ 90-21.77: Reserved for future codification purposes.

§ 90-21.78: Reserved for future codification purposes.

§ 90-21.79: Reserved for future codification purposes.

Article 1I.

Woman's Right to Know Act.

§ 90-21.80. Short title.

This act may be cited as the "Woman's Right to Know Act." (2011-405, s. 1.)

§ 90-21.81. Definitions.

The following definitions apply in this Article:

(1) Abortion. – The use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:

a. Increase the probability of a live birth.

b. Preserve the life or health of the child.

c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.

(2) Attempt to perform an abortion. – An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the

performance of an abortion in violation of this Article or Article 1K of this Chapter.

(3) Department. – The Department of Health and Human Services.

(4) Display a real-time view of the unborn child. – An ultrasound or any more scientifically advanced means of viewing the unborn child in real time.

(5) Medical emergency. – A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions. For purposes of this definition, no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

(6) Physician. – An individual licensed to practice medicine in accordance with this Chapter.

(7) Probable gestational age. – What, in the judgment of the physician, will, with reasonable probability, be the gestational age of the unborn child at the time the abortion is planned to be performed.

(8) Qualified professional. – An individual who is a registered nurse, nurse practitioner, or physician assistant licensed in accordance with Article 1 of this Chapter, or a qualified technician acting within the scope of the qualified technician's authority as provided by North Carolina law and under the supervision of a physician.

(9) Qualified technician. – A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a nurse midwife or advanced practice nurse practitioner in obstetrics with certification in obstetrical ultrasonography.

(10) Stable Internet Web site. – A Web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the Department.

(11) Woman. – A female human, whether or not she is an adult. (2011-405, s. 1; 2013-366, s. 3(b).)

§ 90-21.82. Informed consent to abortion.

No abortion shall be performed upon a woman in this State without her voluntary and informed consent. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if all of the following conditions are satisfied:

(1) At least 72 hours prior to the abortion, a physician or qualified professional has orally informed the woman, by telephone or in person, of all of the following:

a. The name of the physician who will perform the abortion to ensure the safety of the procedure and prompt medical attention to any complications that may arise. The physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure. The physician prescribing, dispensing, or otherwise providing any drug or chemical for the purpose of inducing an abortion

shall be physically present in the same room as the patient when the first drug or chemical is administered to the patient.

b. The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, cervical tear or uterine perforation, danger to subsequent pregnancies, including the ability to carry a child to full term, and any adverse psychological effects associated with the abortion.

c. The probable gestational age of the unborn child at the time the abortion is to be performed.

d. The medical risks associated with carrying the child to term.

e. The display of a real-time view of the unborn child and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the woman. The physician performing the abortion, qualified technician, or referring physician shall inform the woman that the printed materials and Web site described in G.S. 90-21.83 and G.S. 90-21.84 contain phone numbers and addresses for facilities that offer the services free of charge. If requested by the woman, the physician or qualified professional shall provide to the woman the list as compiled by the Department.

f. If the physician who is to perform the abortion has no liability insurance for malpractice in the performance or attempted performance of an abortion, that information shall be communicated.

g. The location of the hospital that offers obstetrical or gynecological care located within 30 miles of the location where the abortion is performed or induced and at which the physician performing or inducing the abortion has clinical privileges. If the physician who will perform the abortion has no local hospital admitting privileges, that information shall be communicated.

If the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. of this subdivision, the woman shall be advised that this information will be directly available from the physician who is to perform the abortion. However, the fact that the physician or qualified professional does not know the information required in sub-subdivisions a., f., or g. shall not restart the 72-hour period. The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information may be provided orally either by telephone or in person, in which case the required information may be based on facts supplied by the woman to the physician and whatever other relevant information is reasonably available. The information required by this subdivision may not be provided by a tape recording but shall be provided during a consultation in which the physician is able to ask questions of the patient and the patient is able to ask questions of the physician. If, in the medical judgment of the physician, a physical examination, tests, or the availability of other information to the physician subsequently

indicates a revision of the information previously supplied to the patient, then that revised information may be communicated to the patient at any time before the performance of the abortion. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(2) The physician or qualified professional has informed the woman, either by telephone or in person, of each of the following at least 72 hours before the abortion:

a. That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care.

b. That public assistance programs under Chapter 108A of the General Statutes may or may not be available as benefits under federal and State assistance programs.

c. That the father is liable to assist in the support of the child, even if the father has offered to pay for the abortion.

d. That the woman has other alternatives to abortion, including keeping the baby or placing the baby for adoption.

e. That the woman has the right to review the printed materials described in G.S. 90-21.83, that these materials are available on a State-sponsored Web site, and the address of the State-sponsored Web site. The physician or a qualified professional shall orally inform the woman that the materials have been provided by the Department and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials other than on the Web site, the materials shall either be given to her at least 72 hours before the abortion or be mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

f. That the woman is free to withhold or withdraw her consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without the loss of any State or federally funded benefits to which she might otherwise be entitled.

The information required by this subdivision shall be provided in English and in each language that is the primary language of at least two percent (2%) of the State's population. The information required by this subdivision may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to have the printed materials given or mailed to her. Nothing in this subdivision shall be construed to prohibit the physician or qualified professional from e-mailing a Web site link to the materials described in this subdivision or G.S. 90-21.83.

(3) The woman certifies in writing, before the abortion, that the information described in subdivisions (1) and (2) of this section has been furnished her and that she has been informed of her opportunity to review the information referred to in sub-subdivision (2)e. of this section. The original of this certification shall be maintained in the woman's medical records, and a copy shall be given to her.

(4) Before the performance of the abortion, the physician who will perform the abortion or the qualified technician must receive a copy of the written

certification required by subdivision (3) of this section. (2011-405, s. 1; 2013-366, s. 4(a); 2015-62, s. 7(b).)

§ 90-21.83. Printed information required.

(a) Within 90 days after this Article becomes effective, the Department shall publish in English and in each language that is the primary language of at least two percent (2%) of the State's population and shall cause to be available on the State Web site established under G.S. 90-21.84, the following printed materials in a manner that ensures that the information is comprehensible to a person of ordinary intelligence:

(1) Geographically indexed materials designed to inform a woman of public and private agencies and services available to assist her through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The information shall include a comprehensive list of the agencies available, a description of the services they offer, including which agencies offer, at no cost to the woman, imaging that enables the woman to view the unborn child or heart tone monitoring that enables the woman to listen to the heartbeat of the unborn child, and a description of the manner, including telephone numbers, in which they might be contacted. In the alternative, in the discretion of the Department, the printed materials may contain a toll-free, 24-hour-a-day telephone number that may be called to obtain, orally or by tape recorded message tailored to the zip code entered by the caller, a list of these agencies in the locality of the caller and of the services they offer.

(2) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time a woman can be known to be pregnant until full term, including pictures or drawings representing the development of the unborn child at two-week gestational increments. The pictures shall contain the dimensions of the unborn child, information about brain and heart functions, the presence of external members and internal organs, and be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall contain objective information describing the methods of abortion procedures employed, the medical risks associated with each procedure, the possible adverse psychological effects of abortion, as well as the medical risks associated with carrying an unborn child to term.

(b) The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible. The Web site provided for in G.S. 90-21.84 shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the Web site shall be a minimum of 200x300 pixels. All letters on the Web site shall be a minimum of 12-point font. All information and pictures shall be accessible with an industry-standard browser requiring no additional plug-ins.

(c) The materials required under this section shall be available at no cost from the Department upon request and in appropriate numbers to any physician, person, health facility, hospital, or qualified professional.

(d) The Department shall cause to be available on the State Web site a list of resources the woman may contact for assistance upon receiving information from the physician performing the ultrasound that the unborn child may have a disability or serious abnormality and shall do so in a manner prescribed by subsection (b) of this section. (2011-405, s. 1; 2013-366, s. 4(b).)

§ 90-21.84. Internet Web site.

The Department shall develop and maintain a stable Internet Web site to provide the information described under G.S. 90-21.83. No information regarding who accesses the Web site shall be collected or maintained. The Department shall monitor the Web site on a regular basis to prevent and correct tampering. (2011-405, s. 1.)

§ 90-21.85. Display of real-time view requirement.

(a) Notwithstanding G.S. 14-45.1, except in the case of a medical emergency, in order for the woman to make an informed decision, at least four hours before a woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, or qualified technician working in conjunction with the physician, shall do each of the following:

(1) Perform an obstetric real-time view of the unborn child on the pregnant woman.

(2) Provide a simultaneous explanation of what the display is depicting, which shall include the presence, location, and dimensions of the unborn child within the uterus and the number of unborn children depicted. The individual performing the display shall offer the pregnant woman the opportunity to hear the fetal heart tone. The image and auscultation of fetal heart tone shall be of a quality consistent with the standard medical practice in the community. If the image indicates that fetal demise has occurred, a woman shall be informed of that fact.

(3) Display the images so that the pregnant woman may view them.

(4) Provide a medical description of the images, which shall include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable.

(5) Obtain a written certification from the woman, before the abortion, that the requirements of this section have been complied with, which shall indicate whether or not she availed herself of the opportunity to view the image.

(6) Retain a copy of the written certification prescribed by subdivision (a)(5) of this section. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater.

If the woman has had an obstetric display of a real-time image of the unborn child within 72 hours before the abortion is to be performed, the certification of the physician or qualified technician who performed the procedure in compliance with this subsection shall be included in the patient's records and the requirements under this subsection shall be deemed to have been met.

(b) Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the displayed images or from refusing to hear the simultaneous explanation and medical description.

(c) In the event the person upon whom the abortion is to be performed is an unemancipated minor, as defined in G.S. 90-21.6(1), the information described in subdivisions (a)(2) and (a)(4) of this section shall be furnished and offered respectively to a person required to give parental consent under G.S. 90-21.7(a) and the unemancipated minor. The person required to give consent in accordance with G.S. 90-21.7(a), as appropriate, shall make the certification required by subdivision (a)(5) of this section. In the event the person upon whom the abortion is to be performed has been adjudicated mentally incompetent by a court of competent jurisdiction, the information shall be furnished and offered respectively to her spouse or a legal guardian if she is married or, if she is not married, to one parent or a legal guardian and the woman. The spouse, legal guardian, or parent, as appropriate, shall make the certification required by subdivision (a)(5) of this section. In the case of an abortion performed pursuant to a court order under G.S. 90-21.8(e) and (f), the information described in subdivisions (a)(2) and (a)(4) of this section shall be provided to the minor, and the certification required by subdivision (a)(5) of this section shall be made by the minor. (2011-405, s. 1.)

§ 90-21.86. Procedure in case of medical emergency.

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a 72-hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions. As soon as feasible, the physician shall document in writing the medical indications upon which the physician relied and shall cause the original of the writing to be maintained in the woman's medical records and a copy given to her. (2011-405, s. 1; 2015-62, s. 7(c).)

§ 90-21.87. Informed consent for a minor.

If the woman upon whom an abortion is to be performed is an unemancipated minor, the voluntary and informed written consent required under G.S. 90-21.82 shall be obtained from the minor and from the adult individual who gives consent pursuant to G.S. 90-21.7(a). (2011-405, s. 1.)

§ 90-21.88. Civil remedies.

(a) Any person upon whom an abortion has been performed and any father of an unborn child that was the subject of an abortion may maintain an action for damages against the person who performed the abortion in knowing or reckless violation of this Article. Any person upon whom an abortion has been attempted may maintain an action for damages against the person who performed the abortion in willful violation of this Article.

(b) Injunctive relief against any person who has willfully violated this Article may be sought by and granted to (i) the woman upon whom an abortion was performed or

attempted to be performed in violation of this Article, (ii) any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of this Article, or (iii) the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in this State in violation of this Article.

(c) If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff. (2011-405, s. 1.)

§ 90-21.89. Protection of privacy in court proceedings.

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.88 (a) or (b) shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant. (2011-405, s. 1.)

§ 90-21.90. Assurance of informed consent.

(a) All information required to be provided under G.S. 90-21.82 to a woman considering abortion shall be presented to the woman individually and, except for information that may be provided by telephone, in the physical presence of the woman and in a language the woman understands to ensure that the woman has adequate opportunity to ask questions and to ensure the woman is not the victim of a coerced abortion.

(b) Should a woman be unable to read the materials provided to the woman pursuant to this section, a physician or qualified professional shall read the materials to the woman in a language the woman understands before the abortion. (2011-405, s. 1.)

§ 90-21.91. Assurance that consent is freely given.

If a physician acting pursuant to this Article has reason to believe that a woman is being coerced into having an abortion, the physician or qualified professional shall inform the

woman that services are available for the woman and shall provide the woman with private access to a telephone and information about, but not limited to, each of the following services:

(1) Rape crisis centers.
(2) Shelters for victims of domestic violence.
(3) Restraining orders.
(4) Pregnancy care centers. (2011-405, s. 1.)

§ 90-21.92. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this Article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable, and the balance of this Article shall remain effective, notwithstanding such unconstitutionality. The General Assembly hereby declares that it would have passed this Article, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional. (2011-405, s. 1.)

§ 90-21.93: Reserved for future codification purposes.

§ 90-21.94: Reserved for future codification purposes.

§ 90-21.95: Reserved for future codification purposes.

§ 90-21.96: Reserved for future codification purposes.

§ 90-21.97: Reserved for future codification purposes.

§ 90-21.98: Reserved for future codification purposes.

§ 90-21.99: Reserved for future codification purposes.

Article 1J.

Voluntary Health Care Services Act.

§ 90-21.100. Short title.

This Article shall be known and may be cited as the Volunteer Health Care Services Act. (2012-155, s. 1.)

§ 90-21.101. Findings.

(a) The General Assembly makes the following findings:

(1) Access to high-quality health care services is a concern of all persons.

(2) Access to high-quality health care services may be limited for some residents of this State, particularly those who reside in remote, rural areas or in the inner city.

(3) Physicians and other health care providers have traditionally worked to ensure broad access to health care services.

(4) Many health care providers from North Carolina and elsewhere are willing to volunteer their services to address the health care needs of North Carolinians who may otherwise not be able to obtain high-quality health care services.

(b) The General Assembly further finds that it is the public policy of this State to encourage and facilitate the voluntary provision of health care services. (2012-155, s. 1.)

§ 90-21.102. Definitions.

The following definitions apply in this Article:

(1) Department. – The North Carolina Department of Health and Human Services.

(2) Free clinic. – A nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs.

(3) Health care provider. – Any person who:

a. Is licensed to practice as a physician or a physician assistant under Article 1 of this Chapter.

b. Holds a limited volunteer license under G.S. 90-12.1A.

c. Holds a retired limited volunteer license under G.S. 90-12.1B.

d. Holds a physician assistant limited volunteer license under G.S. 90-12.4.

e. Holds a physician assistant retired limited volunteer license under 90-12.4B.

f. Is a volunteer health care professional to whom G.S. 90-21.16 applies.

g. Is licensed to practice dentistry under Article 2 of this Chapter.

h. Is licensed to practice pharmacy under Article 4A of this Chapter.

i. Is licensed to practice optometry under Article 6 of this Chapter.

j. Is licensed to practice as a registered nurse or licensed practical nurse under Article 9A of this Chapter.

k. Is licensed to practice as a dental hygienist under Article 16 of this Chapter.

l. Holds a license as a registered licensed optician under Article 17 of this Chapter.

m. Is licensed to practice as a physician, physician assistant, dentist, pharmacist, optometrist, registered nurse, licensed practical nurse, dental hygienist, or optician under provisions of law of another state of the United States comparable to the provisions referenced in sub-subdivisions a. through l. of this subdivision.

(4) Sponsoring organization. – Any nonprofit organization that organizes or arranges for the voluntary provision of health care services pursuant to this Article.

(5) Voluntary provision of health care services. – The provision of health care services by a health care provider in association with a sponsoring organization in which both of the following circumstances exist:

a. The health care services are provided without charge to the recipient of the services or to a third party on behalf of the recipient.

b. The health care provider receives no compensation or other consideration in exchange for the health care services provided.

For the purposes of this Article, the provision of health care services in nonprofit community health centers, local health department facilities, free clinic facilities, or at a provider's place of employment when the patient is referred by a nonprofit community health referral service shall not be considered the voluntary provision of health care. (2012-155, s. 1; 2012-194, s. 47(a); 2013-49, s. 2.)

§ 90-21.103. Limitation on duration of voluntary health care services.

A sponsoring organization duly registered in accordance with G.S. 90-21.104 may organize or arrange for the voluntary provision of health care services at a location in this State for a period not to exceed seven calendar days in any calendar year. (2012-155, s. 1.)

§ 90-21.104. Registration, reporting, and record-keeping requirements.

(a) A sponsoring organization shall not organize or arrange for the voluntary provision of health care services in this State without first registering with the Department on a form prescribed by the Department. The registration form shall contain all of the following information:

(1) The name of the sponsoring organization.

(2) The name of the principal individuals who are the officers or organizational officials responsible for the operation of the sponsoring organization.

(3) The street address, city, zip code, and county of the sponsoring organization's principal office and each of the principal individuals described in subdivision (2) of this subsection.

(4) Telephone numbers for the principal office of the sponsoring organization and for each of the principal individuals described in subdivision (2) of this subsection.

(5) Any additional information requested by the Department.

(b) Each sponsoring organization that applies for registration under this Article shall pay a one-time registration fee in the amount of fifty dollars ($50.00), which it shall submit to the Department along with the completed registration form required by subsection (a) of this section. Upon approval by the Department, a sponsoring organization's registration remains valid unless revoked by the Department pursuant to subsection (f) of this section.

(c) Upon any change in the information required under subsection (a) of this section, the sponsoring organization shall notify the Department of the change, in writing, within 30 days after the effective date of the change.

(d) Each registered sponsoring organization has the duty and responsibility to do all of the following:

(1) Except as provided in this subdivision, by no later than 14 days before a sponsoring organization initiates voluntary health care services in this State, the sponsoring organization shall submit to the Department a list containing the following information regarding each health care provider who is to provide voluntary health care services on behalf of the sponsoring organization during any part of the time period in which the sponsoring organization is authorized to provide voluntary health care services in the State:
   a. Name.
   b. Date of birth.
   c. State of licensure.
   d. License number.
   e. Area of practice.
   f. Practice address.

   By no later than 3 days prior to voluntary health care services being rendered, a sponsoring organization may amend the list to add health care providers defined in G.S. 90-21.102(3)a. through G.S. 90-21.102(3)l.

(2) Beginning April 1, 2013, submit quarterly reports to the Department identifying all health care providers who engaged in the provision of voluntary health care services in association with the sponsoring organization in this State during the preceding calendar quarter. The quarterly report must include the date, place, and type of voluntary health care services provided by each health care provider.

(3) Maintain a list of health care providers associated with its provision of voluntary health care services in this State. For each health care provider listed, the sponsoring organization shall maintain a copy of a current license or statement of exemption from licensure or certification. For health care providers currently licensed or certified under this Chapter, the sponsoring organization may maintain a copy of the health care provider's license or certification verification obtained from a State-sponsored Internet Web site.

(4) Maintain records of the quarterly reports and records required under this subsection for a period of five years from the date of voluntary service and make these records available upon request to any State licensing board established under this Chapter.

(e) Compliance with subsections (a) through (d) of this section is prima facie evidence that the sponsoring organization has exercised due care in its selection of health care providers.

(f) The Department may revoke the registration of any sponsoring organization that fails to comply with the requirements of this Article. A sponsoring organization may challenge the Department's decision to revoke its registration by filing a contested case under Article 3 of Chapter 150B of the General Statutes.

(g) The Department may waive any of the requirements of this section during a natural disaster or other emergency circumstance. (2012-155, s. 1; 2012-194, s. 47(b).)

§ 90-21.105. Department and licensure boards to review licensure status of volunteers.

The Department shall forward the information received from a sponsoring organization under G.S. 90-21.104(d)(1) to the appropriate licensure board within seven days after receipt. Upon receipt of any information or notice from a licensure board that a health care provider on the list submitted by the sponsoring organization pursuant to G.S. 90-21.104(d)(1) is not licensed, authorized, or in good standing, or is the subject of an investigation or pending disciplinary action, the Department shall immediately notify the sponsoring organization that the health care provider is not permitted to engage in the voluntary provision of health care services on behalf of the sponsoring organization. (2012-155, s. 1.)

§ 90-21.106. On-site requirements.

A sponsoring organization that organizes or arranges for the provision of voluntary health care services at a location in this State shall ensure that at least one health care provider licensed to practice in this State, with access to the controlled substances reporting system established under G.S. 90-113.73, is located on the premises where the provision of voluntary health care services is occurring. In addition, every sponsoring organization shall post in a clear and conspicuous manner the following notice in the premises where the provision of voluntary health care services is occurring:

"**NOTICE**

Under North Carolina law, there is no liability for damages for injuries or death alleged to have occurred by reason of an act or omission in the health care provider's voluntary provision of health care services, unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the health care provider." (2012-155, s. 1.)

§ 90-21.107. Additional licensure not required for certain volunteers.

(a) A health care provider who engages in the voluntary provision of health care services in association with a sponsoring organization for no more than seven days during any calendar year shall not be required to obtain additional licensure or authorization in connection therewith if the health care provider meets any of the following criteria:

(1) The health care provider is duly licensed or authorized under the laws of this State to practice in the area in which the health care provider is providing voluntary health care services and is in good standing with the applicable licensing board.

(2) The health care provider lawfully practices in another state or district in the area in which the health care provider is providing voluntary health care services and is in good standing with the applicable licensing board.

(b) This exemption from additional licensure or authorization requirements does not apply if any of the following circumstances exist:

(1) The health care provider has been subjected to public disciplinary action or is the subject of a pending disciplinary proceeding in any state in which the health care provider is or ever has been licensed.

(2) The health care provider's license has been suspended or revoked pursuant to disciplinary proceedings in any state in which the health care provider is or ever has been licensed.

(3) The health care provider renders services outside the scope of practice authorized by the health care provider's license or authorization. (2012-155, s. 1.)

§ 90-21.108. Immunity from civil liability for acts or omissions.

(a) Subject to subsection (b) of this section, a health care provider who engages in the voluntary provision of health care services at any location in this State in association with a sponsoring organization shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the health care provider's voluntary provision of health care services, unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the health care provider.

(b) The immunity from civil liability provided by subsection (a) of this section does not apply if any of the following circumstances exist:

(1) The health care provider receives, directly or indirectly, any type of compensation, benefits, or other consideration of any nature from any person for the health care services provided.

(2) The health care services provided are not part of the health care provider's training or assignment.

(3) The health care services provided are not within the scope of the health care provider's license or authority.

(4) The health care services provided are not authorized by the appropriate authorities to be performed at the location. (2012-155, s. 1.)

§ 90-21.109: Reserved for future codification purposes.

§ 90-21.110: Reserved for future codification purposes.

§ 90-21.111: Reserved for future codification purposes.

§ 90-21.112: Reserved for future codification purposes.

§ 90-21.113: Reserved for future codification purposes.

§ 90-21.114: Reserved for future codification purposes.

§ 90-21.115: Reserved for future codification purposes.

§ 90-21.116: Reserved for future codification purposes.

§ 90-21.117: Reserved for future codification purposes.

§ 90-21.118: Reserved for future codification purposes.

§ 90-21.119: Reserved for future codification purposes.

Article 1K.

Certain Abortions Prohibited.

§ 90-21.120. Definitions.

The following definitions apply in this Article:

(1) Abortion. – As defined in G.S. 90-21.81(1).

(2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).

(3) Woman. – As defined in G.S. 90-21.81(11). (2013-366, s. 3(a).)

§ 90-21.121. Sex-selective abortion prohibited.

(a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or attempt to perform an abortion upon a woman in this State with knowledge, or an objective reason to know, that a significant factor in the woman seeking the abortion is related to the sex of the unborn child.

(b) Nothing in this section shall be construed as placing an affirmative duty on a physician to inquire as to whether the sex of the unborn child is a significant factor in the pregnant woman seeking the abortion. (2013-366, s. 3(a).)

§ 90-21.122. Civil remedies.

(a) Any person who violates any provision of this Article shall be liable for damages, including punitive damages pursuant to Chapter 1D of the General Statutes, and may be enjoined from future acts.

(b) A claim for damages against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse or guardian of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(c) A claim for injunctive relief against any person who has violated a provision of this Article may be sought by (i) the woman upon whom an abortion was performed or attempted in violation of this Article, (ii) any person who is the spouse, guardian, or current or former licensed health care provider of the woman upon whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion was performed or attempted in violation of this Article if the woman was a minor at the time the abortion was performed or attempted.

(d) Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars ($10,000) for the first violation, fifty thousand dollars ($50,000) for the second violation,

and one hundred thousand dollars ($100,000) for the third violation and each subsequent violation. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted.

(e) The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2013-366, s. 3(a).)

§ 90-21.123. Protection of privacy in court proceedings.

In every proceeding or action brought under this Article, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order issued pursuant to this section shall be accompanied by specific written findings explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii) why the order is essential to that end, (iii) how the order is narrowly tailored to serve that interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant. (2013-366, s. 3(a).)

Article 2.

Dentistry.

§ 90-22. Practice of dentistry regulated in public interest; Article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.

(a) The practice of dentistry in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina. This Article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina State Board of Dental Examiners heretofore created by Chapter 139, Public Laws 1879 and by Chapter 178, Public Laws 1915, is hereby continued as the agency of the State for the regulation of the practice of dentistry in this State. Said Board of Dental

Examiners shall consist of six dentists who are licensed to practice dentistry in North Carolina, one dental hygienist who is licensed to practice dental hygiene in North Carolina and one person who shall be a citizen and resident of North Carolina and who shall be licensed to practice neither dentistry nor dental hygiene. The dental hygienist or the consumer member cannot participate or vote in any matters of the Board which involves the issuance, renewal or revocation of the license to practice dentistry in the State of North Carolina. The consumer member cannot participate or vote in any matters of the Board which involve the issuance, renewal or revocation of the license to practice dental hygiene in the State of North Carolina. Members of the Board licensed to practice dentistry in North Carolina shall have been elected in an election held as hereinafter provided in which every person licensed to practice dentistry in North Carolina and residing or practicing in North Carolina shall be entitled to vote. Each member of said Board shall be elected for a term of three years and until his successor shall be elected and shall qualify. Each year there shall be elected two dentists for such terms of three years each. Every three years there shall be elected one dental hygienist for a term of three years. Dental hygienists shall be elected to the Board in an election held in accordance with the procedures hereinafter provided in which those persons licensed to practice dental hygiene in North Carolina and residing or practicing in North Carolina shall be entitled to vote. Every three years a person who is a citizen and resident of North Carolina and licensed to practice neither dentistry nor dental hygiene shall be appointed to the Board for a term of three years by the Governor of North Carolina. Any vacancy occurring on said Board shall be filled by a majority vote of the remaining members of the Board to serve until the next regular election conducted by the Board, at which time the vacancy will be filled by the election process provided for in this Article, except that when the seat on the Board held by a person licensed to practice neither dentistry nor dental hygiene in North Carolina shall become vacant, the vacancy shall be filled by appointment by the Governor for the period of the unexpired term. No dentist shall be nominated for or elected to membership on said Board, unless, at the time of such nomination and election such person is licensed to practice dentistry in North Carolina and actually engaged in the practice of dentistry. No dental hygienist shall be nominated for or elected to membership on said Board unless, at the time of such nomination and election, such person is licensed to practice dental hygiene in North Carolina and is currently employed in dental hygiene in North Carolina. No person shall be nominated, elected, or appointed to serve more than two consecutive terms on said Board.

(c) Nominations and elections of members of the North Carolina State Board of Dental Examiners shall be as follows:

(1) An election shall be held each year to elect successors to those members whose terms are expiring in the year of the election, each successor to take office on the first day of August following the election and to hold office for a term of three years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by August 1 of that year, then the said members elected that year shall take office immediately after the completion of the election and shall hold office until the first of August of the third year thereafter and until their successors are elected and qualified. Persons appointed to the Board by the Governor shall take office on the first day of August following their appointment and shall hold office for a term of three years and until such person's successor has been appointed and shall qualify; provided that if in any year the Governor shall not have appointed a person by August first of that year,

then the said member appointed that year shall take office immediately after his appointment and shall hold office until the first of August of the third year thereafter and until such member's successor is appointed and qualified.

(2) Every dentist with a current North Carolina license residing or practicing in North Carolina shall be eligible to vote in elections of dentists to the Board. Every dental hygienist with a current North Carolina license residing or practicing in North Carolina shall be eligible to vote in elections of dental hygienists to the Board. The holding of such a license to practice dentistry or dental hygiene in North Carolina shall constitute registration to vote in such elections. The list of licensed dentists and dental hygienists shall constitute the registration list for elections to the appropriate seats on the Board.

(3) All elections shall be conducted by the Board of Dental Examiners which is hereby constituted a Board of Dental Elections. If a member of the Board of Dental Examiners whose position is to be filled at any election is nominated to succeed himself, and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Dental Elections for that election and the remaining members of the Board of Dental Elections shall proceed and function without his participation.

(4) Nomination of dentists for election shall be made to the Board of Dental Elections by a written petition signed by not less than 10 dentists licensed to practice in North Carolina and residing or practicing in North Carolina. Nomination of dental hygienists for election shall be made to the Board of Dental Elections by a written petition signed by not less than 10 dental hygienists licensed to practice in North Carolina and residing or practicing in North Carolina. Such petitions shall be filed with said Board of Dental Elections subsequent to January 1 of the year in which the election is to be held and not later than midnight of the twentieth day of May of such year, or not later than such earlier date (not before April 1) as may be set by the Board of Dental Elections: provided, that not less than 10 days' notice of such earlier date shall be given to all dentists or dental hygienists qualified to sign a petition of nomination. The Board of Dental Elections shall, before preparing ballots, notify all persons who have been duly nominated of their nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Dental Elections or its designated secretary at any time prior to the closing of the polls in any election.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Dental Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Dental Elections. At such time as may be fixed by the Board of Dental Elections a ballot and a return official envelope addressed to said Board shall be mailed to each person entitled to vote in the election being conducted, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to

include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope _____

Signature of Voter _____

Address of Voter _____

_____

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

The Board of Dental Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless, within the time hereinafter provided, it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Dental Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Dental Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed dentists may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of the ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) a. Where there is more than one nominee eligible for election to a single seat:

1. The nominee receiving a majority of the votes cast shall be declared elected.

2. In the event that no nominee receives a majority, a second election shall be conducted between the two nominees who receive the highest number of votes.

b. Where there are more than two nominees eligible for election to either of two seats at issue in the same election:

1. A majority shall be any excess of the sum ascertained by dividing the total number of votes cast for all nominees by four.
2. In the event that more than two nominees receive a majority of the votes cast, the two receiving the highest number of votes shall be declared elected.
3. In the event that only one of the nominees receives a majority, he shall be declared elected and the Board of Dental Examiners shall thereupon order a second election to be conducted between the two nominees receiving the next to highest number of votes.
4. In the event that no nominee receives a majority, a second election shall be conducted between the four candidates receiving the highest number of votes. At such second election, the two nominees receiving the highest number of votes shall be declared elected.

c. In any election, if there is a tie between candidates, the tie shall be resolved by the vote of the Board of Dental Examiners, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements: provided, that if the second election is between four candidates, then the two receiving the highest number of votes shall be declared elected.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations because of lack of plural or proper nominations or death, or withdrawal, or disqualification or any other reason, there shall be (i) only two candidates for two positions, they shall be declared elected by the Board of Dental Elections, or (ii) only one candidate for one position, he shall be declared elected by the Board of Dental Elections, or (iii) no candidate for two positions, the two positions shall be filled by the Board of Dental Examiners, or (iv) no candidate for one position, the position shall be filled by the Board of Dental Examiners, or (v) one candidate for two positions, the one candidate shall be declared elected by the Board of Dental Elections and one qualified dentist shall be elected to the other position by the Board of Dental Examiners. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the Board of Dental Examiners. In the event of the death or resignation of a member of the Board of Dental Examiners, after taking office, his position shall be filled for the unexpired term by the Board of Dental Examiners.

(12) An official list of licensed dentists shall be kept at an office of the Board of Dental Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed dentist. As soon as the voting in any election begins a list of the licensed dentists shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Dental Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Dental Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes of North Carolina.

(15) The Board of Dental Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed dentists residing in North Carolina.

(d) For service on the Board of Dental Elections, the members of such Board shall receive the per diem compensation and expenses allowed by this Article for service as members of the Board of Dental Examiners. The Board of Dental Elections is authorized and empowered to expend from funds collected under the provisions of this Article such sum or sums as it may determine necessary in the performance of its duties as a Board of Dental Elections, said expenditures to be in addition to the authorization contained in G.S. 90-43 and to be disbursed as provided therein.

(e) The Board of Dental Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered dentists, for the issuance and the receipt of envelopes and ballots. (1935, c. 66, s. 1; 1957, c. 592, s. 1; 1961, c. 213, s. 1; 1971, c. 755, s. 1; 1973, c. 1331, s. 3; 1979, 2nd Sess., c. 1195, ss. 1-5; 1981, c. 751, ss. 1, 2; 1987, c. 827, s. 1.)

§ 90-23. Officers; common seal.

The North Carolina State Board of Dental Examiners shall, at each annual meeting thereof, elect one of its members president and one secretary-treasurer. The common seal which has already been adopted by said Board, pursuant to law, shall be continued as the seal of said Board. (1935, c. 66, s. 2.)

§ 90-24. Quorum; adjourned meetings.

A majority of the members of said Board shall constitute a quorum for the transaction of business and at any meeting of the Board, if a majority of the members are not present at the time and the place appointed for the meeting, those members of the Board present may adjourn from day to day until a quorum is present, and the action of the Board taken at any adjourned meeting thus had shall have the same force and effect as if had upon the day and at the hour of the meeting called and adjourned from day to day. (1935, c. 66, s. 2; 1981, c. 751, s. 3.)

§ 90-25. Records and transcripts.

The said Board shall keep a record of its transactions at all annual or special meetings and shall provide a record book in which shall be entered the names and proficiency of all persons to whom licenses may be granted under the provisions of law. The said book shall show, also, the license number and the date upon which such license was issued and shall show such other matters as in the opinion of the Board may be necessary or proper. Said book shall be deemed a book of record of said Board and a transcript of any entry therein or a certification that there is not entered therein the name, proficiency and license number or date of granting such license, certified under the hand of the secretary-treasurer, attested by the seal of the North Carolina State Board of Dental Examiners, shall be admitted as evidence in any court of this State when the same shall otherwise be competent. (1935, c. 66, s. 2.)

§ 90-26. Annual and special meetings.

The North Carolina State Board of Dental Examiners shall meet annually on the date and at the time and place as may be determined by the Board, and at such other dates, times, and places as may be determined by action of the Board or by any majority of the members thereof. Notice of the date, time, and place of the annual meeting and of the date, time, and place of any special or called meeting shall be given in writing, by registered or certified mail or personally, to each member of the Board at least 10 days prior to said meeting; provided the requirements of notice may be waived by any member of the Board. At the annual meeting or at any special or called meeting, the said Board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice. (1935, c. 66, s. 3; 1961, c. 446, s. 1; 1981, c. 751, s. 4; 1995 (Reg. Sess., 1996), c. 584, s. 5.)

§ 90-27. Judicial powers; additional data for records.

The president of the North Carolina State Board of Dental Examiners, and/or the secretary-treasurer of said Board, shall have the power to administer oaths, issue subpoenas requiring the attendance of persons and the production of papers and records before said Board in any hearing, investigation or proceeding conducted by it. The sheriff or other proper official of any county of the State shall serve the process issued by said president or secretary-treasurer of said Board pursuant to its requirements and in the same manner as process issued by any court of record. The said Board shall pay for the service of all process, such fees as are provided by law for the service of like process in other cases.

Any person who shall neglect or refuse to obey any subpoena requiring him to attend and testify before said Board or to produce books, records or documents shall be guilty of a Class 1 misdemeanor.

The Board shall have the power, upon the production of any papers, records or data, to authorize certified copies thereof to be substituted in the permanent record of the matter in which such books, records or data shall have been introduced in evidence. (1935, c. 66, s. 4; 1993, c. 539, s. 616; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-28. Bylaws and regulations; acquisition of property.

(a) The North Carolina State Board of Dental Examiners shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this Article, regarding

any matter referred to in this Article and for the purpose of facilitating the transaction of business by the Board.

(b) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. (1935, c. 66, s. 5; 2005-366, s. 3.)

§ 90-29. Necessity for license; dentistry defined; exemptions.

(a) No person shall engage in the practice of dentistry in this State, or offer or attempt to do so, unless such person is the holder of a valid license or certificate of renewal of license duly issued by the North Carolina State Board of Dental Examiners.

(b) A person shall be deemed to be practicing dentistry in this State who does, undertakes or attempts to do, or claims the ability to do any one or more of the following acts or things which, for the purposes of this Article, constitute the practice of dentistry:

(1) Diagnoses, treats, operates, or prescribes for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity;

(2) Removes stains, accretions or deposits from the human teeth;

(3) Extracts a human tooth or teeth;

(4) Performs any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with any artificial substance, material or device;

(5) Corrects the malposition or malformation of the human teeth;

(6) Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;

(6a) Expired pursuant to Session Laws 1991, c. 678, s. 2.

(7) Takes or makes an impression of the human teeth, gums or jaws;

(8) Makes, builds, constructs, furnishes, processes, reproduces, repairs, adjusts, supplies or professionally places in the human mouth any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, except to the extent the same may lawfully be performed in accordance with the provisions of G.S. 90-29.1 and 90-29.2;

(9) Uses a Roentgen or X-ray machine or device for dental treatment or diagnostic purposes, or gives interpretations or readings of dental Roentgenograms or X rays;

(10) Performs or engages in any of the clinical practices included in the curricula of recognized dental schools or colleges;

(11) Owns, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein any one or

more of the acts or practices set forth in subdivisions (1) through (10) above are done, attempted to be done, or represented to be done;

(12) Uses, in connection with his name, any title or designation, such as "dentist," "dental surgeon," "doctor of dental surgery," "D.D.S.," "D.M.D.," or any other letters, words or descriptive matter which, in any manner, represents him as being a dentist able or qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) above;

(13) Represents to the public, by any advertisement or announcement, by or through any media, the ability or qualification to do or perform any of the acts or practices set forth in subdivisions (1) through (10) above.

(c) The following acts, practices, or operations, however, shall not constitute the unlawful practice of dentistry:

(1) Any act by a duly licensed physician or surgeon performed in the practice of his profession;

(2) The practice of dentistry, in the discharge of their official duties, by dentists in any branch of the Armed Forces of the United States or in the full-time employ of any agency of the United States;

(3) The teaching or practice of dentistry, in dental schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, by any person or persons licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction until December 31, 2002. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee.

(4) The practice of dentistry in dental schools or colleges in this State approved by the North Carolina State Board of Dental Examiners by students enrolled in such schools or colleges as candidates for a doctoral degree in dentistry when such practice is performed as a part of their course of instruction and is under direct supervision of a dentist who is either duly licensed in North Carolina or qualified under subdivision (3) above as a teacher; additionally, the practice of dentistry by such students at State or county institutions with resident populations, hospitals, State or county health departments, area health education centers, nonprofit health care facilities serving low-income populations and approved by the State Health Director or his designee and approved by the Board of Dental Examiners, and State or county-owned nursing homes; subject to review and approval or disapproval by the said Board of Dental Examiners when in the opinion of the dean of such dental school or college or his designee, the students' dental education and experience are adequate therefor, and such practice is a part of the course of instruction of such students, is performed under the direct supervision of a duly licensed dentist acting as a teacher or instructor, and is without remuneration except for expenses and subsistence all as defined and permitted by the rules and regulations of said Board of Dental Examiners. Should the Board disapprove a specific program, the Board shall within 90 days inform the dean of its actions. Nothing herein shall be construed to permit the teaching of, delegation to or performance by any dental hygienist, dental assistant, or other auxiliary relative

to any program of extramural rotation, of any function not heretofore permitted by the Dental Practice Act, the Dental Hygiene Act or by the rules and regulations of the Board;

(5) The temporary practice of dentistry by licensed dentists of another state or of any territory or country when the same is performed, as clinicians, at meetings of organized dental societies, associations, colleges or similar dental organizations, or when such dentists appear in emergency cases upon the specific call of a dentist duly licensed to practice in this State;

(6) The practice of dentistry by a person who is a graduate of a dental school or college approved by the North Carolina State Board of Dental Examiners and who is not licensed to practice dentistry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Dental Examiners pursuant to the terms and provisions of this Article, and when such practice of dentistry complies with the conditions of said intern permit, or provisional license;

(7) Any act or acts performed by a dental hygienist when such act or acts are lawfully performed pursuant to the authority of Article 16 of this Chapter 90 or the rules and regulations of the Board promulgated thereunder;

(8) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;

(9) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board;

(10) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of subdivision (3) above;

(11) The extraoral construction, manufacture, fabrication or repair of prosthetic dentures, bridges, appliances, corrective devices, or other structures designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, by a person or entity not licensed to practice dentistry in this State, when the same is done or performed solely upon a written work order in strict compliance with the terms, provisions, conditions and requirements of G.S. 90-29.1 and 90-29.2.

(12) The use of a dental x-ray machine in the taking of dental radiographs by a dental hygienist, certified dental assistant, or a dental assistant who can show evidence of satisfactory performance on an equivalency examination, recognized by the Board of Dental Examiners, based on seven hours of instruction in the production and use of dental x rays and an educational program of not less than seven hours in clinical dental radiology.

(13) A dental assistant, or dental hygienist who shows evidence of education and training in Nitrous Oxide – Oxygen Inhalant Conscious Sedation within a formal educational program may aid and assist a licensed dentist in the administration of Nitrous Oxide – Oxygen Inhalant Conscious Sedation. Any dental assistant who can show evidence of having completed an educational program recognized by the Board of not less than seven clock hours on Nitrous Oxide – Oxygen Inhalant Conscious Sedation may also aid and assist a licensed dentist in the administration of Nitrous Oxide – Oxygen Inhalant Conscious Sedation. Any dental hygienist or dental assistant who has been employed in a dental office where Nitrous Oxide – Oxygen Inhalant Conscious Sedation was utilized, and who can show evidence of performance and instruction of not less than one year prior to July 1, 1980, qualifies to aid and assist a licensed dentist in the administration of Nitrous Oxide – Oxygen Inhalant Conscious Sedation.

(14) The operation of a nonprofit health care facility serving low-income populations and approved by the State Health Director or his designee and approved by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 6; 1953, c. 564, s. 3; 1957, c. 592, s. 2; 1961, c. 446, s. 2; 1965, c. 163, ss. 1, 2; 1971, c. 755, s. 2; 1977, c. 368; 1979, 2nd Sess., c. 1195, ss. 10, 15; 1991, c. 658, s. 1; c. 678, ss. 1, 2; 1997-481, ss. 5, 6; 2002-37, s. 8; 2011-183, s. 57.)

§ 90-29.1. Extraoral services performed for dentists.

Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm, or corporation so employed or engaged, when constructing or repairing such dentures, bridges, or replacements, exclusively, directly, and solely on the written work order of a licensed member of the dental profession as hereafter provided, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this Article. (1957, c. 592, s. 3; 1961, c. 446, ss. 3, 4; 1979, 2nd Sess., c. 1195, s. 6.)

§ 90-29.2. Requirements in respect to written work orders; penalty.

(a) Any licensed dentist who employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, orthodontic appliance, or other replacements, for a part of a tooth, a tooth or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

(1) The name and address of the person, firm, or corporation to which the work order is directed.

(2) The patient's name or identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work order retained by the dentist.

(3) The date on which the work order was written.

(4) A description of the work to be done, including diagrams if necessary.

(5) A specification of the type and quality of materials to be used.

(6) The signature of the dentist and the number of his license to practice dentistry.

(b) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work order and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(c) If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as "subcontractor") to perform some of the services relative to such work order, he or it shall furnish a written subwork order with respect thereto on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

(1) The name and address of the subcontractor.
(2) A number identifying the subwork order with the original work order, which number shall be endorsed on the work order received from the licensed dentist.
(3) The date on which the subwork order was written.
(4) A description of the work to be done by the subcontractor, including diagrams if necessary.
(5) A specification of the type and quality of materials to be used.
(6) The signature of the person, firm or corporation issuing the subwork order.

The subcontractor shall retain the subwork order and the issuer thereof shall retain a duplicate copy, attached to the work order received from the licensed dentist, for inspection by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(d) Any licensed dentist who:

(1) Employs or engages the services of any person, firm or corporation to construct or repair extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm, or corporation with a written work order; or
(2) Fails to retain a duplicate copy of the work order for two years; or
(3) Refuses to allow the North Carolina State Board of Dental Examiners to inspect his files of work orders

is guilty of a Class 1 misdemeanor and the North Carolina State Board of Dental Examiners may revoke or suspend his license therefor.

(e) Any such person, firm, or corporation, who:

(1) Furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or
(2) Acting as a subcontractor as described in (c) above, furnishes such services to any person, firm or corporation, without first obtaining a written subwork order from such person, firm or corporation; or
(3) Fails to retain the original work order or subwork order, as the case may be, for two years; or
(4) Refuses to allow the North Carolina State Board of Dental Examiners or its duly authorized agents, to inspect his or its files of work orders or subwork orders shall be guilty of a Class 1 misdemeanor. (1961, c. 446, s. 5; 1993, c. 539, ss. 617, 618; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-29.3. Provisional license.

(a) The North Carolina State Board of Dental Examiners shall, subject to its rules and regulations, issue a provisional license to practice dentistry to any person who is licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction, if the Board shall determine that said licensing jurisdiction imposed upon said person requirements for licensure no less exacting than those imposed by this State. A provisional licensee may engage in the practice of dentistry only in strict accordance with the terms, conditions and limitations of his license and with the rules and regulations of the Board pertaining to provisional license.

(b) A provisional license shall be valid until the date of the announcement of the results of the next succeeding Board examination of candidates for licensure to practice dentistry in this State, unless the same shall be earlier revoked or suspended by the Board.

(c) No person who has failed an examination conducted by the North Carolina State Board of Dental Examiners shall be eligible to receive a provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-39 of this Article.

(e) A provisional licensee shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-41 upon a determination of the Board that said provisional licensee has violated any of the terms or provisions of this Article. (1969, c. 804, s. 1.)

§ 90-29.4. Intern permit.

The North Carolina State Board of Dental Examiners may, in the exercise of the discretion of said Board, issue to a person who is not licensed to practice dentistry in this State and who is a graduate of a dental school, college, or institution approved by said Board, an intern permit authorizing such person to practice dentistry under the supervision or direction of a dentist duly licensed to practice in this State, subject to the following particular conditions:

(1) An intern permit shall be valid for no more than one year from the date the permit was issued. The Board may, in its discretion, renew the permit for not more than five additional one-year periods. However, no person who has attempted and failed a Board-approved written or clinical examination shall be granted an intern permit or intern permits embracing or covering an aggregate time span of more than 72 calendar months. An intern permit holder who has held an unrestricted dental license in a Board-approved state or jurisdiction for the five years immediately preceding the issuance of an intern permit in this State may, in the Board's discretion, have the intern permit renewed for additional one-year periods beyond 72 months if the intern permit holder's approved employing institution comes before the Board on the permit holder's behalf for each subsequent annual renewal;

(2) The holder of a valid intern permit may practice dentistry only under the supervision or direction of one or more dentists duly licensed to practice in this State;

(3) The holder of a valid intern permit may practice dentistry only (i) as an employee in a hospital, sanatorium, or a like institution which is licensed or approved by the State of North Carolina and approved by the North Carolina State Board of Dental Examiners; (ii) as an employee of a nonprofit health care facility serving low-income populations and approved by the State Health

Director or his designee and approved by the North Carolina State Board of Dental Examiners; or (iii) as an employee of the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when said employment is approved by the North Carolina State Board of Dental Examiners;

(4) The holder of a valid intern permit shall receive no fee or fees or compensation of any kind or nature for dental services rendered by him other than such salary or compensation as might be paid to him by the entity specified in subdivision (3) above wherein or for which said services are rendered;

(5) The holder of a valid intern permit shall not, during the term of said permit or any renewal thereof, change the place of his internship without first securing the written approval of the North Carolina State Board of Dental Examiners;

(6) The practice of dentistry by the holder of a valid intern permit shall be strictly limited to the confines of and to the registered patients of the hospital, sanatorium or institution to which he is attached or to the persons officially served by the governmental entity by whom he is employed;

(7) Any person seeking an intern permit shall first file with the North Carolina State Board of Dental Examiners such papers and documents as are required by said Board, together with the application fee authorized by G.S. 90-39. A fee authorized by G.S. 90-39 shall be paid for any renewal of said intern permit. Such person shall further supply to the Board such other documents, materials or information as the Board may request;

(8) Any person seeking an intern permit or who is the holder of a valid intern permit shall comply with such limitations as the North Carolina State Board of Dental Examiners may place or cause to be placed, in writing, upon such permit, and shall comply with such rules and regulations as the Board might promulgate relative to the issuance and maintenance of said permit in the practice of dentistry relative to the same;

(9) The holder of an intern permit shall be subject to the provisions of G.S. 90-41. (1971, c. 755, s. 3; 1997-481, s. 7; 2002-37, s. 10; 2006-41, s. 1.)

§ 90-29.5. Instructor's license.

(a) The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in this State if the person meets both of the following conditions:

(1) Is licensed to practice dentistry anywhere in the United States or in any country, territory, or other recognized jurisdiction.

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; such dental school or academic medical center shall be accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations.

(b) The holder of an instructor's license may teach and practice dentistry:

(1) In or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners;

(2) In connection with an academic medical center; and

(3) At any teaching hospital adjacent to a dental school or an academic medical center.

(c) Application for an instructor's license shall be made in accordance with the rules of the North Carolina State Board of Dental Examiners. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee. The holder of an instructor's license shall be subject to the provisions of this Article. (1979, 2nd Sess., c. 1195, s. 11; 2002-37, s. 7.)

§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.

(a) The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant for a license to practice dentistry shall be of good moral character, at least 18 years of age at the time the application is filed. The application for a dental license shall be made to the Board in writing and shall be accompanied by evidence satisfactory to the Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the Board; that the applicant is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the Board; and that the applicant has passed a clinical licensing examination, the standard of which shall be determined by the Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations or to accept the results of other Board-approved regional or national independent third-party clinical examinations that shall include procedures performed on human subjects as part of the assessment of restorative clinical competencies and that are determined by the Board to be of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in the examination. The Board may refuse to grant a license to any person guilty of cheating, deception or fraud during the examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic or clinical education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(b) The Department of Public Safety may provide a criminal record check to the North Carolina State Board of Dental Examiners for a person who has applied for a license

through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1935, c. 66, s. 7; 1971, c. 755, s. 4; 1981, c. 751, s. 5; 2002-147, s. 7; 2005-366, s. 1; 2014-100, s. 17.1(o).)

§ 90-30.1. Standards for general anesthesia and enteral and parenteral sedation; fees authorized.

The North Carolina Board of Dental Examiners may establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of general anesthesia and enteral and parenteral sedation for outpatients in the dental setting. Regulatory standards may include a permit process for general anesthesia and enteral and parenteral sedation by dentists. The requirements of any permit process adopted under the authority of this section shall include provisions that will allow a dentist to qualify for continued use of enteral sedation, if he or she is licensed to practice dentistry in North Carolina and shows the Board that he or she has been utilizing enteral sedation in a competent manner for the five years preceding January 1, 2002, and his or her office facilities pass an on-site examination and inspection by qualified representatives of the Board. For purposes of this section, oral premedication administered for minimal sedation (anxiolysis) shall not be included in the definition of enteral sedation. In order to provide the means of regulating general anesthesia and enteral and parenteral sedation, including examination and inspection of dental offices involved, the Board may charge and collect fees established by its rules for each permit application, each annual permit renewal, and each office inspection in an amount not to exceed the maximum fee amounts set forth in G.S. 90-39. (1987 (Reg. Sess., 1988), c. 1073; 1989, c. 648; 1989 (Reg. Sess., 1990), c. 1066, s. 12(a); 1995 (Reg. Sess., 1996), c. 584, s. 2; 2001-511, s. 1.)

§ 90-31. Annual renewal of licenses.

The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina State Board of Dental Examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina State Board of Dental Examiners or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Dental Examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina State Board of Dental

Examiners and receive from said Board, subject to the further provisions of this section and of this Article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe, at least six months prior to January 1 of any year.

If the application for such renewal certificate, accompanied by the fee required by this Article, is not received by the Board before January 31 of each year, an additional fee shall be charged for renewal certificate. The maximum penalty fee for late renewal is set forth in G.S. 90-39. If such application, accompanied by the renewal fee, plus the additional fee, is not received by the Board before March 31 of each year, every person thereafter continuing to practice dentistry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of dentistry and shall be subject to the penalties prescribed by G.S. 90-40. (1935, c. 66, s. 8; 1953, c. 564, s. 5; 1961, c. 446, s. 6; 1971, c. 755, s. 5; 1995 (Reg. Sess., 1996), c. 584, s. 3.)

§ 90-31.1. Continuing education courses required.

All dentists licensed under G.S. 90-30 shall be required to attend Board-approved courses of study in subjects relating to dentistry. The Board shall have authority to consider and approve courses, or providers of courses, to the end that those attending will gain (i) information on existing and new methods and procedures used by dentists, (ii) information leading to increased safety and competence in their dealings with patients and staff, and (iii) information on other matters, as they develop, that are of continuing importance to the practice of dentistry. The Board shall determine the number of hours of study within a particular period and the nature of course work required. The Board may provide exemptions or waivers from continuing education requirements where dentists are receiving alternate learning experiences or where they have limited practices. The Board shall by regulation define circumstances for exemptions or waivers for dentists who are involved in dental education or training pursuits where they gain experiences equivalent to formal continuing education courses, for those who have reached an advanced age and are semiretired or have otherwise voluntarily restricted their practices in volume and scope, and for such other situations as the Board in its discretion may determine meet the purposes of this section. (1993, c. 307, s. 1.)

§ 90-32. Contents of original license.

The original license granted by the North Carolina State Board of Dental Examiners shall bear a serial number, the full name of the applicant, the date of issuance and shall be signed by the president and the majority of the members of the said Board and attested by the seal of said Board and the secretary thereof. The certificate of renewal of license shall bear a serial number which need not be the serial number of the original license issued, the full name of the applicant and the date of issuance. (1935, c. 66, s. 8.)

§ 90-33. Displaying license and current certificate of renewal.

The license and the current certificate of renewal of license to practice dentistry issued, as herein provided, shall at all times be displayed in a conspicuous place in the office of the holder thereof and whenever requested the license and the current certificate of renewal shall be exhibited to or produced before the North Carolina State Board of Dental Examiners or to its authorized agents. (1935, c. 66, s. 8.)

§ 90-34. Refusal to grant renewal of license.

For nonpayment of fee or fees required by this Article, for failure to comply with continuing education requirements adopted by the Board under the authority of G.S. 90-31.1, or for violation of any of the terms or provisions of G.S. 90-41 concerning disciplinary actions, the North Carolina State Board of Dental Examiners may refuse to issue a certificate for renewal of license. As used in this section, the term "license" includes license, provisional license or intern permit. (1935, c. 66, s. 8; 1971, c. 755, s. 6; 1993, c. 307, s. 2.)

§ 90-35. Duplicate licenses.

When a person is a holder of a license to practice dentistry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina State Board of Dental Examiners for the issuance of a copy or a duplicate thereof accompanied by a fee that shall not exceed the maximum fee for a duplicate license or certificate set forth in G.S. 90-39. Upon the filing of the application and the payment of the fee, the said Board shall issue a copy or duplicate. (1935, c. 66, s. 8; 1961, c. 446, s. 7; 1995 (Reg. Sess., 1996), c. 584, s. 4.)

§ 90-36. Licensing practitioners of other states.

(a) The North Carolina State Board of Dental Examiners may issue a license by credentials to an applicant who has been licensed to practice dentistry in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications, is in good standing with the licensing jurisdiction, has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board, and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dentistry.

(a1) The North Carolina State Board of Dental Examiners shall issue a license by credentials to any dentist who applies for a license by credentials and who holds a current license and is in good standing with the licensing jurisdiction in one of the four states that border North Carolina provided that the dental board of the border state will also issue a license by credentials to a dentist having a license to practice in North Carolina. The requirements of subsections (b), (c) and (d) of this section shall apply to any dentist who applies for a license by credentials from a border state in accordance with this subsection.

(b) The applicant for licensure by credentials shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years immediately preceding the date of application.

(2) Has not been the subject of final or pending disciplinary action in the Armed Forces of the United States, in any state or territory in which the applicant is or has ever been licensed to practice dentistry, or in any state or territory in which the applicant has held any other professional license.

(3) Presents evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent dental care.

(4) Has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application to the North Carolina State Board of Dental Examiners, the form of which shall be determined by the Board, pay the fee required by G.S. 90-39, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet the criteria or requirements established by the Board.

(e) Repealed by Session Laws 2018-88, s. 6(b), effective October 1, 2018. (1935, c. 66, s. 9; 1971, c. 755, s. 7; 1981, c. 751, s. 6; 2002-37, s. 2; 2009-289, s. 1; 2011-183, s. 58; 2018-88, s. 6(b).)

§ 90-37. Certificate issued to dentist moving out of State.

Any dentist duly licensed by the North Carolina State Board of Dental Examiners, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said Board, upon application to said Board and the payment to it of the fee in this Article provided, shall be issued a certificate showing his full name and address, the date of license originally issued to him, the date and number of his renewal of license, and whether any charges have been filed with the Board against him. The Board may provide forms for such certificate, requiring such additional information as it may determine proper. (1935, c. 66, s. 10.)

§ 90-37.1. Limited volunteer dental license.

(a) The North Carolina State Board of Dental Examiners may issue to an applicant a "Limited Volunteer Dental License" to practice dentistry only in nonprofit health care facilities serving low-income populations in the State. Holders of a limited volunteer dental license may volunteer their professional services, without compensation, only for the purpose of helping to meet the dental health needs of these persons served by these facilities. The Board may issue a limited license to an applicant under this section who:

(1) Has an out-of-state current or expired license, or an expired license in this State, or is authorized to treat veterans of or personnel serving in the Armed Forces of the United States; and

(2) Has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), within the past five years.

(b) The limited license may be issued to an applicant who produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the

applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue a "limited volunteer dental license" to an applicant who the Board determines is unfit to practice dentistry.

(c) The applicant shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(d) The applicant shall meet all of the following conditions:

(1) Show that the applicant has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years.

(2) Show that the applicant has not been the subject of final or pending disciplinary action in any state in which the applicant has ever been licensed to practice dentistry or in any state in which the applicant has held any other professional license.

(3) Present evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent care.

(4) Present evidence that the applicant has no pending Veterans Administration or military disciplinary actions or any history of such disciplinary action.

(5) Show that the applicant has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(e) The applicant shall submit an application, the form of which shall be determined by the Board, pay the fee required under G.S. 90-39, and successfully complete examinations in Jurisprudence and Sterilization and Infection Control. The Board may charge and collect fees for license application and annual renewal as required under G.S. 90-39, except that credentialing fees applicable under G.S. 90-39(13) are waived for holders of a limited volunteer dental license.

(f) Holders of a limited volunteer dental license shall comply with the continuing dental education requirements adopted by the Board including CPR training.

(g) The holder of a limited license under this section who practices dentistry other than as authorized in this section shall be guilty of a Class 1 misdemeanor with each day's violation constituting a separate offense. Upon proof of practice other than as authorized in this section, the Board may suspend or revoke the limited license after notice to the licensee. For violations of the dental practice act or rules adopted under the act that are applicable to a limited license practice, the Board has the same authority to investigate and impose sanctions on limited license holders as it has for those holding an unlimited license.

(h) The Board shall maintain a nonexclusive list of nonprofit health care facilities serving the dental health needs of low-income populations in the State. Upon request, the Board shall consider adding other facilities to the list.

(i) The Board may adopt rules in accordance with Chapter 150B of the General Statutes to implement this section. (2002-37, s. 4; 2011-183, s. 59.)

§ 90-37.2. Temporary permits for volunteer dentists.

(a) The North Carolina State Board of Dental Examiners may issue to a person who is not licensed to practice dentistry in this State and who is a graduate of a Board-approved dental school, college, or institution a temporary volunteer permit authorizing such person to practice dentistry under the supervision or direction of a dentist duly licensed in this State. A temporary volunteer permit shall be issued only to those dentists who are licensed in another Board-approved state or jurisdiction, have never been subject to discipline, and have passed a patient-based clinical examination substantially similar to the clinical examination offered in this State. The issuance of a temporary volunteer permit is subject to the following conditions:

(1) A temporary volunteer permit shall be valid no more than one year from the date of issue; provided, however, that the Board may renew the permit for additional one-year periods.

(2) The holder of a temporary volunteer permit may practice only under the supervision or direction of one or more dentists duly licensed to practice in this State.

(3) The holder of a temporary volunteer permit may practice dentistry only: (i) as a volunteer in a hospital, sanatorium, temporary clinic, or like institution which is licensed or approved by the State of North Carolina and approved by the Board; (ii) as a volunteer for a nonprofit health care facility serving low-income populations and approved by the State Health Director or his designee or approved by the Board; or (iii) as a volunteer for the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when such service is approved by the Board.

(4) The holder of a temporary volunteer permit shall receive no fee or monetary compensation of any kind or nature for any dental service performed.

(5) The practice of dentistry by the holder of a temporary volunteer permit shall be strictly limited to the confines of and to the registered patients of the hospital, sanatorium, temporary clinic, or approved nonprofit health care facilities for which he is working or to the patients officially served by the governmental entity to which he is offering his volunteer services.

(6) The holder of a temporary volunteer permit shall be subject to discipline by the Board for those actions constituting the practice of dentistry by G.S. 90-29 occurring while practicing in this State.

(7) Any person seeking a temporary volunteer permit must file with the Board such proof as is required by the Board to determine if the applicant has a valid unrestricted dental license in another state or jurisdiction, has not been subject to discipline by any licensing board, has a proven record of clinical safety and is otherwise qualified to practice dentistry in this State.

(8) There shall be no fee associated with the issuance of a temporary volunteer permit for the practice of dentistry.

(b) The Board is authorized to make rules consistent with this section to regulate the practice of dentistry for those issued a temporary volunteer permit. (2007-346, s. 27.)

§ 90-38. Licensing former dentists who have moved back into State or resumed practice.

Any person who shall have been licensed by the North Carolina State Board of Dental Examiners to practice dentistry in this State who shall have retired from practice or who shall have moved from the State and shall have returned to the State, may, upon a satisfactory showing to

said Board of his proficiency in the profession of dentistry and his good moral character during the period of his retirement, be granted by said Board a license to resume the practice of dentistry upon making application to the said Board in such form as it may require. The license to resume practice, after issuance thereof, shall be subject to all the provisions of this Article. (1935, c. 66, s. 11; 1953, c. 564, s. 2.)

§ 90-39. Fees.

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

(1) Each application for general dentistry license $1,200

(2) Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dentist..... 600.00

(2a) Penalty for late renewal of any license or permit 100.00

(3) Each provisional license 300.00

(4) Each intern permit or renewal thereof 500.00

(5) Each certificate of license to a resident dentist desiring to change to another state or territory 75.00

(6) Repealed by Session Laws 1995, (Reg. Sess., 1996), c. 584, s. 1.

(7) Each license to resume the practice issued to a dentist who has retired from and returned to this State 500.00

(8) Each instructor's license or renewal thereof 500.00

(9) With each renewal of a dentistry license, an annual fee to help fund special peer review organizations for impaired dentists..... 100.00

(10) Each duplicate of any license, permit, or certificate issued by the Board 75.00

(11) Each office inspection for general anesthesia and parenteral sedation permits 750.00

(12) Each general anesthesia and parenteral sedation permit application or renewal of permit..... 100.00

(13) Each application for license by credentials 3,000.00

(14) Each application for limited volunteer dental license 200.00

(15) Each limited volunteer dental license annual renewal..... 50.00.

(1935, c. 66, s. 12; 1953, c. 564, s. 1; 1961, c. 446, s. 8; 1965, c. 163, s. 3; 1971, c. 755, s. 8; 1979, 2nd Sess., c. 1195, s. 12; 1987, c. 555, s. 1; 1993, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 584, s. 1; 2002-37, s. 5; 2003-348, s. 1; 2005-366, s. 2.)

§ 90-40. Unauthorized practice; penalty.

If any person shall practice or attempt to practice dentistry in this State without first having passed the examination and obtained a license from the North Carolina Board of Dental Examiners or having obtained a provisional license from said Board; or if he shall practice dentistry after March 31 of each year without applying for a certificate of renewal of license, as provided in G.S. 90-31; or shall practice or attempt to practice dentistry while his license is revoked, or suspended,

or when a certificate of renewal of license has been refused; or shall violate any of the provisions of this Article for which no specific penalty has been provided; or shall practice or attempt to practice, dentistry in violation of the provisions of this Article; or shall practice dentistry under any name other than his own name, said person shall be guilty of a Class 1 misdemeanor. Each day's violation of this Article shall constitute a separate offense. (1935, c. 66, s. 13; 1953, c. 564, s. 6; 1957, c. 592, s. 4; 1965, c. 163, s. 6; 1969, c. 804, s. 2; 1993, c. 539, s. 619; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-40.1. Enjoining unlawful acts.

(a) The practice of dentistry by any person who has not been duly licensed so as to practice or whose license has been suspended or revoked, or the doing, committing or continuing of any of the acts prohibited by this Article by any person or persons, whether licensed dentists or not, is hereby declared to be inimical to public health and welfare and to constitute a public nuisance. The Attorney General for the State of North Carolina, the district attorney of any of the superior courts, the North Carolina State Board of Dental Examiners in its own name, or any resident citizen may maintain an action in the name of the State of North Carolina to perpetually enjoin any person from so unlawfully practicing dentistry and from the doing, committing or continuing of such unlawful act. This proceeding shall be in addition to and not in lieu of criminal prosecutions or proceedings to revoke or suspend licenses as authorized by this Article.

(b) In an action brought under this section the final judgment, if in favor of the plaintiff, shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of dentistry. The provisions of the statutes or rules relating generally to injunctions as provisional remedies in actions shall apply to such a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which such acts constituting unlicensed or unlawful practice of dentistry are alleged to have been committed or in which there appear reasonable grounds to believe that they will be committed, in the county where the defendants in such action reside, or in Wake County.

(d) The plaintiff in such action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of the parties. (1957, c. 592, s. 5; 1973, c. 47, s. 2; 2012-195, s. 2.)

§ 90-40.2. Management arrangements.

(a) The following definitions apply in this section:

(1) Ancillary personnel. — Dental hygienists or dental assistants who assist licensed dentists in providing direct patient care.

(2) Clinical. — Of or relating to the activities of a dentist as described in G.S. 90-29(b)(1)-(10).

(3) Management arrangement. — Any one or more agreements or arrangements, alone or together, whether written or oral, between a management company and a dentist or professional entity whereby the management company provides services to assist in the development, promotion, delivery, financing, support, or administration of the dentist's or professional entity's dental practice.

(4) Management company. — Any individual, business corporation, nonprofit corporation, partnership, limited liability company, limited partnership, or other legal entity that is not a professional entity or dentist which provides through one or more contractual arrangements any combination of management or business support services, including, but not limited to, accounting and financial services; collection, billing, and payment services; file and records maintenance; human resources services; assistance with the acquisition of fixed assets, including the locating and procurement of office space, facilities, and equipment; maintenance of offices, equipment, furniture, and fixtures; marketing and practice development; information technology; compliance with applicable federal, State, and local laws; and clerical services.

(5) Professional entity. — A professional corporation, nonprofit corporation, partnership, professional limited liability company, professional limited partnership, or other entity or aggregation of individuals that is licensed or certified or otherwise explicitly permitted to practice dentistry under North Carolina General Statutes.

(6) Unlicensed person. — Any person or entity other than a dentist licensed in this State or registered professional entity authorized to provide dental services under this Article.

(b) A management arrangement executed on or after January 1, 2013, is invalid unless there appears on the instrument evidencing, directly above or below the space or spaces provided for the signature of the parties, in such type size or distinctive marking that it appears more clearly and conspicuously than anything else on the document:

"WARNING – YOU HAVE THE RIGHT AND ARE ENCOURAGED TO HAVE THIS CONTRACT REVIEWED BY YOUR OWN LEGAL COUNSEL PRIOR TO SIGNING."

(c) No member of the Board shall be subject to examination in connection with any investigation, inquiry, or interview related to the Board's review of any management arrangement.

(d) For actions brought under G.S. 90-40.1, the venue shall be the superior court of any county in which acts constituting unlicensed or unlawful practice of dentistry are alleged to have been committed or in which there appear reasonable grounds to believe that they will be committed, in the county where at least one defendant in the action resides, or in Wake County.

(e) If investigative information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed.

(f) The Board shall cooperate with and assist law enforcement agencies and the district attorney conducting a criminal investigation or prosecution of a licensee or person

engaged in the unauthorized practice of dentistry, including a management company, by providing information that is relevant to the criminal investigation or prosecution to the investigating agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(g) Nothing in this section shall affect the validity of any of the Board's rules or regulations which were in effect as of the effective date of this section, except to the extent that such rules or regulations directly conflict with the provisions of this section. (2012-195, s. 1.)

§ 90-41. Disciplinary action.

(a) The North Carolina State Board of Dental Examiners shall have the power and authority to (i) Refuse to issue a license to practice dentistry; (ii) Refuse to issue a certificate of renewal of a license to practice dentistry; (iii) Revoke or suspend a license to practice dentistry; and (iv) Invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper;

in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;

(2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice dentistry;

(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;

(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;

(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any state or federal narcotic or barbiturate law;

(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;

(7) Is mentally, emotionally, or physically unfit to practice dentistry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice dentistry unless or until such person shall have been subsequently lawfully declared to be mentally competent;

(8) Has conducted in-person solicitation of professional patronage or has employed or procured any person to conduct such solicitation by personal contact with potential patients, except to the extent that informal advice may be permitted by regulations issued by the Board of Dental Examiners;

(9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of dentistry or in attempting to fraudulently obtain a license to practice dentistry;

(10) Has engaged in such immoral conduct as to discredit the dental profession;
(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;
(12) Has been negligent in the practice of dentistry;
(13) Has employed a person not licensed in this State to do or perform any act or service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article or under Article 16 of this Chapter, can lawfully be done or performed only by a dentist or a dental hygienist licensed in this State;
(14) Is incompetent in the practice of dentistry;
(15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;
(16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
(17) Has committed any fraudulent or misleading acts in the practice of dentistry;
(18) Has, directly or indirectly, published or caused to be published or disseminated any advertisement for professional patronage or business which is untruthful, fraudulent, misleading, or in any way inconsistent with rules and regulations issued by the Board of Dental Examiners governing the time, place, or manner of such advertisements;
(19) Has, in the practice of dentistry, committed an act or acts constituting malpractice;
(20) Repealed by Session Laws 1981, c. 751, s. 7.
(21) Has permitted a dental hygienist or a dental assistant in his employ or under his supervision to do or perform any act or acts violative of this Article, or of Article 16 of this Chapter, or of the rules and regulations promulgated by the Board;
(22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of dentistry;
(23) Has persistently maintained, in the practice of dentistry, unsanitary offices, practices, or techniques;
(24) Is a menace to the public health by reason of having a serious communicable disease;
(25) Has distributed or caused to be distributed any intoxicant, drug or narcotic for any other than a lawful purpose; or
(26) Has engaged in any unprofessional conduct as the same may be, from time to time, defined by the rules and regulations of the Board.

(b) If any person engages in or attempts to engage in the practice of dentistry while his license is suspended, his license to practice dentistry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article or of Article 16.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or of Article 16 or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license, instructor's license, and intern permit.

(g) Records, papers, and other documents containing information collected or compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any investigation, inquiry, or interview; and provided, further, that if any record, paper, or other document containing information collected and compiled by the Board is received and admitted into evidence in any hearing before the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes. (1935, c. 66, s. 14; 1957, c. 592, s. 7; 1965, c. 163, s. 4; 1967, c. 451, s. 1; 1971, c. 755, s. 9; 1979, 2nd Sess., c. 1195, ss. 7, 8; 1981, c. 751, s. 7; 1989, c. 442; 1997-456, s. 27; 2002-37, s. 9.)

§ 90-41.1. Hearings.

(a) With the exception of applicants for license by comity and applicants for reinstatement after revocation, every licensee, provisional licensee, intern, or applicant for license, shall be afforded notice and opportunity to be heard before the North Carolina State Board of Dental Examiners shall take any action, the effect of which would be:

(1) To deny permission to take an examination for licensing for which application has been duly made; or
(2) To deny a license after examination for any cause other than failure to pass an examination; or
(3) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
(4) To suspend a license; or
(5) To revoke a license; or
(6) To revoke or suspend a provisional license or an intern permit; or
(7) To invoke any other disciplinary measures, censure, or probative terms against a licensee, a provisional licensee, or an intern,

such proceedings to be conducted in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(b) In lieu of or as a part of such hearing and subsequent proceedings, the Board is authorized and empowered to enter any consent order relative to the discipline, censure, or probation of a licensee, provisional licensee, an intern, or an applicant for a license, or relative to the revocation or suspension of a license, provisional license, or intern permit.

(c) Following the service of the notice of hearing as required by Chapter 150B of the General Statutes, the Board and the person upon whom such notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process

as might be necessary or proper to effect the purposes of this subsection; provided, however, that no member of the Board shall be subject to examination hereunder. (1967, c. 451, s. 2; 1969, c. 804, s. 3; 1971, c. 755, s. 10; 1973, c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 90-42. Restoration of revoked license.

Whenever any dentist has been deprived of his license, the North Carolina State Board of Dental Examiners, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licentiate, before restoration. (1935, c. 66, s. 14.)

§ 90-43. Compensation and expenses of Board.

Notwithstanding G.S. 93B-5(a), each member of the North Carolina State Board of Dental Examiners shall receive as compensation for his services in the performance of his duties under this Article a sum not exceeding one hundred dollars ($100.00) for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said Board, and all legitimate and necessary expenses incurred in attending meetings of the said Board.

The Board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this Article, and employ such personnel as it may deem requisite to assist in carrying out the administrative functions required by this Article and by the Board. (1935, c. 66, s. 15; 1965, c. 163, s. 5; 1971, c. 755, s. 11; 1979, 2nd Sess., c. 1195, s. 9; 1989 (Reg. Sess., 1990), c. 892.)

§ 90-44. Annual report of Board.

Said Board shall, on or before the fifteenth day of February in each year, make an annual report as of the thirty-first day of December of the year preceding, of its proceedings, showing therein the examinations given, the fees received, the expenses incurred, the hearings conducted and the result thereof, which said report shall be filed with the Governor of the State of North Carolina. (1935, c. 66, s. 15.)

§ 90-45. Repealed by Session Laws 1967, c. 218, s. 4.

§ 90-46. Filling prescriptions.

Legally licensed druggists of this State may fill prescriptions of dentists duly licensed by the North Carolina State Board of Dental Examiners. (1935, c. 66, s. 17.)

§ 90-47. Repealed by Session Laws 1979, 2nd Sess., c. 1195, s. 13.

§ 90-48. Rules and regulations of Board; violation a misdemeanor.

The North Carolina State Board of Dental Examiners shall be and is hereby vested, as an agency of the State, with full power and authority to enact rules and regulations governing the practice of dentistry within the State, provided such rules and regulations are not inconsistent with the provisions of this Article. Such rules and regulations shall become effective 30 days after passage, and the same may be proven, as evidence, by the president and/or the secretary-treasurer of the Board, and/or by certified copy under the hand and official seal of the secretary-treasurer. A certified copy of any rule or regulation shall be receivable in all courts as prima facie evidence thereof if otherwise competent, and any person, firm, or corporation violating any such rule,

regulation, or bylaw shall be guilty of a Class 2 misdemeanor, and each day that this section is violated shall be considered a separate offense.

The Board shall issue every two years to each licensed dentist a compilation or supplement of the Dental Practice Act and the Board rules and regulations, and upon written request therefor by such licensed dentist, a directory of dentists. (1935, c. 66, s. 19; 1957, c. 592, s. 6; 1971, c. 755, s. 12; 1993, c. 539, s. 620; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-48.1. Free choice by patient guaranteed.

No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed dentist as the provider of care or services which are within the scope of practice of the profession of dentistry as defined in this Chapter. (1965, c. 1169, s. 3.)

§ 90-48.2. Board agreements with special peer review organizations for impaired dentists.

(a) The State Board of Dental Examiners may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired dentist peer review organizations formed by the North Carolina Dental Society. The organizations shall be made up of Dental Society members designated by the Society, the Board, and the Dental School of the University of North Carolina. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of dentists licensed by the Board, as such matters may relate to impaired dentists. Special impaired dentist peer review organizations may include a statewide supervisory committee and various regional and local components or subgroups. The statewide supervisory committee shall consist of representatives from the North Carolina Dental Society, the UNC School of Dentistry, and the Board. When the statewide supervisory committee considers activities and programs that relate to impaired dental hygienists pursuant to G.S. 90-48.3, its membership shall be expanded to include two dental hygienists appointed upon the recommendation of the dental hygienist member of the Board.

(b) Agreements authorized under this section shall include provisions for the impaired dentist peer review organizations to receive relevant information from the Board and other sources, conduct any investigation, review, and evaluation in an expeditious manner, provide assurance of confidentiality of nonpublic information and of the peer review process, make reports of investigations and evaluations to the Board, and to do other related activities for operating and promoting a coordinated and effective peer review process. The agreements shall include provisions assuring basic due process for dentists that become involved.

(c) The impaired dentist peer review organizations that enter into agreements with the Board shall establish and maintain a program for impaired dentists licensed by the Board for the purpose of identifying, reviewing and evaluating the ability of those dentists to function as dentists, and to provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired dentist peer review programs. The Board shall adopt rules to apply to the operation of impaired dentist peer review programs, with provisions for: definitions of impairment; guidelines for program elements; procedures for receipt and use of information of suspected impairment; procedures for intervention and referral; arrangements for monitoring treatment, rehabilitation, posttreatment support and performance; reports of individual cases to the

Board; periodic reporting of statistical information; and assurance of confidentiality of nonpublic information and of the peer review process.

(d) Upon investigation and review of a dentist licensed by the Board, or upon receipt of a complaint or other information, an impaired dentist peer review organization that enters into a peer review agreement with the Board shall report immediately to the Board detailed information about any dentist licensed by the Board, if:

(1) The dentist constitutes an imminent danger to the public or himself;

(2) The dentist refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Impaired dentist peer review organizations operating pursuant to this section shall have the same protections and responsibilities as traditional State and local dental society peer review committees under Article 2A of this Chapter. In addition, any confidential patient information and other nonpublic information acquired, created, or used in good faith by an impaired dentist peer review organization pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. No person participating in good faith in an impaired dentist peer review program developed under this section shall be required in a civil case to disclose any information (including opinions, recommendations, or evaluations) acquired or developed solely in the course of participating in the program.

(f) Impaired dentist peer review activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws. (1993, c. 420, s. 2; 1999-382, s. 4.)

§ 90-48.3. Board authority to include impaired dental hygienists in programs developed for impaired dentists.

The Board may enter into agreements with special impaired dentist peer review organizations to include programs for impaired dental hygienists, and the provisions of G.S. 90-48.2 shall apply to any such agreements and programs. Special impaired dentist peer review organizations shall have the authority to appoint to the organizations, upon the recommendation of the dental hygienist member of the Board, one additional member who is a licensed dental hygienist and the member shall participate in activities and programs as they relate to impaired dental hygienists. Peer liaisons and volunteers participating in programs for impaired dental hygienists shall be dental hygienists. Dental hygienists who work with special impaired dentist peer review organizations in conducting programs for impaired dental hygienists shall have the same protections and responsibilities as members of traditional State and local dental society peer review committees under Article 2A of this Chapter and as provided in G.S. 90-48.2. The provisions of G.S. 90-48.2 regarding confidentiality shall also be applicable to all dental hygienist activities authorized under this section. (1999-382, s. 1.)

§§ 90-48.4 through 90-48.6. Reserved for future codification purposes.

Article 2A.

Dental Peer Review Protection Act.

§ 90-48.7. Title.

General Statutes 90-48.7 through G.S. 90-48.11 may be cited as the "Dental Peer Review Protection Act." (1979, 2nd Sess., c. 1192, s. 1.)

§ 90-48.8. Immunity of a member.

No member of a dental peer review committee of a State or local dental society shall be held liable in damages to any person for any action taken or recommendation made within the scope of the functions of that committee, except with regard to Medicare and Medicaid charges or payments if the committee member acts without malice and in reasonable belief that the action or recommendation was warranted by the facts known to him after reasonable effort to obtain the facts of the matter as to which the action was taken or recommendation was made. (1979, 2nd Sess., c. 1192, s. 1.)

§ 90-48.9. Immunity of witnesses before dental peer review committee.

Notwithstanding any other provision of law, no person providing information to any dental peer review committee or organization shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law unless:

(1) The information is unrelated to the performance of the duty or function of the peer review committee or organization, or

(2) The information is false, and the person providing the information knew, or had good reason to believe that the information was false. (1979, 2nd Sess., c. 1192, s. 1.)

§ 90-48.10. Confidentiality of review organization's proceedings and records.

The proceedings and records of a dental review committee except those concerning the investigation and consideration of Medicare and Medicaid charges or payments, shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action arising out of the matters which are the subject of evaluation and review by the committee; and no person who was in attendance at a meeting of the committee shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members thereof, except with regard to Medicare and Medicaid charges or payments: Provided, however, that information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during proceedings of a committee, nor should any person who testifies before a committee or who is a member of a committee be prevented from testifying as to matters within his knowledge, but the witness shall not be asked about his testimony before a committee or opinions formed by him as a result of the committee hearings, except with regard to Medicare and Medicaid charges or payments. (1979, 2nd Sess., c. 1192, s. 1.)

§ 90-48.11. No limitation on previous privileges and immunities.

Nothing in this G.S. 90-48.7 through G.S. 90-48.11 shall be deemed to annul, abridge, or limit in any manner any privileges or immunities heretofore existing under the laws of this State. (1979, 2nd Sess., c. 1192, s. 1.)

Article 3.

The Licensing of Mouth Hygienists to Teach and Practice Mouth Hygiene in Public Institutions.

§§ 90-49 through 90-52. Repealed by Session Laws 1945, c. 639, s. 14.

Article 4.

Pharmacy.

Part 1. Practice of Pharmacy.

§§ 90-53 through 90-75. Recodified as §§ 90-85.2 to 90-85.26, 90-85.32 to 90-85.40.

§ 90-76. Repealed by Session Laws 1979, c. 1017, s. 1, effective January 1, 1980.

Part 1A. Drug Product Selection.

§§ 90-76.1 through 90-76.5: Recodified as §§ 90-85.27 to 90-85.31 pursuant to Session Laws 1981 (Regular Session, 1982), c. 1188, s. 3.

§ 90-76.6. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1188, s. 4, effective July 1, 1982.

Part 2. Dealing in Specific Drugs Regulated.

§§ 90-77 through 90-80.1. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1188, s. 5, effective July 1, 1982.

§§ 90-81 through 90-85. Repealed by Session Laws 1955, c. 1330, s. 8.

§ 90-85.1. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1188, s.5.

Article 4A.

North Carolina Pharmacy Practice Act.

Part 1. North Carolina Pharmacy Practice Act.

§ 90-85.2. Legislative findings.

The General Assembly of North Carolina finds that mandatory licensure of all who engage in the practice of pharmacy is necessary to insure minimum standards of competency and to protect the public from those who might otherwise present a danger to the public health, safety and welfare. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.3. Definitions.

(a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.

(b) "Board" means the North Carolina Board of Pharmacy.

(b1) "Certified pharmacy technician" means a pharmacy technician who (i) has passed a nationally recognized pharmacy technician certification board examination, or its equivalent, that has been approved by the Board and (ii) obtains and maintains certification from a nationally recognized pharmacy technician certification board that has been approved by the Board.

(b2) "Clinical pharmacist practitioner" means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of G.S. 90-18.4.

(c) "Compounding" means taking two or more ingredients and combining them into a dosage form of a drug, exclusive of compounding by a drug manufacturer, distributor, or packer.

(d) "Deliver" means the actual, constructive or attempted transfer of a drug, a device, or medical equipment from one person to another.

(e) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, whose label or labeling bears the statement "Caution: federal law requires dispensing by or on the order of a physician." The term does not include:

(1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;

(2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs.

(f) "Dispense" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by State and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".

(g) "Drug" means:

(1) Any article recognized as a drug in the United States Pharmacopeia, or in any other drug compendium or any supplement thereto, or an article recognized as a drug by the United States Food and Drug Administration;

(2) Any article, other than food or devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(3) Any article, other than food or devices, intended to affect the structure or any function of the body of man or other animals; and

(4) Any article intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection.

(h) "Emancipated minor" means any person under the age of 18 who is or has been married or who is or has been a parent; or whose parents or guardians have surrendered

their rights to the minor's services and earnings as well as their right to custody and control of the minor's person; or who has been emancipated by an appropriate court order.

(i) "Health care provider" means any licensed health care professional; any agent or employee of any health care institution, health care insurer, health care professional school; or a member of any allied health profession.

(i1) "Immunizing pharmacist" means a licensed pharmacist who meets all of the following qualifications:

(1) Holds a current provider level cardiopulmonary resuscitation certification issued by the American Heart Association or the American Red Cross, or an equivalent certification.

(2) Has successfully completed a certificate program in vaccine administration accredited by the Centers for Disease Control and Prevention, the Accreditation Council for Pharmacy Education, or a similar health authority or professional body approved by the Board.

(3) Maintains documentation of three hours of continuing education every two years, designed to maintain competency in the disease states, drugs, and vaccine administration.

(4) Has successfully completed training approved by the Division of Public Health's Immunization Branch for participation in the North Carolina Immunization Registry.

(5) Has notified the North Carolina Board of Pharmacy and the North Carolina Medical Board of immunizing pharmacist status.

(6) Administers vaccines or immunizations in accordance with G.S. 90-18.15B.

(j) "Label" means a display of written, printed or graphic matter upon the immediate or outside container of any drug.

(k) "Labeling" means preparing and affixing a label to any drug container, exclusive of labeling by a manufacturer, packer or distributor of a nonprescription drug or a commercially packaged prescription drug or device.

(l) "License" means a license to practice pharmacy including a renewal license issued by the Board.

(l1) "Medical equipment" means any of the following items that are intended for use by the consumer in the consumer's place of residence:

(1) A device.

(2) Ambulation assistance equipment.

(3) Mobility equipment.

(4) Rehabilitation seating.

(5) Oxygen and respiratory care equipment.

(6) Rehabilitation environmental control equipment.

(7) Diagnostic equipment.

(8) A bed prescribed by a physician to treat or alleviate a medical condition.

The term "medical equipment" does not include (i) medical equipment used or dispensed in the normal course of treating patients by or on behalf of home care agencies, hospitals, and nursing facilities licensed under Chapter 131E of the General Statutes or hospitals or agencies licensed under Article 2 of Chapter 122C of the General Statutes; (ii) medical equipment used or dispensed by professionals licensed under Chapters 90 or 93D of the General Statutes, provided the

professional is practicing within the scope of that professional's practice act; (iii) upper and lower extremity prosthetics and related orthotics; or (iv) canes, crutches, walkers, and bathtub grab bars.

(l2) "Mobile pharmacy" means a pharmacy that meets all of the following conditions:

(1) Is either self-propelled or moveable by another vehicle that is self-propelled.

(2) Is operated by a nonprofit corporation.

(3) Dispenses prescription drugs at no charge or at a reduced charge to persons whose family income is less than two hundred percent (200%) of the federal poverty level and who do not receive reimbursement for the cost of the dispensed prescription drugs from Medicare, Medicaid, a private insurance company, or a governmental unit.

(m) "Permit" means a permit to operate a pharmacy, deliver medical equipment, or dispense devices, including a renewal license issued by the Board.

(n) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.

(o) "Person in loco parentis" means the person who has assumed parental responsibilities for a child.

(p) "Pharmacist" means a person licensed under this Article to practice pharmacy.

(q) "Pharmacy" means any place where prescription drugs are dispensed or compounded.

(q1) "Pharmacy personnel" means pharmacists and pharmacy technicians.

(q2) "Pharmacy technician" means a person who may, under the supervision of a pharmacist, perform technical functions to assist the pharmacist in preparing and dispensing prescription medications.

(r) "Practice of pharmacy" is as specified in G.S. 90-85.3A.

(s) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement:

"Caution: Federal law prohibits dispensing without prescription."

(t) "Prescription order" means a written or verbal order for a prescription drug, prescription device, or pharmaceutical service from a person authorized by law to prescribe such drug, device, or service. A prescription order includes an order entered in a chart or other medical record of a patient.

(u) "Unit dose medication system" means a system in which each dose of medication is individually packaged in a properly sealed and properly labeled container. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, ss. 1-3; 1991, c. 578, s. 1; 1993 (Reg. Sess., 1994), c. 692, s. 2; 1995, c. 94, s. 24; 1999-246, s. 1; 1999-290, ss. 4, 5; 2001-375, s. 1; 2002-159, s. 37; 2013-246, ss. 1, 2; 2013-379, s. 1.)

§ 90-85.3A. Practice of pharmacy.

(a) A pharmacist is responsible for interpreting and evaluating drug orders, including prescription orders; compounding, dispensing, and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services.

(b) A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses, and significant problems of drugs and devices; assess, record, and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record, and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31.

(c) An immunizing pharmacist is authorized and permitted to administer drugs as provided in G.S. 90-85.15B, and in accordance with rules adopted by each of the Board of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. These rules shall be designed to ensure the safety and health of the patients for whom such drugs are administered.

(d) An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient subject to the provisions of G.S. 90-18.4. (2013-246, s. 3.)

§ 90-85.4. North Carolina Pharmaceutical Association.

The North Carolina Pharmaceutical Association, and the persons composing it, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by that name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do any other things and perform any other acts as appertain to bodies corporate and politic not inconsistent with the Constitution and laws of the State. (1881, c. 355, s. 1; Code, s. 3135; Rev., s. 4471; C.S., s. 6650; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.5. Objective of Pharmaceutical Association.

The objective of the Association is to unite the pharmacists of this State for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent and to elevate the standard of professional thought. (1881, c. 355, s. 2; Code, s. 3136; Rev., s. 4472; C.S., s. 6651; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1991, c. 125, s. 1.)

§ 90-85.6. Board of Pharmacy; creation; membership; qualification of members.

(a) Creation. – The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. – The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. – The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time

of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members. (1905, c. 108, ss. 5-7, 9; Rev., ss. 4473, 4475; 1907, c. 113, s. 1; C.S., ss. 6652, 6654; 1945, c. 572, s. 1; 1981, c. 717, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1997-177, s. 1.)

§ 90-85.7. Board of Pharmacy; selection; vacancies; commission; term; per diem; removal.

(a) The Board of Pharmacy shall consist of six persons. Five of the members shall be licensed as pharmacists within this State and shall be elected and commissioned by the Governor as hereinafter provided. Pharmacist members shall be chosen in an election held as hereinafter provided in which every person licensed to practice pharmacy in North Carolina and residing in North Carolina shall be entitled to vote. Each pharmacist member of said Board shall be elected for a term of five years and until his successor shall be elected and shall qualify. Members chosen by election under this section shall be elected upon the expiration of the respective terms of the members of the present Board of Pharmacy. No pharmacist shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice pharmacy in North Carolina. In case of death, resignation or removal from the State of any pharmacist member of said Board, the pharmacist members of the Board shall elect in his place a pharmacist who meets the criteria set forth in this section to fill the unexpired term.

One member of the Board shall be a person who is not a pharmacist and who represents the interest of the public at large. The Governor shall appoint this member.

All Board members serving on June 30, 1989, shall be eligible to complete their respective terms. No member appointed or elected to a term on or after July 1, 1989, shall serve more than two complete consecutive five-year terms. The Governor may remove any member appointed by him for good cause shown and may appoint persons to fill unexpired terms of members appointed by him.

It shall be the duty of a member of the Board of Pharmacy, within 10 days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

(b) All nominations and elections of pharmacist members of the Board shall be conducted by the Board of Pharmacy, which is hereby constituted a Board of Pharmacy Elections. Every pharmacist with a current North Carolina license residing in this State shall be eligible to vote in all elections. The list of pharmacists shall constitute the registration list for elections. The Board of Pharmacy Elections is authorized to make rules and regulations relative to the conduct of these elections, provided such rules and regulations are not in conflict with the provisions of this section and provided that notice shall be given to all pharmacists residing in North Carolina. All such rules and regulations shall be adopted subject to the procedures of Chapter 150B of the General Statutes of North Carolina. From any decision of the Board of Pharmacy Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes.

(c) All rules, regulations, and bylaws of the North Carolina Board of Pharmacy so far as they are not inconsistent with the provisions of this Article, shall continue in effect.

(d) Notwithstanding G.S. 93B-5, Board members shall receive as compensation for their services per diem not to exceed one hundred dollars ($100.00) for each day during which they are engaged in the official business of the Board. (1905, c. 108, ss. 5-7; Rev., s. 4473; C.S., s. 6652;

1981, c. 717, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, s. 4; 1989, c. 118; 1989 (Reg. Sess., 1990), c. 825.)

§ 90-85.8. Organization.

The Board shall elect from its members a president, vice-president, and other officers as it deems necessary. The officers shall serve one-year terms and until their successors have been elected and qualified. (1905, c. 108, s. 8; Rev., s. 4474; C.S., s. 6653; 1923, c. 82; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.9. Meetings.

The Board shall meet at least twice annually for the purpose of administering examinations and conducting other business. Four Board members constitute a quorum. The Board shall keep a record of its proceedings, a register of all licensed persons, and a register of all persons to whom permits have been issued. The Board shall report, in writing, annually to the Governor and the presiding officer of each house of the General Assembly. (1905, c. 108, s. 8; Rev., s. 4474; C.S., s. 6653; 1923, c. 82; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.10. Employees; Executive Director.

The Board shall employ as Executive Director a pharmacist to serve as a full-time employee of the Board. The Executive Director shall serve as secretary and treasurer of the Board and shall perform administrative functions as authorized by the Board. The Board shall have the authority to employ other personnel as it may deem necessary to carry out the requirements of this Article. (1905, c. 108, s. 9; Rev., s. 4475; 1907, c. 113, s. 1; C.S., s. 6654; 1945, c. 572, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.11. Compensation of employees.

The Board shall determine the compensation of its employees. Employees shall be reimbursed for all necessary expenses incurred in the performance of their official duties. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.11A. Acquisition of real property; equipment; liability insurance.

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees. (2001-407, s. 1.)

§ 90-85.12. Executive Director to make investigations and prosecute.

(a) Upon receiving information concerning a violation of this Article that is a threat to the public safety, health, or welfare, the Executive Director shall promptly conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing. If the Executive Director receives information concerning a violation of this Article that does not pose a threat to the public safety, health, or welfare, the Executive Director may

conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing.

(b) In all prosecutions of unlicensed persons for the violation of any of the provisions of this Article, a certificate signed under oath by the Executive Director shall be competent and admissible evidence in any court of this State that the person is not licensed, as required by law. (1905, c. 108, s. 11; Rev., s. 4477; C.S., s. 6656; 1923, c. 74, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 2005-402, s. 1.2.)

§ 90-85.13. Approval of schools and colleges of pharmacy.

The Board shall approve schools and colleges of pharmacy upon a finding that students successfully completing the course of study offered by the school or college can reasonably be expected to practice pharmacy safely and properly. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.14. Practical experience program.

The Board shall issue regulations governing a practical experience program. These regulations shall assure that the person successfully completing the program will have gained practical experience that will enable him to safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.15. Application, qualifications, and criminal record check for licensure as a pharmacist; prerequisites.

(a) Each applicant for licensure under this Article as a pharmacist shall file an application with the Executive Director on the form furnished by the Board, verified under oath, setting forth all of the following:

(1) The applicant's name.
(2) The applicant's age.
(3) The place at which and the time that the applicant has spent in the study of pharmacy.
(4) The applicant's experience in compounding and dispensing prescriptions under the supervision of a pharmacist.

(b) The Board shall license an applicant to practice pharmacy if, in addition to completing an application as specified in subsections (a) of this section, the applicant meets all of the following qualifications:

(1) Holds an undergraduate degree from a school of pharmacy approved by the Board.
(2) Has had up to one year of experience, approved by the Board, under the supervision of a pharmacist.
(3) Has passed the required examination offered by the Board.
(4) Has appeared at a time and place designated by the Board and submitted to an examination as to the applicant's qualifications for being licensed. The applicant must demonstrate to the Board the physical and mental competency to practice pharmacy.

(c) The Board shall require each applicant to provide the Board with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. The Board shall keep

all information obtained pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. Applicants are required to pay the designated reporting service for the cost of these reports. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C.S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; 1971, c. 481; 1981, c. 717, s. 4; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, s. 5; 2002-147, s. 8; 2014-100, s. 17.1(o); 2017-144, s. 1.)

§ 90-85.15A. Pharmacy technicians.

(a) Registration, Generally. – A registration program for pharmacy technicians is established for the purposes of identifying those persons who are employed or are eligible for employment as pharmacy technicians. The Board must maintain a registry of pharmacy technicians that contains the name of each pharmacy technician, the name and location of a pharmacy in which the pharmacy technician works, the pharmacist-manager who employs the pharmacy technician, and the dates of that employment.

(a1) Registration of Noncertified Pharmacy Technicians. – The Board must register a pharmacy technician who pays the fee required under G.S. 90-85.24, is employed by a pharmacy holding a valid permit under this Article, and completes a required training program provided by the supervising pharmacist-manager as specified in subsection (b) of this section. A pharmacy technician must register with the Board within 30 days after the date the pharmacy technician completes a training program provided by the supervising pharmacist-manager. The registration must be renewed annually by paying a registration fee.

(a2) Registration of Certified Pharmacy Technicians. – The Board must register a certified pharmacy technician who pays the fee required under G.S. 90-85.24 and provides proof of current certification. The registration must be renewed annually by paying a registration fee and providing proof of current certification.

(b) Responsibilities of Pharmacist-Manager to Noncertified Pharmacy Technicians. – A pharmacist-manager may hire a person who has a high school diploma or equivalent or is currently enrolled in a program that awards a high school diploma or equivalent to work as a pharmacy technician. Pursuant to G.S. 90-85.21, a pharmacist-manager must notify the Board within 21 days of the date the pharmacy technician began employment. The pharmacist-manager must provide a training program for a pharmacy technician that includes pharmacy terminology, pharmacy calculations, dispensing systems and labeling requirements, pharmacy laws and regulations, record keeping and documentation, and the proper handling and storage of medications. The requirements of a training program may differ depending upon the type of employment. The training program must be provided and completed within 180 days of the date the pharmacy technician began employment.

(b1) Responsibilities of Pharmacist-Manager to Certified Pharmacy Technicians. – A pharmacist-manager may hire a certified pharmacy technician who has registered with the Board pursuant to subsection (a2) of this section. Pursuant to G.S. 90-85.21, a certified pharmacy technician shall notify the Board within 10 days of beginning employment as a pharmacy technician. The supervising pharmacist-manager and certified pharmacy

technician shall be deemed to have satisfied the pharmacy technician training program requirements of subsection (b) of this section.

(c) Supervision. – A pharmacist may not supervise more than two pharmacy technicians unless the pharmacist-manager receives written approval from the Board. The Board may not allow a pharmacist to supervise more than two pharmacy technicians unless the additional pharmacy technicians are certified pharmacy technicians. The Board must respond to a request from a pharmacist-manager to allow a pharmacist to supervise more than two pharmacy technicians within 60 days of the date it received the request. The Board must respond to the request in one of three ways:

(1) Approval of the request.
(2) Approval of the request as amended by the Board.
(3) Disapproval of the request. A disapproval of a request must include a reasonable explanation of why the request was not approved.

(d) Disciplinary Action. – The Board may, in accordance with Chapter 150B of the General Statutes and rules adopted by the Board, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew the registration of a pharmacy technician if the pharmacy technician has done one or more of the following:

(1) Made false representations or withheld material information in connection with registering as a pharmacy technician.
(2) Been found guilty of or plead guilty or nolo contendere to a felony involving the use or distribution of drugs.
(3) Indulged in the use of drugs to an extent that it renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
(4) Developed a physical or mental disability that renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
(4a) Been negligent in assisting a pharmacist in preparing and dispensing prescription medications.
(5) Failed to comply with the laws governing pharmacy technicians, including any provision of this Article or rules adopted by the Board governing pharmacy technicians.

(e) Exemption. – This section does not apply to pharmacy students who are enrolled in a school of pharmacy approved by the Board under G.S. 90-85.13.

(f) Rule-Making Authority. – The Board may adopt rules necessary to implement this section. (2001-375, s. 2; 2013-379, s. 2.)

§ 90-85.15B. Immunizing pharmacists.

(a) Except as provided in subsection (b) and (c) of this section, an immunizing pharmacist may administer vaccinations or immunizations only if the vaccinations or immunizations are recommended or required by the Centers for Disease Control and Prevention and administered to persons at least 18 years of age pursuant to a specific prescription order.

(b) An immunizing pharmacist may administer the vaccinations or immunizations listed in subdivisions (1) through (7) of this subsection to persons at least 18 years of age if the vaccinations or immunizations are administered under written protocols as defined in 21 NCAC 46. 2507(b)(12) and 21 NCAC 32U. 0101(b)(12) and in accordance with the supervising physician's responsibilities as defined in 21 NCAC 46. 2507(e) and 21 NCAC 32U. 0101(e), and the physician is licensed in and has a practice physically located in North Carolina:

(1) Pneumococcal polysaccharide or pneumococcal conjugate vaccines.
(2) Herpes zoster vaccine.
(3) Hepatitis B vaccine.
(4) Meningococcal polysaccharide or meningococcal conjugate vaccines and Serogroup B meningococcal vaccines.
(5) Tetanus-diphtheria, tetanus and diphtheria toxoids and pertussis, tetanus and diphtheria toxoids and acellular pertussis, or tetanus toxoid vaccines. However, a pharmacist shall not administer any of these vaccines if the patient discloses that the patient has an open wound, puncture, or tissue tear.
(6) Human Papillomavirus vaccine.
(7) Hepatitis A vaccine.

(c) An immunizing pharmacist may administer the influenza vaccine to persons at least 10 years of age pursuant to 21 NCAC 46. 2507 and 21 NCAC 32U. 0101. An immunizing pharmacist may administer an influenza vaccine to persons at least six years of age pursuant to a specific prescription order initiated by a prescriber following a physical examination of the patient by the prescriber.

(d) An immunizing pharmacist who administers a vaccine or immunization to any patient pursuant to this section shall do all of the following:

(1) Maintain a record of any vaccine or immunization administered to the patient in a patient profile.
(2) Within 72 hours after administration of the vaccine or immunization, notify any primary care provider identified by the patient. If the patient does not identify a primary care provider, the immunizing pharmacist shall direct the patient to information describing the benefits to a patient of having a primary care physician, prepared by any of the following: North Carolina Medical Board, North Carolina Academy of Family Physicians, North Carolina Medical Society, or Community Care of North Carolina.
(3) Except for influenza vaccines administered under G.S. 90-85.15B(c), access the North Carolina Immunization Registry prior to administering the vaccine or immunization and record any vaccine or immunization administered to the patient in the registry within 72 hours after the administration. In the event the registry is not operable, an immunizing pharmacist shall report as soon as reasonably possible. (2013-246, s. 4; 2014-115, s. 40; 2019-21, s. 1.)

§ 90-85.16. Examination.

The license examination shall be given by the Board at least twice each year. The Board shall determine the subject matter of each examination and the place, time and date for administering the examination. The Board shall also determine which persons have passed the examination. The

examination shall be designed to determine which applicants can reasonably be expected to safely and properly practice pharmacy. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C.S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; 1971, c. 481; 1981, c. 717, s. 4; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.17. License renewal.

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to 30 hours of continuing education every two years from Board-approved providers as a condition of license renewal, with a minimum of 10 hours required per year. (1905, c. 108, ss. 18, 19, 27; Rev., ss. 3653, 4484; 1911, c. 48; C.S., s. 6662; 1921, c. 68, s. 2; 1947, c. 781; 1953, c. 1051; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 2005-402, s. 4.)

§ 90-85.18. Approval of continuing education programs.

The Board shall approve providers of continuing education programs upon finding that the provider is competent to and does offer an educational experience designed to enable those who successfully complete the program to more safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.19. Reinstatement.

Whenever a pharmacist who has not renewed his license for five or more years seeks to renew or reinstate his license, he must appear before the Board and submit evidence that he can safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.20. Licensure without examination.

(a) The Board may issue a license to practice pharmacy, without examination, to any person who is licensed as a pharmacist in another jurisdiction if the applicant shall present satisfactory evidence of possessing the same qualifications as are required of licensees in this State, that he was licensed by examination in such other jurisdiction, and that the standard of competence required by such other jurisdiction is substantially equivalent to that of this State at that time. The Board must be satisfied that a candidate for licensure has a satisfactory understanding of the laws governing the practice of pharmacy and distribution of drugs in this State.

(b) Repealed by Session Laws 1991, c. 125, s. 2. (1905, c. 108, s. 16; Rev., s. 4482; C.S., s. 6660; 1945, c. 572, s. 2; 1971, c. 468; 1977, c. 598; 1981, c. 717, ss. 6, 7; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, ss. 6, 7; 1991, c. 125, s. 2.)

§ 90-85.21. Pharmacy permit.

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application shall identify the pharmacist-manager of the pharmacy and all pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in pharmacy personnel within 30 days of the change. In addition to identifying the pharmacist-manager, a pharmacy may identify a

pharmacy permittee's designated agent that the Board shall notify of any investigation of the pharmacy or a pharmacist employed by the pharmacy. The notice shall include the specific reason for the investigation and be given prior to the initiation of any disciplinary proceedings.

(a1) A mobile pharmacy shall register annually with the Board in the manner prescribed in subsection (a) of this section, and the registration shall be renewed annually. A mobile pharmacy shall be considered a single pharmacy and shall not be required to pay a separate registration fee for each location but shall pay the annual registration fee prescribed in G.S. 90-85.24. A mobile pharmacy shall provide the Board with the address of every location from which prescription drugs will be dispensed by the mobile pharmacy.

(b) Each physician who dispenses prescription drugs, for a fee or other charge, shall annually register with the Board on the form provided by the Board, and with the licensing board having jurisdiction over the physician. Such dispensing shall comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping. Authority and responsibility for disciplining physicians who fail to comply with the provisions of this subsection are vested in the licensing board having jurisdiction over the physician. The form provided by the Board under this subsection shall be as follows:

Application For Registration
With The Pharmacy Board
As A Dispensing Physician

1.	2.
Name and Address of Dispensing Physician	Affix Dispensing Label Here

3. Physician's North Carolina License Number _____

4. Are you currently practicing in a professional association registered with the North Carolina Medical Board?

_____ Yes _____ No. If yes, enter the name and registration number of the professional corporation:

_____

_____

5. I certify that the information is correct and complete.

_____ _____

Signature Date

(1927, c. 28, s. 1; 1953, c. 183, s. 2; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1987, c. 687; 1995, c. 94, s. 25; 1999-246, s. 2; 2001-375, s. 3; 2005-427, s. 1.)

§ 90-85.21A. Applicability to out-of-state operations.

(a) Any pharmacy operating outside the State which ships, mails, or delivers in any manner a dispensed legend drug into this State shall annually register with the Board on a form provided by the Board. In order to satisfy the registration requirements of this subsection, a pharmacy shall certify that the pharmacy employs a pharmacist who is responsible for dispensing, shipping,

mailing, or delivering dispensed legend drugs into this State or in a state approved by the Board and has met requirements for licensure equivalent to the requirements for licensure in this State. In order for the pharmacy's certification of the pharmacists to be valid, a pharmacist shall agree in writing, on a form approved by the Board, to be subject to the jurisdiction of the Board, the provisions of this Article, and the rules adopted by the Board. If the Board revokes this certification, the pharmacy shall no longer have authority to dispense, ship, mail, or deliver in any manner a dispensed legend drug into this State.

(b) Any pharmacy subject to this section shall at all times maintain a valid unexpired license, permit, or registration necessary to conduct such pharmacy in compliance with the laws of the state in which such pharmacy is located. No pharmacy operating outside the State may ship, mail, or deliver in any manner a dispensed legend drug into this State unless such drug is lawfully dispensed by a licensed pharmacist in the state where the pharmacy is located.

(c) The Board shall be entitled to charge and collect not more than five hundred dollars ($500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than two hundred dollars ($200.00), and for reinstatement thereof, not more than two hundred dollars ($200.00).

(d) The Board may deny a nonresident pharmacy registration upon a determination that the pharmacy has a record of being formally disciplined in its home state for violations that relate to the compounding or dispensing of legend drugs and presents a threat to the public health and safety.

(e) Except as otherwise provided in this subsection, the Board may adopt rules to protect the public health and safety that are necessary to implement this section. Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs by pharmacies required to register under this section that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. A pharmacy required to register under this section shall comply with rules adopted pursuant to this section.

(f) The Board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of this section. (1993, c. 455, s. 1; 1998-212, s. 12.3B(b); 2004-199, s. 25; 2005-402, s. 3.)

§ 90-85.21B. Unlawful practice of pharmacy.

It shall be unlawful for any person, firm, or corporation not licensed or registered under the provisions of this Article to:

(1) Use in a trade name, sign, letter, or advertisement any term, including "drug", "pharmacy", "prescription drugs", "prescription", "Rx", or "apothecary", that would imply that the person, firm, or corporation is licensed or registered to practice pharmacy in this State.

(2) Hold himself or herself out to others as a person, firm, or corporation licensed or registered to practice pharmacy in this State. (2003-284, s. 10.8D.)

§ 90-85.21C. Pharmacy permit exemption for dispensing and delivery of home renal products.

Each location or facility within or outside this State from which dialysate or drugs necessary to perform home renal dialysis are dispensed and delivered to a patient in this

State is exempt from the pharmacy permit requirements established by G.S. 90-85.21 and G.S. 90-8.21A, provided that all the following criteria are met:

(1) The dialysate or drugs have been approved or cleared by United States Food and Drug Administration.

(2) The dialysate or drugs are lawfully held by a manufacturer or an agent of the manufacturer that is properly licensed by the North Carolina Department of Agriculture and Consumer Services as a manufacturer, or as a wholesaler, or as both, as required by G.S. 106-145.3.

(3) The dialysate or drugs are held, delivered, and dispensed in their original, sealed packaging from the manufacturing facility.

(4) The dialysate or drugs are delivered only by the manufacturer, or an agent of the manufacturer, and only upon receipt of a physician's order.

(5) The manufacturer or an agent of the manufacturer delivers the dialysate or drugs directly to either of the following:

a. A patient with chronic kidney failure or a designee of the patient, for self-administration of the dialysis therapy.

b. A health care provider, or health care facility licensed under Chapter 122C, 131D, or 131E of the General Statutes, for administration or delivery of the dialysis therapy to a patient with chronic kidney failure. (2015-28, s. 1.)

§ 90-85.21D. Dialysis facilities as designated agents to receive home medications for patients with renal failure.

Pharmacies may ship medications for home use by patients with renal failure to renal dialysis facilities for delivery to (i) patients who receive dialysis treatments in a Medicare certified dialysis facility or (ii) patients who self-dialyze at home, provided that all of the following criteria are met:

(1) The patient authorizes, in writing, the dialysis facility staff to act as the patient's designated agent for the purpose of receiving mailed medical packages at the dialysis facility.

(2) The pharmacy, whether in-state or out-of-state, is licensed as a pharmacy in North Carolina.

(3) The medications for home use are dispensed by the licensed pharmacist pursuant to a valid prescription order.

(4) The delivered medication packages are held in a secure location in an area not accessible to the public and delivered by the dialysis facility staff, unopened, to the patient.

(5) Medication packages are individually labeled with the patient name.

(6) The medications exclude controlled substances, as defined under G.S. 90-87. (2015-28, s. 1.)

§ 90-85.22. Device and medical equipment permits; exemptions.

(a) Devices. – Each place, whether located in this State or out-of-state, where devices are dispensed or delivered to the user in this State shall register annually with the Board on a form provided by the Board and obtain a device permit. A business that has a

current pharmacy permit does not have to register and obtain a device permit. Records of devices dispensed in pharmacies or other places shall be kept in accordance with rules adopted by the Board.

(b) Medical Equipment. – Each place, whether located in this State or out-of-state, that delivers medical equipment to the user of the equipment in this State shall register annually with the Board on a form provided by the Board and obtain a medical equipment permit. A business that has a current pharmacy permit or a current device permit does not have to register and obtain a medical equipment permit. Medical equipment shall be delivered only in accordance with requirements established by rules adopted by the Board.

(c) This section shall not apply to any of the following:

(1) A pharmaceutical manufacturer registered with the Food and Drug Administration.

(2) A wholly owned subsidiary of a pharmaceutical manufacturer registered with the Food and Drug Administration.

(3) The dispensing and delivery of home renal products in accordance with the criteria specified in G.S. 90-85.21C. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1993 (Reg. Sess., 1994), c. 692, s. 1; 2001-339, s. 1; 2015-28, s. 2.)

§ 90-85.23. License and permit to be displayed.

Every pharmacist-manager's license, every permit, and every current renewal shall be conspicuously posted in the place of business owned by or employing the person to whom it is issued. The licenses and every last renewal of all other pharmacists employed in the pharmacy must be readily available for inspection by agents of the Board. Failure to display any license or permit and the most recent renewal shall be a violation of this Article and each day that the license or permit or renewal is not displayed shall be a separate and distinct offense. (1905, c. 108, ss. 18, 26; Rev., ss. 3651, 4485; C.S., s. 6663; 1921, c. 68, s. 3; 1953, c. 1051; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.24. Fees collectible by Board.

(a) The Board of Pharmacy shall be entitled to charge and collect not more than the following fees:

(1) For the examination of an applicant for license as a pharmacist, two hundred dollars ($200.00), plus the cost of the test material;

(2) For renewing the license as a pharmacist, one hundred thirty-five dollars ($135.00);

(3) For reinstatement of a license as a pharmacist, one hundred thirty-five dollars ($135.00);

(4) For annual registration of a pharmacy technician, thirty dollars ($30.00);

(5) For reinstatement of a registration of a pharmacy technician, thirty dollars ($30.00);

(6) For licenses without examination as provided in G.S. 90-85.20, original, six hundred dollars ($600.00);

(7) For original registration of a pharmacy, five hundred dollars ($500.00), and renewal thereof, two hundred dollars ($200.00);

(8) For reinstatement of the registration of a pharmacy, two hundred dollars ($200.00);
(9) For annual registration as a dispensing physician under G.S. 90-85.21(b), seventy-five dollars ($75.00);
(10) For reinstatement of registration as a dispensing physician, seventy-five dollars ($75.00);
(11) For annual registration as a dispensing physician assistant under G.S. 90-18.1, seventy-five dollars ($75.00);
(12) For reinstatement of registration as a dispensing physician assistant, seventy-five dollars ($75.00);
(13) For annual registration as a dispensing nurse practitioner under G.S. 90-18.2, seventy-five dollars ($75.00);
(14) For reinstatement of registration as a dispensing nurse practitioner, seventy-five dollars ($75.00);
(15) For registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), thirty-five dollars ($35.00);
(16) For a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00);
(17) For original registration to dispense devices, deliver medical equipment, or both, five hundred dollars ($500.00);
(18) For renewal of registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00);
(19) For reinstatement of a registration to dispense devices, deliver medical equipment, or both, two hundred dollars ($200.00).

(b) All fees under this section shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board. (1905, c. 108, s. 12; Rev., s. 4478; C.S., s. 6657; 1921, c. 57, s. 3; 1945, c. 572, s. 3; 1953, c. 183, s. 1; 1965, c. 676, s. 1; 1973, c. 1183; 1981, c. 72; c. 717, s. 3; 1981 (Reg. Sess., 1982), c. 1188, s. 2; 1983, c. 196, s. 8; 1987, c. 260; 1987 (Reg. Sess., 1988), c. 1039, s. 4; 1993 (Reg. Sess., 1994), c. 692, s. 3; 1997-231, s. 1; 2001-375, s. 4; 2005-402, s. 2.)

§ 90-85.25. Disasters and emergencies.

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public.

(b) The pharmacist in charge of a pharmacy shall report within 10 days to the Board any disaster, accident, theft, or emergency which may affect the strength, purity, or labeling of drugs and devices in the pharmacy. (1981 Reg. Sess., 1982), c. 1188, s. 1; 1998-212, s. 12.3B(a); 2012-12, s. 2(gg).)

§ 90-85.26. Prescription orders preserved.

(a) Every pharmacist-manager of a pharmacy shall maintain for at least three years the original of every prescription order and refill compounded or dispensed at the pharmacy except for prescription orders recorded in a patient's medical record. An automated data processing system may be used for the storage and retrieval of refill information for prescriptions pursuant to the regulations of the Board. A pharmacist-manager may comply with this section by capturing and maintaining an electronic image of a prescription order or refill. An electronic image of a prescription order or refill shall constitute the original prescription order, and a hard copy of the prescription order or refill is not required to be maintained. If a pharmacist-manager elects to maintain prescription orders by capturing electronic images of prescription orders or refills, the pharmacy's computer system must be capable of maintaining, printing, and providing in an electronic or paper format, upon a request by the Board, all of the information required by this Chapter or rules adopted pursuant to this Chapter within 48 hours of such a request.

(b) Every pharmacy permittee's designated agent shall maintain documentation of alleged medication errors and incidents described in G.S. 90-85.47(e)(1) for which the pharmacy permittee has knowledge. (1905, c. 108, s. 21; Rev., s. 4490; C.S., s. 6666; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 2005-427, s. 2; 2007-248, s. 1.)

§ 90-85.26A. Clinical pharmacist practitioners subcommittee.

The North Carolina Board of Pharmacy shall appoint and maintain a subcommittee of the Board consisting of four licensed pharmacists to work jointly with the subcommittee of the North Carolina Medical Board to develop rules to govern the provision of drug therapy management by clinical pharmacist practitioners and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The rules developed by this subcommittee shall govern the performance of acts by clinical pharmacist practitioners and shall become effective when they have been adopted by both Boards. (1999-290, s. 6.)

§ 90-85.27. Definitions.

As used in G.S. 90-85.28 through G.S. 90-85.31:

(1) Biological product. – As defined in section 351(i) of the Public Health Service Act, 42 U.S.C. § 262(i).

(1a) Equivalent drug product. – A drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription.

(2) Established name. – As defined in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 352(e)(3).

(3) Good manufacturing practice. – As defined in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations.

(3a) Interchangeable biological product. – A biological product determined by the United States Food and Drug Administration to meet the standards set forth in 42 U.S.C. § 262(k)(4), or deemed therapeutically equivalent by the United States Food and Drug Administration.

(4) Manufacturer. – The actual manufacturer of the finished dosage form of the drug.

(4a) Narrow therapeutic index drugs. – Those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold

difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide intrapatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Health and Human Services upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.

(5) Prescriber. – Anyone authorized to prescribe drugs pursuant to the laws of this State. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1983, c. 196, s. 9; 1997-76, s. 1; 1997-443, s. 11A.118(b); 2015-27, s. 1.)

§ 90-85.28. Selection by pharmacists permissible; prescriber may permit or prohibit selection; price limit on selected drugs; communication of dispensed biological products under specified circumstances.

(a) A pharmacist dispensing a prescription for a drug product prescribed by its brand name may select any equivalent drug or interchangeable biological product which meets all of the following standards:

(1) The manufacturer's name and the distributor's name, if different from the manufacturer's name, shall appear on the label of the stock package.

(2) It shall be manufactured in accordance with current good manufacturing practices.

(3) All oral solid dosage forms shall have a logo, or other identification mark, or the product name to identify the manufacturer or distributor.

(4) The manufacturer shall have adequate provisions for drug recall.

(5) The manufacturer shall have adequate provisions for return of outdated drugs, through the distributor or otherwise.

(b) The pharmacist shall not select an equivalent drug or interchangeable biological product if the prescriber instructs otherwise by one of the following methods:

(1) A prescription form shall be preprinted or stamped with two signature lines at the bottom of the form which read:

"_____ _____

Product Selection Permitted Dispense as Written"

On this form, the prescriber shall communicate instructions to the pharmacist by signing the appropriate line.

(2) In the event the preprinted or stamped prescription form specified in subdivision (1) of subsection (b) of this section is not readily available, the prescriber may handwrite "Dispense as Written" or words or abbreviations of the same meaning on a prescription form.

(3) When ordering a prescription orally, the prescriber shall specify either that the prescribed drug product be dispensed as written or that product selection is

permitted. The pharmacist shall note the instructions on the file copy of the prescription and retain the prescription form for the period prescribed by law.

(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give documented consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term "refilled" shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug.

(b2) **(Effective until October 1, 2020 – see note)** Within a reasonable time following the dispensing of a biological product requiring a prescription, the pharmacist or a designee shall communicate to the prescriber the product name and manufacturer of the specific biological product dispensed to the patient. This required communication shall be conveyed by making an entry into an interoperable electronic medical records system, or electronic prescribing technology, or a pharmacy benefit management system, or a pharmacy record that can be electronically accessible by the prescriber. Entry into one of the above referenced methods of communication is presumed to provide the required communication. Otherwise, the pharmacist or a designee shall provide the required communication to the prescriber by facsimile, telephone, electronic transmission, or other prevailing means, provided that communication shall not be required under any of the following circumstances:

(1) There is no United States Food and Drug Administration-approved interchangeable biological product for the product prescribed.

(2) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(b3) The Board of Pharmacy shall maintain a link on its Internet Web site to the current list of biological products determined by the United States Food and Drug Administration to be interchangeable with a specific biological product.

(b4) **(Effective until October 1, 2020 – see note)** If the State mandates electronic medical records between a pharmacist and a prescriber as described in subsection (b2) of this section, then the pharmacist shall only be required to communicate the biological product dispensed through an electronic medical records system when such a system is in place and the information is accessible by the prescriber.

(c) The pharmacist shall not select an equivalent drug or interchangeable biological product unless its price to the purchaser is less than the price of the prescribed drug product. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1997-76, s. 2; 2015-27, s. 2.)

§ 90-85.29. Prescription label.

The prescription label of every drug product dispensed shall contain the brand name of any drug product dispensed, or in the absence of a brand name, the established name. The prescription drug label of every drug product dispensed shall:

(1) Contain the discard date when dispensed in a container other than the manufacturer's original container. The discard date shall be the earlier of one

year from the date dispensed or the manufacturer's expiration date, whichever is earlier, and

(2) Not obscure the expiration date and storage statement when the product is dispensed in the manufacturer's original container.

As used in this section, "expiration date" means the expiration date printed on the original manufacturer's container, and "discard date" means the date after which the drug product dispensed in a container other than the original manufacturer's container shall not be used. Nothing in this section shall impose liability on the dispensing pharmacist or the prescriber for damages related to or caused by a drug product that loses its effectiveness prior to the expiration or disposal date displayed by the pharmacist or prescriber. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1993, c. 529, s. 7.5.)

§ 90-85.30. Prescription record.

The pharmacy file copy of every prescription shall include the brand or trade name, if any, or the established name and the manufacturer of the drug product dispensed. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3.)

§ 90-85.31. Prescriber and pharmacist liability not extended.

The selection of an equivalent drug or interchangeable biological product pursuant to this Article shall impose no greater liability upon the pharmacist for selecting the dispensed drug or biological product or upon the prescriber of the same than would be incurred by either for dispensing the drug or biological product specified in the prescription. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 2015-27, s. 3.)

§ 90-85.32. Rules pertaining to filling, refilling, transfer, and mail or common-carrier delivery of prescription orders.

(a) Except as otherwise provided in this section, the Board may adopt rules governing the filling, refilling and transfer of prescription orders not inconsistent with other provisions of law regarding the distribution of drugs and devices. The rules shall assure the safe and secure distribution of drugs and devices. Prescriptions marked PRN shall not be refilled more than one year after the date issued by the prescriber unless otherwise specified.

(b) Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1998-212, s. 12.3B(c).)

§ 90-85.33. Unit dose medication systems.

The Board may adopt regulations governing pharmacists providing unit dose medication systems. The regulations shall ensure the safe and proper distribution of drugs in the patient's best health interests. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.34. Unique pharmacy practice.

Consistent with the provisions of this Article, the Board may regulate unique pharmacy practices including, but not limited to, nuclear pharmacy and clinical pharmacy, to ensure the best interests of patient health and safety. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.34A. Public health pharmacy practice.

(a) A registered nurse in a local health department clinic may dispense prescription drugs and devices, other than controlled substances as defined in G.S. 90-87, under the following conditions:

(1) The registered nurse has training acceptable to the Board in the labeling and packaging of prescription drugs and devices;

(2) Dispensing by the registered nurse shall occur only at a local health department clinic;

(3) Only prescription drugs and devices contained in a formulary recommended by the Department of Health and Human Services and approved by the Board shall be dispensed;

(4) The local health department clinic shall obtain a pharmacy permit in accordance with G.S. 90-85.21;

(5) Written procedures for the storage, packaging, labeling and delivery of prescription drugs and devices shall be approved by the Board; and

(6) The pharmacist-manager, or another pharmacist at his direction, shall review dispensing records at least weekly, provide consultation where appropriate, and be responsible to the Board for all dispensing activity at the local health department clinic.

(b) This section is applicable only to prescriptions issued on behalf of persons receiving local health department clinic services and issued by an individual authorized by law to prescribe drugs and devices.

(c) This section does not affect the practice of nurse practitioners pursuant to G.S. 90-18.2 or of physician assistants pursuant to G.S. 90-18.1. (1985, c. 359; 1989 (Reg. Sess., 1990), c. 1004, s. 2; 1997-443, s. 11A.22.)

§ 90-85.35. Availability of patient records.

Pharmacists employed in health care facilities shall have access to patient records maintained by those facilities when necessary for the pharmacist to provide pharmaceutical services. The pharmacist shall make appropriate entries in patient records. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.36. Availability of pharmacy records.

(a) Except as provided in subsections (b) and (c) below, written or electronic prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and any person having custody of or access to the prescription orders may divulge the contents or provide a copy only to the following persons:

(1) An adult patient for whom the prescription was issued or a person who is legally appointed guardian of that person;

(2) An emancipated minor patient for whom the prescription order was issued or a person who is the legally appointed guardian of that patient;

(3) An unemancipated minor patient for whom the prescription order was issued when the minor's consent is sufficient to authorize treatment of the condition for which the prescription was issued;

(4) A parent or person in loco parentis of an unemancipated minor patient for whom the prescription order was issued when the minor's consent is not sufficient to authorize treatment for the condition for which the prescription is issued;
(5) The licensed practitioner who issued the prescription;
(6) The licensed practitioner who is treating the patient for whom the prescription was issued;
(7) A pharmacist who is providing pharmacy services to the patient for whom the prescription was issued;
(8) Anyone who presents a written authorization for the release of pharmacy information signed by the patient or his legal representative;
(9) Any person authorized by subpoena, court order or statute;
(10) Any firm, association, partnership, business trust, corporation or company charged by law or by contract with the responsibility of providing for or paying for medical care for the patient for whom the prescription order was issued;
(11) A member or designated employee of the Board;
(12) The executor, administrator or spouse of a deceased patient for whom the prescription order was issued;
(13) Researchers and surveyors who have approval from the Board. The Board shall issue this approval when it determines that there are adequate safeguards to protect the confidentiality of the information contained in the prescription orders and that the researchers or surveyors will not publicly disclose any information that identifies any person;
(14) The person owning the pharmacy or his authorized agent; or
(15) A HIPAA covered entity, or business associate described in 45 C.F.R. § 160.103, or a health care provider who is not a covered entity, for purposes of treatment, payment, or health care operations to the extent that disclosure is permitted or required by applicable State or federal law.

(b) A pharmacist may disclose any information to any person only when he reasonably determines that the disclosure is necessary to protect the life or health of any person.

(c) Records required to be kept by G.S. 90-93(d) (Schedule V) are not public records and shall be disclosed at the pharmacist's discretion. (1905, c. 108, s. 21; Rev., s. 4490; C.S., s. 6666; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1991, c. 125, s. 3; 2011-314, s. 1.)

§ 90-85.37. Embargo.

Notwithstanding any other provisions of law, whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health, he shall affix to the drug or device a notice that the article is suspected of being dangerous to the public health and warning all persons not to remove or dispose of the article. Whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health and that there are reasonable grounds to believe that it might be disposed of pending a judicial resolution of the matter, he shall seize the article and take it to a safe and secure place. When an article has been embargoed under this section, the Board shall, as soon as practical, file a petition in Orange County District Court for a condemnation order for such article. If the judge determines after hearing, that the article is not dangerous to the public health, the Board shall direct the immediate removal of the tag or other marking, and where appropriate,

shall direct that the article be returned to its owner. If the judge finds the article is dangerous to the public health, he shall order its destruction at the owner's expense and under the Board's supervision. If the judge determines that the article is dangerous to the public health, he shall order the owner of the article to pay all court costs, reasonable attorney's fees, storage fees, and all other costs incident to the proceeding. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.38. Disciplinary authority.

(a) The Board may, in accordance with Chapter 150B of the General Statutes, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew a license to practice pharmacy, or require licensees to successfully complete remedial education if the licensee has done any of the following:

(1) Made false representations or withheld material information in connection with securing a license or permit.
(2) Been found guilty of or plead guilty or nolo contendere to any felony in connection with the practice of pharmacy or the distribution of drugs.
(3) Indulged in the use of drugs to an extent that renders the pharmacist unfit to practice pharmacy.
(4) Made false representations in connection with the practice of pharmacy that endanger or are likely to endanger the health or safety of the public, or that defraud any person.
(5) Developed a physical or mental disability that renders the pharmacist unfit to practice pharmacy with reasonable skill, competence and safety to the public.
(6) Failed to comply with the laws governing the practice of pharmacy and the distribution of drugs.
(7) Failed to comply with any provision of this Article or rules adopted by the Board.
(8) Engaged in, or aided and abetted an individual to engage in, the practice of pharmacy without a license.
(9) Been negligent in the practice of pharmacy.

(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend, revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a). The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of pharmacy under this Article, and any assistance rendered with an execution under Article 19 of Chapter 15 of the General Statutes shall not be the cause for disciplinary action under this Article.

(c) Any license or permit obtained through false representation or withholding of material information shall be void and of no effect. (1905, c. 108, ss. 17, 25; Rev., s. 4483; C.S., s. 6661; 1967, c. 807; 1973, c. 138; 1981, c. 412, s. 4; c. 717, s. 8; c. 747, s. 66; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1987, c. 827, s. 1; 2001-375, s. 5; 2013-154, s. 1(c).)

§ 90-85.39. Injunctive authority.

The Board may apply to any court for an injunction to prevent violations of this Article or of any rules enacted pursuant to it. The court is empowered to grant the injunctions regardless of

whether criminal prosecution or other action has been or may be instituted as a result of the violation. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

§ 90-85.40. Violations.

(a) It shall be unlawful for any owner or manager of a pharmacy or other place to allow or cause anyone other than a pharmacist to dispense or compound any prescription drug unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(b) Every person lawfully authorized to compound or dispense prescription drugs shall comply with all the laws and regulations governing the labeling and packaging of such drugs by pharmacists.

(c) It shall be unlawful for any person not licensed as a pharmacist to compound or dispense any prescription drug, unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(d) It shall be unlawful for any person to manage any place of business where devices are dispensed or sold at retail without a permit as required by this Article.

(d1) It is unlawful for a person to own or manage a place of business from which medical equipment is delivered without a permit as required by this Article.

(e) It shall be unlawful for any person without legal authorization to dispose of an article that has been embargoed under this Article.

(f) It shall be unlawful to violate any provision of this Article or of any rules or regulations enacted pursuant to it.

(g) This Article shall not be construed to prohibit any person from performing an act that person is authorized to perform pursuant to North Carolina law. Health care providers who are authorized to prescribe drugs without supervision are authorized to dispense drugs without supervision.

(h) A violation of this Article shall be a Class 1 misdemeanor. (1905, c. 108, ss. 4, 23, 24; Rev., ss. 3649, 3650, 4487; C.S., ss. 6667, 6668, 6669; 1921, c. 68, ss. 6, 7; Ex. Sess. 1924, c. 116; 1953, c. 1051; 1957, c. 617; 1959, c. 1222; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1993, c. 539, s. 621; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 692, s. 4; 2001-375, ss. 6, 7.)

§ 90-85.41. Board agreements with special peer review organizations for impaired pharmacy personnel.

(a) The North Carolina Board of Pharmacy may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired pharmacy personnel peer review organizations. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of pharmacy personnel licensed or registered by the Board, as such matters may relate to impaired pharmacy personnel. Special impaired pharmacy personnel peer review organizations may include a statewide supervisory committee and various regional and local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired pharmacy personnel peer review organizations to receive relevant information from the Board and other sources, conduct any investigation, review, and evaluation in an expeditious manner, provide assurance of confidentiality of nonpublic information and of the peer review process, make reports

of investigations and evaluations to the Board, and to do other related activities for operating and promoting a coordinated and effective peer review process. The agreements shall include provisions assuring basic due process for pharmacy personnel that become involved.

(c) The impaired pharmacy personnel peer review organizations that enter into agreements with the Board shall establish and maintain a program for impaired pharmacy personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those pharmacists to function as pharmacists, and pharmacy technicians to function as pharmacy technicians, and to provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired pharmacy personnel peer review programs. The Board shall adopt rules to apply to the operation of impaired pharmacy personnel peer review programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; and (viii) assurance of confidentiality of nonpublic information and of the peer review process.

(d) Upon investigation and review of a pharmacist licensed by the Board, or a pharmacy technician registered with the Board, or upon receipt of a complaint or other information, an impaired pharmacy personnel peer review organization that enters into a peer review agreement with the Board shall report immediately to the Board detailed information about any pharmacist licensed or pharmacy technician registered by the Board, if:

(1) The pharmacist or pharmacy technician constitutes an imminent danger to the public or himself or herself.

(2) The pharmacist or pharmacy technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by an impaired pharmacy personnel peer review organization pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. No person participating in good faith in an impaired pharmacy personnel peer review program developed under this section shall be required in a civil case to disclose any information (including opinions, recommendations, or evaluations) acquired or developed solely in the course of participating in the program.

(f) Impaired pharmacy personnel peer review activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws. (1999-81, s. 1; 2001-375, s. 8.)

§ 90-85.42. Reserved for future codification purposes.

§ 90-85.43. Reserved for future codification purposes.

Part 2. Drug, Supplies, and Medical Device Repository Program.

§ 90-85.44. Drug, Supplies, and Medical Device Repository Program established.

(a) Definitions. – As used in this section unless the context clearly requires otherwise, the following definitions apply:

(1) Board. – As defined in G.S. 90-85.3.
(2) Dispense. – As defined in G.S. 90-85.3.
(3) Drug. – As defined in G.S. 90-85.3.
(4) Eligible donor. – The following are eligible donors under the Program:
  a. A patient or the patient's family member.
  b. A manufacturer, wholesaler, or supplier of drugs, supplies, or medical devices.
  c. A pharmacy, free clinic, hospital, or a hospice care program.
(5) Eligible patient. – An uninsured or underinsured patient who meets the eligibility criteria established by the Board, free clinic, or pharmacy.
(6) Free clinic. – A private, nonprofit, community-based organization that provides health care services at little or no charge to low-income, uninsured, and underinsured persons through the use of volunteer health care professionals.
(7) Medical device. – A device as defined in G.S. 90-85.3(e).
(8) Pharmacist. – As defined in G.S. 90-85.3.
(9) Pharmacy. – As defined in G.S. 90-85.3.
(10) Practitioner. – A physician or other provider of health services licensed or otherwise permitted to distribute, dispense, or administer drugs, supplies, or medical devices.
(11) Program. – The Drug, Supplies, and Medical Device Repository Program established under this act.
(12) Supplies. – Supplies associated with or necessary for the administration of a drug.

(b) Program Purpose. – The Board shall establish and administer the Program. The purpose of the Program is to allow an eligible donor to donate unused drugs, supplies, and medical devices to uninsured and underinsured patients in this State. The unused drugs, supplies, and medical devices shall be donated to a free clinic or pharmacy that elects to participate in the Program. A free clinic that receives a donated unused drug, supplies, or medical device under the Program may distribute the drug, supplies, or medical device to another free clinic or pharmacy for use under the Program.

(c) Requirements of Participating Pharmacists or Free Clinics. – A pharmacist may accept and dispense drugs, supplies, and medical devices donated to the Program to eligible patients if all of the following requirements are met:

(1) The drug, supplies, or medical device is in the original, unopened, sealed, and tamper-evident packaging or, if packaged in single-unit doses, the single-unit dose packaging is unopened.
(2) The pharmacist has determined that the drug, supplies, or medical device is safe for redistribution.
(3) The drug has not reached its expiration date.
(4) The drug, supplies, or medical device is not adulterated or misbranded, as determined by a pharmacist.
(5) The drug, supplies, or medical device is prescribed by a practitioner for use by an eligible patient and is dispensed by a pharmacist.

(d) Fee. – A participating pharmacist or free clinic shall not resell a drug, supplies, or a medical device donated to the Program. A pharmacist or free clinic may charge an eligible patient a handling fee to receive a donated drug, supplies, or medical device, which shall not exceed the amount specified in rules adopted by the Board.

(e) Program Participation Voluntary. – Nothing in this section requires a free clinic or pharmacy to participate in the Program.

(f) Eligible Patient. – The Board shall establish eligibility criteria for individuals to receive donated drugs, supplies, or medical devices. Board eligibility criteria shall provide that individuals meeting free clinic or pharmacy eligibility criteria are eligible patients. Dispensing shall be prioritized to patients who are uninsured or underinsured. Dispensing to other patients shall be permitted if an uninsured or underinsured patient is not available.

(g) Rules. – The Board shall adopt rules necessary for the implementation of the Program. Rules adopted by the Board shall provide for the following:

(1) Requirements for free clinics and pharmacies to accept and dispense donated drugs, supplies, and medical devices pursuant to the Program, including eligibility criteria, confidentiality of donors, and standards and procedures for a free clinic or pharmacy to accept and safely store and dispense donated drugs, supplies, and medical devices.

(2) The amount of the maximum handling fee that a free clinic or pharmacy may charge for distributing or dispensing donated drugs, supplies, or medical devices.

(3) A list of drugs, supplies, and medical devices, arranged either by category or by individual drug, supply, or medical device, that the Program will accept for dispensing.

(h) Immunity. – The following limited immunities apply under the Program:

(1) Unless a pharmaceutical manufacturer exercises bad faith, the manufacturer is not subject to criminal or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a drug or medical device manufactured by the manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug or medical device.

(2) The following individuals or entities are immune from civil liability for an act or omission that causes injury to or the death of an individual to whom the drug, supplies, or medical device is dispensed under the Program, and no disciplinary action may be taken against a pharmacist or practitioner as long as the drug, supplies, or medical device is donated in accordance with the requirements of this section:

a. A pharmacy or free clinic participating in the Program.

b. A pharmacist dispensing a drug, supplies, or medical device pursuant to the Program.

c. A practitioner administering a drug, supplies, or medical devices pursuant to the Program.

d. An eligible donor who has donated a drug, supplies, or a medical device pursuant to the Program. (2009-423, s. 2; 2019-54, s. 1.)

Article 4B.

Pharmacy Quality Assurance Protection Act.

§ 90-85.45. Legislative intent.

It is the intent of the General Assembly to require pharmacy quality assurance programs to further contribute to and enhance the quality of health care and reduce medication errors in this State by facilitating a process for the continuous review of the practice of pharmacy. (2005-427, s. 3.)

§ 90-85.46. Definitions.

The following definitions shall apply in this Article:

(1) Board. – The North Carolina Board of Pharmacy.

(2) Pharmacy quality assurance program. – A program pertaining to one of the following:

a. A pharmacy association created under G.S. 90-85.4 or incorporated under Chapter 55A of the General Statutes that evaluates the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.

b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services.

c. A quality assurance committee or medical or peer review committee established by a health care provider licensed under this Chapter or a health care facility licensed under Chapter 122C, 131D, or 131E of the General Statutes that includes evaluation of the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services. (2005-427, s. 3; 2006-259, s. 16(a).)

§ 90-85.47. Pharmacy quality assurance program required; limited liability; discovery.

(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

(1) The quality of the practice of pharmacy.

(2) The cause of alleged medication errors and incidents.

(3) Pharmaceutical care outcomes.

(4) Possible improvements for the practice of pharmacy.

(5) Methods to reduce alleged medication errors and incidents.

(b) There shall be no monetary liability on the part of, or no cause of action for damages arising against, any member of a duly appointed pharmacy quality assurance program or any pharmacy or pharmacist furnishing information to a pharmacy quality assurance program or any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy

quality assurance program, for any act or proceeding undertaken or performed within the scope of the functions of the pharmacy quality assurance program.

(c) This section shall not be construed to confer immunity from liability on any professional association, pharmacy or pharmacist, or health care provider while performing services other than as a member of a pharmacy quality assurance program or upon any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed outside the scope of the functions of the pharmacy quality assurance program. Except as provided in subsection (a) or (b) of this section, where a cause of action would arise against a pharmacy, pharmacist, or an individual health care provider, the cause of action shall remain in effect.

(d) The proceedings of a pharmacy quality assurance program, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100 and shall not be subject to discovery or introduction into evidence in any civil action, administrative hearing or Board investigation against a pharmacy, pharmacist, pharmacy technician, a pharmacist manager or a permittee or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action, administrative hearing or Board Investigation results from matters that are the subject of evaluation and review by the pharmacy quality assurance program. No person who was in attendance at a meeting of the pharmacy quality assurance program shall be required to testify in any civil action, administrative hearing or Board investigation as to any evidence or other matters produced or presented during the proceedings of the pharmacy quality assurance program or as to any findings, recommendations, evaluations, opinions, or other actions of the pharmacy quality assurance program or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the pharmacy quality assurance program. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the pharmacy quality assurance program. A member of the pharmacy quality assurance program may testify in a civil or administrative action but cannot be asked about the person's testimony before the pharmacy quality assurance program or any opinions formed as a result of the pharmacy quality assurance program. Nothing in this subsection shall preclude:

(1) A pharmacy, pharmacist, pharmacy technician, or other person or any agent or representative of a pharmacy, pharmacist, pharmacy technician or other person participating on a pharmacy quality assurance program may use otherwise privileged, confidential information for legitimate internal business or professional purposes of the pharmacy quality assurance program.

(2) A pharmacy, pharmacist, pharmacy technician, other person participating on the committee, or any person or organization named as a defendant in a civil action, a respondent in an administrative proceeding, or a pharmacy, pharmacist, or pharmacy technician subject to a Board investigation as a result of participation in the pharmacy quality assurance program may use otherwise privileged, confidential information in the pharmacy quality assurance program or person's own defense. A plaintiff in the civil action or the agency in the administrative proceeding may disclose records or determinations of or communications to the pharmacy quality assurance program in rebuttal to

information given by the defendant, respondent, or pharmacist subject to Board investigation.

(e) Upon the Board providing written notice to the pharmacy permittee's designated agent under G.S. 90-85.21(a) and pharmacist of an investigation against the pharmacist, including the specific reason for the Board investigation, the pharmacy permittee's designated agent shall compile and provide documentation within 10 days of the receipt of the notice of any alleged medication error or incident committed by the pharmacist in the 12 months preceding the receipt of the notice, that the pharmacy permittee has knowledge of, when:

(1) The alleged medication error or incident resulted in any of the following:

a. A visit to a physician or an emergency room attributed to the alleged medication incident or error.

b. Hospitalization requiring an overnight stay or longer.

c. A fatality.

(2) The Board has initiated a disciplinary proceeding against the pharmacist as a result of the investigation. Unless the documentation relates to an alleged medication error or incident that was specifically the cause of the investigation, the Board may review the documentation only after the Board has made findings of fact and conclusions of law pursuant to G.S. 150B-42(a) and may use the documentation in determining the remedial action the pharmacist shall undergo as part of the disciplinary action imposed by the Board. The documentation shall be released only to the Board or its designated employees pursuant to this subsection and shall not otherwise be released except as required by law.

The documentation provided to the Board shall not include the proceedings and records of a pharmacy quality assurance program or information prepared by the pharmacy solely for consideration by or upon request of a pharmacy quality assurance program.

(f) Nothing in this section shall preclude the Board from obtaining information concerning a specific alleged medication error or incident that is the subject of a Board investigation resulting from a complaint to the Board. (2005-427, s. 3; 2006-259, s. 16(b).)

§ 90-85.48: Reserved for future codification purposes.

§ 90-85.49: Reserved for future codification purposes.

Article 4C.

Pharmacy Audit Rights.

§ 90-85.50. Declaration of pharmacy rights during audit.

(a) The following definitions apply in this Article:

(1) "Pharmacy" means a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.

(2) "Responsible party" means the entity responsible for payment of claims for health care services other than (i) the individual to whom the health care services were rendered or (ii) that individual's guardian or legal representative.

(b) Notwithstanding any other provision of law, whenever a managed care company, insurance company, third-party payer, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, the pharmacy has a right to all of the following:

(1) To have at least 14 days' advance notice of the initial on-site audit for each audit cycle.

(2) To have any audit that involves clinical judgment be done with a pharmacist who is licensed, and is employed or working under contract with the auditing entity.

(3) Not to have clerical or record-keeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record, in the absence of any other evidence, deemed fraudulent. This subdivision does not prohibit recoupment of fraudulent payments.

(4) If required under the terms of the contract, to have the auditing entity provide a pharmacy, upon request, all records related to the audit in an electronic format or contained in digital media.

(5) To have the properly documented records of a hospital or any person authorized to prescribe controlled substances for the purpose of providing medical or pharmaceutical care for their patients transmitted by any means of communication in order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug.

(6) To have a projection of an overpayment or underpayment based on either the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs. This subdivision does not prohibit recoupments of actual overpayments, unless the projection for overpayment or underpayment is part of a settlement by the pharmacy.

(7) Prior to the initiation of an audit, if the audit is conducted for an identified problem, the audit is limited to claims that are identified by prescription number.

(8) If an audit is conducted for a reason other than described in subdivision (6) of this subsection, the audit is limited to 100 selected prescriptions.

(9) If an audit reveals the necessity for a review of additional claims, to have the audit conducted on site.

(10) Except for audits initiated for the reason described in subdivision (6) of this subsection, to be subject to no more than one audit in one calendar year, unless fraud or misrepresentation is reasonably suspected.

(11) Except for cases of Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on any of the following unless defined within the billing requirements set forth in the pharmacy provider manual not inconsistent with current North Carolina Board of Pharmacy Regulations:

a. Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the State Board of Pharmacy.

b. A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the State Board of Pharmacy.

(12) To be subject to recoupment only following the correction of a claim and to have recoupment limited to amounts paid in excess of amounts payable under the corrected claim.

(13) Except for Medicare claims, to be subject to reversals of approval for drug, prescriber, or patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements.

(14) To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.

(15) To have at least 30 days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during an audit.

(16) To have the period covered by an audit limited to 24 months from the date a claim was submitted to, or adjudicated by, a managed care company, an insurance company, a third-party payer, or any entity that represents responsible parties, unless a longer period is permitted by a federal plan under federal law.

(17) Not to be subject to the initiation or scheduling of audits during the first five calendar days of any month due to the high volume of prescriptions filled during that time, without the express consent of the pharmacy. The pharmacy shall cooperate with the auditor to establish an alternate date should the audit fall within the days excluded.

(18) To have the preliminary audit report delivered to the pharmacy within 120 days after conclusion of the audit.

(19) To have a final audit report delivered to the pharmacy within 90 days after the end of the appeals period, as provided for in G.S. 90-85.51.

(20) Not to have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans.

(21) Not to be subject to recoupment on any portion of the reimbursement for the dispensed product of a prescription, unless otherwise provided in this subdivision:

a. Recoupment of reimbursement, or a portion of reimbursement, for the dispensed product of a prescription may be had in the following cases:

1. Fraud or other intentional and willful misrepresentation evidenced by a review of the claims data, statements, physical review, or other investigative methods.
2. Dispensing in excess of the benefit design, as established by the plan sponsor.
3. Prescriptions not filled in accordance with the prescriber's order.
4. Actual overpayment to the pharmacy.

b. Recoupment of claims in cases set out in sub-subdivision a. of this subdivision shall be based on the actual financial harm to the entity or the actual underpayment or overpayment. Calculations of overpayments

shall not include dispensing fees unless one of the following conditions is present:

1. A prescription was not actually dispensed.
2. The prescriber denied authorization.
3. The prescription dispensed was a medication error by the pharmacy. For purposes of this subdivision, a medication error is a dispensing of the wrong drug or dispensing to the wrong patient or dispensing with the wrong directions.
4. The identified overpayment is based solely on an extra dispensing fee.
5. The pharmacy was noncompliant with Risk Evaluation and Mitigation Strategies (REMS) program guidelines.
6. There was insufficient documentation, including electronically stored information, as described in this subsection.
7. Fraud or other intentional and willful misrepresentation by the pharmacy.

(22) To have an audit based only on information obtained by the entity conducting the audit and not based on any audit report or other information gained from an audit conducted by a different auditing entity. This subdivision does not prohibit an auditing entity from using an earlier audit report prepared by that auditing entity for the same pharmacy. Except as required by State or federal law, an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous report was prepared by that entity.

(23) If the audit is conducted by a vendor or subcontractor, that entity is required to identify the responsible party on whose behalf the audit is being conducted without having this information being requested.

(24) To use any prescription that complies with federal or State laws and regulations at the time of dispensing to validate a claim in connection with a prescription, prescription refill, or a change in a prescription. (2011-375, s. 1; 2013-379, s. 3.)

§ 90-85.51. Mandatory appeals process.

(a) Each entity that conducts an audit of a pharmacy shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(b) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the unsubstantiated portion of the audit report without any further proceedings.

(c) Each entity conducting an audit shall provide a copy, if required under contractual terms, of the audit findings to the plan sponsor after completion of any appeals process. (2011-375, s. 1.)

§ 90-85.52. Pharmacy audit recoupments.

(a) The entity conducting an audit shall not recoup any disputed funds, charges, or other penalties from a pharmacy until (i) the deadline for initiating the appeals process

established pursuant to G.S. 90-85.51 has elapsed or (ii) after the final internal disposition of an audit, including the appeals process as set forth in G.S. 90-85.51, whichever is later, unless fraud or misrepresentation is reasonably suspected.

(b) Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

(c) The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(1) The responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party.

(2) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped. (2011-375, s. 1; 2013-379, s. 4.)

§ 90-85.53. Applicability.

This Article does not apply to any audit, review, or investigation that involves alleged Medicaid fraud, Medicaid abuse, insurance fraud, or other criminal fraud or misrepresentation. (2011-375, s. 1.)

Article 5.

North Carolina Controlled Substances Act.

§ 90-86. Title of Article.

This Article shall be known and may be cited as the "North Carolina Controlled Substances Act." (1971, c. 919, s. 1.)

§ 90-87. Definitions.

As used in this Article:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

a. A practitioner (or, in his presence, by his authorized agent), or

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

(3a) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(4) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(5) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(5a) "Controlled substance analogue" means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; and does not include (i) a controlled substance; (ii) any substance for which there is an approved new drug application; (iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under § 355 of Title 21 of the United States Code to the extent conduct with respect to such substance is pursuant to such exemption; or (iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance. The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to subdivision 802(34) or 802(35) of Title 21 of the United States Code does not preclude a finding pursuant to this subdivision that the chemical is a controlled substance analogue.

(6) "Counterfeit controlled substance" means:

a. A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser; or

b. Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:

1. The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.

2. Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.

3. The physical appearance of the tablets, capsules or other finished product containing the substance is substantially identical to a specified controlled substance.

(7) "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(9) "Dispenser" means a practitioner who dispenses.

(10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(11) "Distributor" means a person who distributes.

(12) "Drug" means a. substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; b. substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; c. substances (other than food) intended to affect the structure or any function of the body of man or other animals; and d. substances intended for use as a component of any article specified in a, b, or c of this subdivision; but does not include devices or their components, parts, or accessories.

(13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(14) "Immediate precursor" means a substance which the Commission has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(14a) The term "isomer" means any type of isomer, including structural, geometric, or optical isomers, and stereoisomers.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and "manufacture" further includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

(16) (See editor's note for expiration of last sentence) "Marijuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. The term does not include industrial hemp as defined in G.S. 106-568.51, when the industrial hemp is produced and used in compliance with rules issued by the North Carolina Industrial Hemp Commission.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiate and opioid, and any salt, compound, derivative, or preparation of opium, opiate, or opioid.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(18a) "Opioid" means any synthetic narcotic drug having opiate-like activities but is not derived from opium.

(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

a. A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

(23) "Prescription" means:

a. A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; or issued by a practitioner serving on active duty with the Armed Forces of the United States or the United States Veterans Administration who is licensed in this or another state or Puerto Rico, provided the order is written for the benefit of eligible beneficiaries of armed services medical care; a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or

b. A drug or preparation, or combination, or mixture thereof furnished pursuant to a prescription order.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25) "Registrant" means a person registered by the Commission to manufacture, distribute, or dispense any controlled substance as required by this Article.

(26) "State" means the State of North Carolina.

(26a) "Targeted controlled substance" means any controlled substance included in G.S. 90-90(1) or (2) or G.S. 90-91(d).

(27) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use, or for the use of a member of his household, or for administration to an animal owned by him or by a member of his household. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, ss. 2-4; c. 1358, ss. 1, 15; 1977, c. 482, s. 6; 1981, c. 51, ss. 8, 9; c. 75, s. 1; c. 732; 1985, c. 491; 1987, c. 105, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 1030, s. 21; 1997-456, s. 27; 2003-249, s. 2; 2011-183, s. 60; 2015-299, s. 2; 2016-93, s. 6; 2017-74, s. 3; 2017-115, s. 2.)

§ 90-88. Authority to control.

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right.

(a1) In making a determination regarding a substance, the Commission shall consider the following:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration, and significance of abuse;
(6) The risk to the public health;
(7) The potential of the substance to produce psychic or physiological dependence liability; and
(8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to Chapter 150B of the General Statutes within 180 days of its decision to object.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or

denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) Repealed by Session Laws 1987, c. 413, s. 4.

(i) The North Carolina Department of Health and Human Services shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State. (1971, c. 919, s. 1; 1973, c. 476, s. 128; cc. 524, 541; c. 1358, ss. 2, 3, 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1987, c. 413, ss. 1-4; 1989, c. 770, s. 16; 1997-443, s. 11A.118(a); 2000-189, s. 4; 2001-487, s. 22.)

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Opiates. – Any of the following opiates or opioids, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacet amide).

b. Acetylmethadol.

c. Repealed by Session Laws 1987, c. 412, s. 2.

d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl/-4-piperidinyl]-N-phenylpro panamide).

e. Allylprodine.

f. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levomethadyl acetate and LAAM).

g. Alphameprodine.

h. Alphamethadol.

i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).

j. Benzethidine.

k. Betacetylmethadol.

l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).

m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.
y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Pi- peridyl]-N-Phenylpropanamide).
kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
ll. Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.
oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide.
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.

aaa. Racemoramide.

bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.

ccc. Tilidine.

ddd. Trimeperidine.

eee. Acetyl Fentanyl.

fff. Trans-3,4-dichloro-N-(2(dimethylamino)cyclohexyl)-N-methyl-benzamide (U47700).

ggg. 3,4-dichloro-N([1(dimethylamino)cyclohexyl]methyl)benzamide; 1-(3,4-dichlorobenzamidomethyl)cyclohexyldimethylamine) (also known as AH-7921).

hhh. 3,4-dichloro-N-([diethylamino)cyclohexyl]-N-methylbenzamide (also known as U-49900).

iii. U-77891.

jjj. 1-phenylethylpiperidylidene-2-(4-chlorphenyl)sulfonamide; 1-(4-nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide; 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide (also known as W-18).

kkk. 1-phenylethylpiperidylidene-2-(4-chlorophenyl)sulfonamide; 4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide (also known as W-15).

lll. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).

(1a) Fentanyl derivatives. – Any compounds structurally derived from N-[1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the anilido phenyl group, or any combination of the above unless specifically excepted or listed in another schedule to include their salts, isomers, and salts of isomers. Fentanyl derivatives include, but are not limited to, the following:

a. N-(1-phenylethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (also known as Furanyl Fentanyl).

b. N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide; N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (also known as Butyryl Fentanyl).

c. N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (also known as Beta-Hydroxythiofentanyl).

d. N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-2propenamide (also known as Acrylfentanyl).

e. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-pentanamide (also known as Valeryl Fentanyl).

f. N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (also known as 2-fluorofentanyl).

g. N-(3-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (also known as 3-fluorofentanyl).

h. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxa mide (also known as tetrahydrofuran fentanyl).

i. N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]- propanamid e (also known as 4-fluoroisobutyryl fentanyl, 4-FIBF).

j. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (also known as 4-fluorobutyryl fentanyl, 4-FBF).

(2) Opium derivatives. – Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.
v. Thebacon.
w. Drotebanol.

(3) Hallucinogenic substances. – Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.

c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy) phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.
l. Ibogaine.
m. Lysergic acid diethylamide.
n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
v. v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.
x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.
aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
bb. Parahexyl.
cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.
dd. Alpha-Methyltryptamine.
ee. 5-Methoxy-N,N-diisopropyltryptamine.
ff. Methoxetamine (other names: MXE, 3-MeO-2-Oxo-PCE).

gg. BTCP (Benzothiophenylcyclohexylpiperidine).
hh. Deschloroketamine.
jj. 3-MeO-PCP (3-methoxyphencyclidine).
kk. 4-hydroxy-MET.
ll. 4-OH-MiPT (4-hydroxy-N-methyl-N-isopropyltryptamine).
mm. 5-methoxy-N-methyl-N-propyltryptamine (5-MeO-MiPT).

(4) Systemic depressants. – Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

a. Mecloqualone.
b. Methaqualone.
c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.
d. Etizolam.
e. Flubromazepam.
f. Phenazepam.

(5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.
b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
c. Fenethylline.
d. Methcathinone. Some trade or other names: 2-(methylamino)- propiophenone, alpha-(methylamino)propiophenone, 2-(methy- lamino)-1-phenylpropan-1-one, alpha-N-methylamino- propiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432.
e. (+-)cis-4-methylaminorex [(+-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).
f. N,N-dimethylamphetamine. Some other names: N,N,alpha-tri- methylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine.
g. N-ethylamphetamine.
h. 4-methylmethcathinone (also known as mephedrone).
i. 3,4-Methylenedioxypyrovalerone (also known as MDPV).

j. Substituted cathinones. A compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways: (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents; (ii) by substitution at the 3-position to any extent; or (iii) by substitution at the nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups or by inclusion of the nitrogen atom in a cyclic structure.

k. N-Benzylpiperazine.

l. 2,5 – Dimethoxy-4-(n)-propylthiophenethylamine.

(6) NBOMe compounds. – Any material compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation unless specifically excepted or unless listed in another schedule:

a. 25B-NBOMe (2C-B-NBOMe) 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

b. 25C-NBOMe (2C-C-NBOMe) 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

c. 25D-NBOMe (2C-D-NBOMe) 2-(2,5-dimethoxy-4-methylphenyl)-N-(2-methoxybenzyl)ethanamine.

d. 25E-NBOMe (2C-E-NBOMe) 2-(4-Ethyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

e. 25G-NBOMe (2C-G-NBOMe) 2-(2,5-dimethoxy-3,4-dimethylphenyl)-N-(2-methoxybenzyl)ethanamine.

f. 25H-NBOMe (2C-H-NBOMe) 2-(2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

g. 25I-NBOMe (2C-I-NBOMe) 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine.

h. 25N-NBOMe (2C-N-NBOMe) 2-(2,5-dimethoxy-4-nitrophenyl)-N-(2-methoxybenzyl)ethanamine.

i. 25P-NBOMe (2C-P-NBOMe) 2-(4-Propyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.

j. 25T2-NBOMe (2C-T2-NBOMe) 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-(methylthio)-benzene ethanamine.

k. 25T4-NBOMe (2C-T4-NBOMe) 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-[(1-methylethyl)thio]-benzeneeth anamine.

l. 25T7-NBOMe (2C-T7-NBOMe) 2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-4-(propylthio)-benzenee thanamine.

(7) Synthetic cannabinoids. – Any quantity of any synthetic chemical compound that (i) is a cannabinoid receptor agonist and mimics the pharmacological effect

of naturally occurring substances or (ii) has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is not listed as a controlled substance in Schedules I through V, and is not an FDA-approved drug. Synthetic cannabinoids include, but are not limited to, the substances listed in sub-subdivisions a. through p. of this subdivision and any substance that contains any quantity of their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation. The following substances are examples of synthetic cannabinoids and are not intended to be inclusive of the substances included in this Schedule:

a. Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Some trade or other names: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398, AM-2201, and WIN 55-212.

b. Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

c. Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Another name: JWH-307.

d. Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

e. Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group,

whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: SR-18, RCS-8, JWH-250, and JWH-203.

f. Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Some trade or other names: CP 47,497 (and homologues), cannabicyclohexanol.

g. Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: AM-694, Pravadoline (WIN 48,098), and RCS-4.

h. 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone. Some trade or other name: WIN 55,212-2.

i. (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol 7370. Some trade or other name: HU-210.

j. 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone) indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not further substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent. Substances in this class include, but are not limited to: UR-144, fluoro-UR-144, XLR-11, A-796,260, and A-834,735.

k. Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-indole-2-carboxaldehyde substituted in both of the following ways:

1. At the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group;whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or

(iv) anitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: AB-001.

l. Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-indole-2-carboxamide substituted in both of the following ways:

1. At the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde groupwhether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: SDB-001 and STS-135.

m. Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-indole-2-carboxylic acid substituted in both of the following ways:

1. At the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: SDB-001 and STS-135.whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indole ring, or

(iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: PB-22 and fluoro-PB-22.

n. Indazole carboxaldehydes. Any compound structurally derived from 1H-indazole-3-carboxaldehyde or 1H-indazole-2-carboxaldehyde substituted in both of the following ways:

1. At the nitrogen atom of the indazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the carbon of the carboxaldehyde by a phenyl, benzyl,whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

o. Indazole carboxamides. Any compound structurally derived from 1H-indazole-3-carboxamide or 1H-indazole-2-carboxamide substituted in both of the following ways:

1. At the nitrogen atom of the indazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and
2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group;whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: AKB-48, fluoro-AKB-48, APINCACA, AB-PINACA, AB-FUBINACA, ADB-FUBINACA, and ADB-PINACA.

p. Indazole carboxylic acids. Any compound structurally derived from 1H-indazole-3-carboxylic acid or 1H-indazole-2-carboxylic acid substituted in both of the following ways:

1. At the nitrogen atom of the indazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,

1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and

2. At the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

q. Carbazoles. Any compound containing a carbazole ring system with a substituent on the nitrogen atom and bearing an additional substituent at the 1, 2, or 3 position of the carbazole ring system, with a linkage connecting the ring system to the substituent:

1. Where the linkage connecting the carbazole ring system to the substituent if its 1, 2, or 3 position is any of the following: Alkyl, Carbonyl, Ester, Thione, Thioester, Amino, Alkylamino, Amido, or Alkylamido.

2. Where the substituent at the 1, 2, or 3 position of the carbazole ring system, disregarding the linkage, is any of the following groups: Naphthyl, Quinolinyl, Adamantyl, Phenyl, Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl), Biphenyl, Alkylamido (limited to ethylamido, propylamido, butanamido, pentamido), Benzyl, Carboxylic acid, Ester, Ether, Phenylpropylamido, or Phenylpropylamino; whether or not further substituted in either of the following ways: (i) the substituent at the 1, 2, or 3 position of the carbazole ring system, disregarding the linkage, is further substituted to any extent (ii) further substitution on the carbazole ring system to any extent. This class includes, but is not limited to, the following: MDMB CHMCZCA, EG-018, and EG-2201.

r. Naphthoylnaphthalenes. Any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent. Substances in this class include, but are not limited to: CB-13. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 844; c. 1358, ss. 4, 5, 15; 1975, c. 443, s. 1; c. 790; 1977, c. 667, s. 3; c. 891, s. 1; 1979, c. 434, s. 1; 1981, c. 51, s. 9; 1983, c. 695, s. 1; 1985, c. 172, ss. 1-3; 1987, c. 412, ss. 1-5; 1989 (Reg. Sess., 1990), c. 1040, s. 1; 1993, c. 319, ss. 1, 2; 1995, c. 186, ss. 1-3; c. 509, s. 135.1(c); 1997-456, ss. 12, 27; 1999-165, s. 1; 2000-140, s. 92.2(a); 2011-12, s. 1; 2011-326, s. 14(a), (b); 2015-162, s. 1; 2015-264, s. 13; 2017-115, s. 3; 2018-44, ss. 2, 3.)

§ 90-89.1. Treatment of controlled substance analogues.

A controlled substance analogue shall, to the extent intended for human consumption, be treated for the purposes of any State law as a controlled substance in Schedule I. (2003-249, s. 1.)

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

a. Opium, opiate, or opioid and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Any material, compound, mixture, or preparation which contains any quantity of hydrocodone.
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer,

salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(2) Any of the following opiates or opioids, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

a. Alfentanil.
b. Alphaprodine.
c. Anileridine.
d. Bezitramide.
e. Carfentanil.
f. Dihydrocodeine.
g. Diphenoxylate.
h. Fentanyl.
h1. Fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP).
i. Isomethadone.
j. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone – Intermediate, 4-cyano-2-dimethylamino-4, 4- diphenyl butane.
p. Moramide – Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
q. Pethidine.
r. Pethidine – Intermediate – A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine – Intermediate – B, ethyl-4-phenylpiperidine-4-carboxylate.
t. Pethidine – Intermediate – C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Remifentanil.
z. Sufentanil.
aa. Tapentadol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Phenmetrazine and its salts.
c. Methamphetamine, including its salts, isomers, and salts of isomers.
d. Methylphenidate, including its salts, isomers, and salts of its isomers.
e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.
f. Lisdexamfetamine, including its salts, isomers, and salts of isomers.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:

a. Amobarbital
b. Glutethimide
c. Repealed by Session Laws 1983, c. 695, s. 2.
d. Pentobarbital
e. Phencyclidine
f. Phencyclidine immediate precursors:
   1. 1-Phenylcyclohexylamine
   2. 1-Piperidinocyclohexanecarbonitrile (PCC)
g. Secobarbital.

(5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Repealed by Session Laws 2001-233, s. 2(a), effective June 21, 2001.
b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 6; c. 1358, ss. 6, 15; 1975, c. 443, s. 2; 1977, c. 667, s. 3; c. 891, s. 2; 1979, c. 434, s. 2; 1981, c. 51, s. 9; 1983, c. 695, s. 2; 1985, c. 172, ss. 4, 5; 1987, c. 105, s. 3; c. 412, ss. 5A-7; 1989 (Reg. Sess., 1990), c. 1040, s. 2; 1993, c. 319, ss. 3, 4; 1995, c. 186, s. 4; 1997-385, s. 1; 1997-456, s. 27; 1999-165, s. 2; 2001-233, ss. 1, 2(a); 2011-326, s. 14(c), (d); 2015-162, s. 2; 2017-115, s. 4; 2018-44, s. 4.)

§ 90-91. Schedule III controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In

determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.

9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine:
2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam:
4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]/y-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing
    (i) Amobarbital.
    (ii) Secobarbital.
    (iii) Pentobarbital.
    or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
    (i) Amobarbital.
    (ii) Secobarbital.
    (iii) Pentobarbital.
    or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

12. Ketamine.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3., 4. Repealed by Session Laws 2017-115, s. 5, effective December 1, 2017, and applicable to offenses committed on or after that date.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
9. Buprenorphine.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and

(a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone decanoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
8a. Boldione,
9. Chlorotestosterone (4-chlorotestosterone),
10. Clostebol,
11. Dehydrochlormethyltestosterone,
11a. Desoxymethyltesterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol) (also known as madol),
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
19a. Methasterone,
20. Methenolene,
21. Methyltestosterone,

22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone,
31a. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione), and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include (i) an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration or (ii) chorionic gonadotropin when administered by injection for veterinary use by a licensed veterinarian or the veterinarian's designated agent. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(*l*) Repealed by Session Laws 2001-233, s. 3(a), effective June 21, 2001.

(m) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act.

(n) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names: (6aR-trans), -6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-o1 or (-)-delta-9-(trans)-tetrahydrocannabinol]. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 5; c. 1358, ss. 7, 15; 1975, c. 442; 1977, c. 667, s. 3; 1979, c. 434, s. 3; 1981, c. 51, s. 9; 1987, c. 412, ss. 8-10; 1987 (Reg. Sess., 1988), c. 1055; 1991, c. 413, s. 1; 1993, c. 319, s. 5; 1999-370, s. 3; 2000-140, s. 92.2(b); 2001-233, ss. 2(b), 3(a), 3(b); 2011-326, s. 14(e); 2016-113, s. 9; 2017-115, s. 5.)

§ 90-92. Schedule IV controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or pyschological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(1) Depressants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.
b. Barbital.
c. Bromazepam.
d. Camazepam.
d1. Carisoprodol.
e. Chloral betaine.
f. Chloral hydrate.
g. Chlordiazepoxide.
h. Clobazam.
i. Clonazepam.
j. Clorazepate.
k. Clotiazepam.
l. Cloxazolam.
m. Delorazepam.
n. Diazepam.
n1. Dichloralphenazone.
o. Estazolam.
p. Ethchlorvynol.
q. Ethinamate.
r. Ethyl loflazepate.
s. Fludiazepam.
t. Flunitrazepam.
u. Flurazepam.
u1. Fospropol.
v. Repealed by Session Laws 2000, c. 140, s. 92.2(c), effective December 1, 2000.
w. Halazepam.
x. Haloxazolam.
y. Ketazolam.
z. Loprazolam.
aa. Lorazepam.
bb. Lormetazepam.
cc. Mebutamate.
dd. Medazepam.
ee. Meprobamate.
ff. Methohexital.
gg. Methylphenobarbital (mephobarbital).
hh. Midazolam.
ii. Nimetazepam.
jj. Nitrazepam.
kk. Nordiazepam.
ll. Oxazepam.
mm. Oxazolam.
nn. Paraldehyde.

oo. Petrichloral.
pp. Phenobarbital.
qq. Pinazepam.
rr. Prazepam.
ss. Quazepam.
tt. Temazepam.
uu. Tetrazepam.
vv. Triazolam.
ww. Zolpidem.
xx. Zaleplon.
yy. Zopiclone.

(2) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
a. Fenfluramine.
b. Pentazocine.

(3) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Diethylpropion.
b. Mazindol.
c. Pemoline (including organometallic complexes and chelates thereof).
d. Phentermine.
e. Cathine.
f. Fencamfamin.
g. Fenproporex.
h. Mefenorex.
i. Sibutramine.
j. Modafinil.

(4) Other Substances. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
a. Dextropropoxyphene (Alpha-(plus)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
b. Pipradrol.
c. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
d. Butorphanol.

(5) Narcotic Drugs. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

b. Repealed by Session Laws 2017-115, s. 6, effective December 1, 2017, and applicable to offenses committed on or after that date.

c. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers (including tramadol).

(b) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 8, 15; c. 1446, s. 5; 1975, cc. 401, 819; 1977, c. 667, s. 3; c. 891, s. 3; 1979, c. 434, ss. 4-6; 1981, c. 51, s. 9; 1985, c. 172, ss. 6-8; c. 439, s. 1; 1987, c. 412, ss. 11, 12; 1993, c. 319, s. 6; 1995, c. 509, s. 38; 1997-456, s. 27; 1997-501, s. 1; 1999-165, s. 3; 2000-140, s. 92.2(c); 2001-233, s. 4; 2017-115, s. 6; 2017-212, ss. 8.8(a), (b).)

§ 90-93. Schedule V controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

(1) Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:

a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.

c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.

d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Repealed by Session Laws 1985, c. 172, s. 9.

(3) Stimulants. – Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
a. Repealed by Session Laws 1993, c. 319, s. 7.
b. Pyrovalerone.

(4) Anticonvulsants. – Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
a. Ezogabine.
b. Lacosamide.
c. Brivaracetam.
d. Pregabalin.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 9, 15; 1977, c. 667, s. 3; 1979, c. 434, ss. 7, 8; 1981, c. 51, s. 9; 1985, c. 172, s. 9; 1989 (Reg. Sess., 1990), c. 1040, s. 3; 1993, c. 319, s. 7; 1997-456, s. 27; 2017-115, s. 7.)

§ 90-94. Schedule VI controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

(1) Marijuana.

(2) Tetrahydrocannabinols.

(3) Repealed by Session Laws 2017-115, s. 8, effective December 1, 2017, and applicable to offenses committed on or after that date. (1971, c. 919, s. 1;

1973, c. 476, s. 128; c. 1358, s. 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1997-456, s. 27; 2011-12, s. 5; 2013-109, s. 1; 2015-162, s. 3; 2015-264, s. 48(a); 2017-115, s. 8.)

§ 90-94.1. Exemption for use or possession of hemp extract.

(a) As used in this section, "hemp extract" means an extract from a cannabis plant, or a mixture or preparation containing cannabis plant material, that has all of the following characteristics:

(1) Is composed of less than nine-tenths of one percent (0.9%) tetrahydrocannabinol by weight.

(2) Is composed of at least five percent (5%) cannabidiol by weight.

(3) Contains no other psychoactive substance.

(b) Notwithstanding any other provision of this Chapter, an individual may possess or use hemp extract, and is not subject to the penalties described in this Chapter, if the individual satisfies all of the following criteria:

(1) Possesses or uses the hemp extract only to treat intractable epilepsy, as defined in G.S. 90-113.101.

(2) Possesses, in close proximity to the hemp extract, a certificate of analysis that indicates the hemp extract's ingredients, including its percentages of tetrahydrocannabinol and cannabidiol by weight.

(3) Is a caregiver, as defined in G.S. 90-113.101.

(c) Notwithstanding any other provision of this Chapter, an individual who possesses hemp extract lawfully under this section may administer hemp extract to another person under the individual's care and is not subject to the penalties described in this Chapter for administering the hemp extract to the person if the individual is the person's caregiver, as defined in G.S. 90-113.101.

(d) Any individual who possesses or uses hemp extract, as defined under this section, shall dispose of all residual oil from the extract at a secure collection box managed by a law enforcement agency. No criminal penalty shall attach for any violation of this subsection. (2014-53, s. 3; 2015-154, s. 1; 2018-36, s. 1.)

§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except as follows: (i) the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felony, and (ii) the manufacture of methamphetamine shall be punished as provided by subdivision (1a) of this subsection.

(1a) The manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon. However, if the controlled substance is MDPV and the quantity of the MDPV is 1 gram or less, the violation shall be punishable as a Class 1 misdemeanor.

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana, or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic

tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) (1) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance; or

c. Possess a pseudoephedrine product if the person has a prior conviction for the possession of methamphetamine, possession with the intent to sell or deliver methamphetamine, sell or deliver methamphetamine, trafficking methamphetamine, possession of an immediate precursor chemical, or manufacture of methamphetamine. The prior conviction may be from any jurisdiction within the United States. Except where the conduct is covered under subdivision (2) of this subsection, any person who violates this subdivision shall be punished as a Class H felon.

(2) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture methamphetamine; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture methamphetamine.

Any person who violates this subdivision shall be punished as a Class F felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Acetic anhydride.
(2) Acetone.
(2a) Ammonium nitrate.
(2b) Ammonium sulfate.
(3) Anhydrous ammonia.
(4) Anthranilic acid.
(5) Benzyl chloride.
(6) Benzyl cyanide.
(7) 2-Butanone (Methyl Ethyl Ketone).
(8) Chloroephedrine.
(9) Chloropseudoephedrine.
(10) D-lysergic acid.
(11) Ephedrine.
(12) Ergonovine maleate.
(13) Ergotamine tartrate.
(13a) Ether based starting fluids.
(14) Ethyl ether.
(15) Ethyl Malonate.
(16) Ethylamine.

(17) Gamma-butyrolactone.
(18) Hydrochloric Acid. (Muriatic Acid).
(19) Iodine.
(20) Isosafrole.
(21) Sources of lithium metal.
(22) Malonic acid.
(23) Methylamine.
(24) Methyl Isobutyl Ketone.
(25) N-acetylanthranilic acid.
(26) N-ethylephedrine.
(27) N-ethylepseudoephedrine.
(28) N-methylephedrine.
(29) N-methylpseudoephedrine.
(29a) N-phenethyl-4-piperidinone (NPP).
(30) Norpseudoephedrine.
(30a) Petroleum based organic solvents such as camping fuels and lighter fluids.
(31) Phenyl-2-propanone.
(32) Phenylacetic acid.
(33) Phenylpropanolamine.
(34) Piperidine.
(35) Piperonal.
(36) Propionic anhydride.
(37) Pseudoephedrine.
(38) Pyrrolidine.
(39) Red phosphorous.
(40) Safrole.
(40a) Sodium hydroxide (Lye).
(41) Sources of sodium metal.
(42) Sulfuric Acid.
(43) Tetrachloroethylene.
(44) Thionylchloride.
(45) Toluene.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior

conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within 1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision, a child care center is as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a public park or within 1,000 feet of the boundary of real property that is a public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the

difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(1a) For the purpose of this subsection, a "dosage unit" shall consist of 3 grams of synthetic cannabinoid or any mixture containing such substance. Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 dosage units of a synthetic cannabinoid or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in synthetic cannabinoids," and if the quantity of such substance involved:

a. Is in excess of 50 dosage units, but less than 250 dosage units, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 250 dosage units or more, but less than 1250 dosage units, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 1250 dosage units or more, but less than 3750 dosage units, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 3750 dosage units or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term

of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1, effective December 1, 1999.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or any mixture containing such substance shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 282 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3c) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of amphetamine or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in amphetamine", and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 400 grams or more, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined at least one hundred thousand dollars ($100,000).

(3d) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of any substituted cathinone, as defined in G.S. 90-89(5)(j), or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in substituted cathinones," and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 282 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3e) Repealed by Session Laws 2018-44, s. 7, effective December 1, 2018.

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium, opiate, or opioid, or any salt, compound, derivative, or preparation of opium, opiate, or opioid (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium, opiate, opioid, or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 282 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a

Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section. (1971, c. 919, s. 1; 1973, c. 654, s. 1; c. 1078; c. 1358, s. 10; 1975, c. 360, s. 2; 1977, c. 862, ss. 1, 2; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 4-7; 1983, c. 18; c. 294, s. 6; c. 414; 1985, c. 569, s. 1; c. 675, ss. 1, 2; 1987, c. 90; c. 105, ss. 4, 5; c. 640, ss. 1, 2; c. 783, s. 4; 1989, c. 641; c. 672; c. 690; c. 770, s. 68; 1989 (Reg. Sess., 1990), c. 1024, s. 17; c. 1039, s. 5; c. 1081, s. 2; 1991, c. 484, s. 1; 1993, c. 538, s. 30; c. 539, s. 1358.1; 1994, Ex. Sess., c. 11, s. 1; c. 14, ss. 46, 47; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.13(c); 1997-304, ss. 1, 2; 1997-443, s. 19.25(b), (u), (ii); 1998-212, s. 17.16(e); 1999-165, s. 4; 1999-370, s. 1; 2000-140, s. 92.2(d); 2001-307, s. 1; 2001-332, s. 1; 2004-178, ss. 3, 4, 5, 6; 2007-375, s. 1; 2009-463, ss. 1, 2; 2009-473, s. 7; 2011-12, ss. 2-4, 6-8; 2011-19, s. 5; 2012-188, s. 5; 2013-124, s. 1; 2013-171, ss. 7, 8; 2014-115, s. 41(a); 2015-32, s. 1; 2015-173, s. 4; 2017-115, s. 11; 2018-44, ss. 5-7.)

§ 90-95.1. Continuing criminal enterprise.

(a) Any person who engages in a continuing criminal enterprise shall be punished as a Class C felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by him in such enterprise, and

(2) Any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) He violates any provision of this Article, the punishment of which is a felony; and

(2) Such violation is a part of a continuing series of violations of this Article;

a. Which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which such person obtains substantial income or resources.

(d) Repealed by Session Laws 1979, c. 760, s. 5. (1971, s. 919, s. 1; 1979, c. 760, s. 5.)

§ 90-95.2. Cooperation between law-enforcement agencies.

(a) The head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of this Article if so requested in writing by the head of the other agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the other agency (including in an undercover capacity) and lending equipment and supplies. While working with another agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in

addition to those he normally possesses. While on duty with the other agency, he shall be subject to the lawful operational commands of his superior officers in the other agency, but he shall for personnel and administrative purposes remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency, including the chief of police of a local police department and the sheriff of a county, or an officer of the agency to whom the head of the agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means any State or local agency, force, department, or unit responsible for enforcing criminal laws in this State, including any local police department or sheriff's department.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers. (1975, c. 782, s. 1; 1981, c. 93, s. 1; 1991, c. 636, s. 3.)

§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug analyses; restitution for seizure and cleanup of clandestine laboratories.

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) Repealed by Session Laws 2002-126, s. 29A.8(b), effective October 1, 2002. See Editor's Note.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies. (1975, c. 782, s. 2; 1989 (Reg. Sess., 1990), c. 1039, s. 3; 1999-370, s. 2; 2002-126, s. 29A.8(b).)

§ 90-95.4. Employing or intentionally using minor to commit a drug law violation.

(a) A person who is at least 18 years old but less than 21 years old who hires or intentionally uses a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as follows:

(1) If the minor was more than 13 years of age, then as a felony that is one class more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(2) If the minor was 13 years of age or younger, then as a felony that is two classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(b) A person 21 years of age or older who hires or intentionally uses a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as follows:

(1) If the minor was more than 13 years of age, then as a felony that is three classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(2) If the minor was 13 years of age or younger, then as a felony that is four classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

(d) The term "minor" as used in this section is defined as an individual who is less than 18 years of age. (1989 (Reg. Sess., 1990), c. 1081, s. 1; 1998-212, s. 17.16(f).)

§ 90-95.5. Civil liability – employing a minor to commit a drug offense.

A person 21 years of age or older, who hires, employs, or intentionally uses a person under 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug addiction proximately caused by the violation. The doctrines of contributory negligence and assumption of risk are no defense to liability under this section. (1989 (Reg. Sess., 1990), c. 1081, s. 3; 1998-212, s. 17.16(g).)

§ 90-95.6. Promoting drug sales by a minor.

(a) A person who is 21 years of age or older is guilty of promoting drug sales by a minor if the person knowingly:

(1) Entices, forces, encourages, or otherwise facilitates a minor in violating G.S. 90-95(a)(1).

(2) Supervises, supports, advises, or protects the minor in violating G.S. 90-95(a)(1).

(b) Mistake of age is not a defense to a prosecution under this section.

(c) A violation of this section is a Class D felony. (1998-212, s. 17.16(h).)

§ 90-95.7. Participating in a drug violation by a minor.

(a) A person 21 years of age or older who purchases or receives a controlled substance from a minor 13 years of age or younger who possesses, sells, or delivers the controlled substance in violation of G.S. 90-95(a)(1) is guilty of participating in a drug violation of a minor.

(b) Mistake of age is not a defense to a prosecution under this section.

(c) A violation of this section is a Class G felony. (1998-212, s. 17.16(h).)

§ 90-96. Conditional discharge for first offense.

(a) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or G.S. 90-113.22A or (ii) a felony under G.S. 90-95(a)(3), the court shall, without entering a judgment of guilt and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require, unless

the court determines with a written finding, and with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services or in the Treatment for Effective Community Supervision Program under Subpart B of Part 6 of Article 13 of Chapter 143B of the General Statutes. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions as provided in this subsection.

(a1) Upon the first conviction only of any offense which qualifies under the provisions of subsection (a) of this section, and the provisions of this subsection, the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than

seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.22, or 90-113.22A shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the discharge of such person, and dismissal of the proceedings against the person under subsection (a) or (a1) of this section, such person, if he or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).

(c) Repealed by Session Laws 2009-510, s. 8(b), effective October 1, 2010.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of this Article or a felony under G.S. 90-95(a)(3), upon dismissal by the State of the charges against such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).

(e) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under this Article; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules I through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or

G.S. 90-113.22A, or (ii) a felony under G.S. 90-95(a)(3), the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

(f) Repealed by Session Laws 2009-577, s. 6, effective December 1, 2009, and applicable to petitions for expunctions filed on or after that date. (1971, c. 919, s. 1; 1973, c. 654, s. 2; c. 1066; 1977, 2nd Sess., c. 1147, s. 11B; 1979, c. 431, ss. 3, 4; c. 550; 1981, c. 922, ss. 1-4; 1994, Ex. Sess., c. 11, s. 1.1; 1997-443, s. 11A.118(a); 2002-126, s. 29A.5(d); 2009-510, s. 8(a)-(d); 2009-577, s. 6; 2010-174, ss. 10-12; 2011-192, s. 5(a); 2013-210, s. 1; 2017-102, s. 38.)

§ 90-96.01. Drug education schools; responsibilities of the Department of Health and Human Services; fees.

(a) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish standards and guidelines for the curriculum and operation of local drug education programs. The Department of Health and Human Services shall oversee the development of a statewide system of schools and shall insure that schools are available in all localities of the State as soon as is practicable.

(1) A fee of one hundred fifty dollars ($150.00) shall be paid by all persons enrolling in an accredited drug education school established pursuant to this section. That fee must be paid to an official designated for that purpose and at a time and place specified by the area mental health, developmental disabilities, and substance abuse authority providing the course of instruction in which the person is enrolled. If the clerk of court in the county in which the person is convicted agrees to collect the fees, the clerk shall collect all fees for persons convicted in that county. The clerk shall pay the fees collected to the area mental health, developmental disabilities, and substance abuse authority for the catchment area where the clerk is located regardless of the location where the defendant attends the drug education school and that authority shall distribute the funds in accordance with the rules and regulations of the Department. The fee must be paid in full within two weeks of the date the person is convicted and before he attends any classes, unless the court, upon a showing of reasonable hardship, allows the person additional time to pay the fee or allows him to begin the course of instruction without paying the fee. If the person enrolling in the school demonstrates to the satisfaction of the court that ordered him to enroll in the school that he is unable to pay and his inability to pay is not willful, the court may excuse him from paying the fee. Parents or guardians of persons attending drug education school shall be allowed to audit the drug education school along with their children or wards at no extra expense.

(2) The Department of Health and Human Services shall have the authority to approve programs to be implemented by area mental health, developmental disabilities, and substance abuse authorities. Area mental health, developmental disabilities, and substance abuse authorities may subcontract for the delivery of drug education program services. The Department shall have the authority to approve budgets and contracts with public and private governmental and nongovernmental bodies for the operation of such schools.

(3) Fees collected under this section and retained by the area mental health, developmental disabilities, and substance abuse authority shall be placed in a nonreverting fund. That fund must be used, as necessary, for the operation, evaluation and administration of the drug educational schools; excess funds may only be used to fund other drug or alcohol programs. The area mental health, developmental disabilities, and substance abuse authority shall remit five percent (5%) of each fee collected to the Department of Health and Human Services on a monthly basis. Fees received by the Department as required by this section may only be used in supporting, evaluating, and administering drug education schools, and any excess funds will revert to the General Fund.

(4) All fees collected by any area mental health, developmental disabilities, and substance abuse authority under the authority of this section may not be used in any manner to match other State funds or be included in any computation for State formula-funded allocations.

(b) Willful failure to pay the fee is one ground for a finding that a person placed on probation or who may make application for expunction of all recordation of his arrest or conviction has not successfully completed the course. If the court determines the person is unable to pay, he shall not be deemed guilty of a willful failure to pay the fee. (1981, c. 922, s. 8; 1991, c. 636, s. 19(b), (c); 1993, c. 395, s. 1; 1997-443, s. 11A.118(a).)

§ 90-96.1. Immunity from prosecution for minors.

Whenever any person who is not more than 18 years of age, who has not previously been convicted of any offense under this Article or under any statute of the United States of any state relating to controlled substances included in any schedule of this Article, is accused with possessing or distributing a controlled substance in violation of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), the court may, upon recommendation of the district attorney, grant said person immunity from prosecution for said violation(s) if said person shall disclose the identity of the person or persons from whom he obtained the controlled substance(s) for which said person is being accused of possessing or distributing. (1973, c. 47, s. 2; c. 654, s. 3.)

§ 90-96.2. Drug-related overdose treatment; limited immunity.

(a) As used in this section, "drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the offenses listed in subsection (c3) of this section if all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(2) The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.

(3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.

(4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(5) The evidence for prosecution of the offenses listed in subsection (c3) of this section was obtained as a result of the person seeking medical assistance for the drug-related overdose.

(c) Limited Immunity for Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the person who experienced the drug-related overdose if all of the requirements and conditions listed in subdivisions (1), (2), (4), and (5) of subsection (b) of this section are satisfied.

(c1) Probation or Release. – A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution under subsection (b) or (c) of this section. The arrest of a person for an offense for which subsection (b) or (c) of this section may provide the person with immunity will not itself be deemed to be a commission of a new criminal offense in violation of a condition of the person's pretrial release, condition of probation, or condition of parole or post-release.

(c2) Civil Liability for Arrest or Charges. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest or filing of charges.

(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

(1) A misdemeanor violation of G.S. 90-95(a)(3).

(2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine.

(3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.

(4) A violation of G.S. 90-113.22.

(d) Construction. – Nothing in this section shall be construed to do any of the following:

(1) Bar the admissibility of any evidence obtained in connection with the investigation and prosecution of (i) other crimes committed by a person who otherwise qualifies for limited immunity under this section or (ii) any crimes committed by a person who does not qualify for limited immunity under this section.

(2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation of, or to effectuate an arrest for, any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole. (2013-23, s. 1; 2015-94, s. 1.)

§ 90-97. Other penalties.

Any penalty imposed for violation of this Article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. If a violation of this Article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State. (1971, c. 919, s. 1.)

§ 90-98. Attempt and conspiracy; penalties.

Except as otherwise provided in this Article, any person who attempts or conspires to commit any offense defined in this Article is guilty of an offense that is the same class as the offense which was the object of the attempt or conspiracy and is punishable as specified for that class of offense and prior record or conviction level in Article 81B of Chapter 15A of the General Statutes. (1971, c. 919, s. 1; 1979, c. 760, s. 5; 1997-80, s. 9.)

§ 90-99. Republishing of schedules.

The North Carolina Department of Health and Human Services shall update and republish the schedules established by this Article on a semiannual basis for two years from January 1, 1972, and thereafter on an annual basis. (1971, c. 919, s. 1; 1977, c. 667, s. 3; 1997-443, s. 11A.118(a).)

§ 90-100. Rules.

The Commission may adopt rules relating to the registration and control of the manufacture, distribution, security, and dispensing of controlled substances within this State. (1971, c. 919, s. 1; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1991, c. 309, s. 2; 1993, c. 384, s. 1.)

§ 90-101. Annual registration and fee to engage in listed activities with controlled substances; effect of registration; exceptions; waiver; inspection.

(a) Every person who manufactures, distributes, dispenses, or conducts research with any controlled substance within this State or who proposes to engage in any of these activities shall annually register with the North Carolina Department of Health and Human Services, in accordance with rules adopted by the Commission, and shall pay the registration fee set by the Commission for the category to which the applicant belongs. An applicant for registration shall file an application for registration with the Department of Health and Human Services and submit the required fee with the application. The categories of applicants and the maximum fee for each category are as follows:

CATEGORY	MAXIMUM FEE
Clinic	$150.00
Animal Shelter	150.00
Hospital	350.00
Nursing Home	150.00
Teaching Institution	150.00
Researcher	150.00
Analytical Laboratory	150.00
Dog Handler	150.00
Distributor	600.00
Manufacturer	700.00

(a1) Repealed by Session Laws 2019-159, s. 1.1, effective July 22, 2019.

(a2) An animal shelter may register under this section for the limited purpose of obtaining, possessing, and using sodium pentobarbital and other drugs approved by the Department in consultation with the North Carolina Veterinary Medical Association for the euthanasia of animals lawfully held by the animal shelter. An animal shelter registered under this section shall also register with the federal Drug Enforcement Agency under the federal Controlled Substances Act. An animal shelter's acquisition of sodium pentobarbital and other approved drugs for use in the euthanizing of animals shall be made only by the shelter's manager or chief operating officer or by a licensed veterinarian.

A person certified by the Department of Agriculture and Consumer Services to administer euthanasia by injection is authorized to possess and administer sodium pentobarbital and other approved euthanasia drugs for the purposes of euthanizing domestic dogs (Canis familiaris) and cats (Felis domestica) lawfully held by an animal shelter. Possession and administration of sodium pentobarbital and other approved drugs for use in the euthanizing of dogs and cats by a certified euthanasia technician shall be limited to the premises of the animal shelter.

For purposes of this section, "animal shelter" means an animal shelter registered under Article 3 of Chapter 19A of the General Statutes and owned, operated, or maintained by a unit of local government or under contract with a unit of local government for the purpose of housing or containing seized, stray, homeless, quarantined, abandoned, or unwanted animals.

(b) Persons registered by the North Carolina Department of Health and Human Services under this Article (including research facilities) to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of this Article:

(1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment;

(2) The State courier service operated by the Department of Administration, a common or contract carrier, or a public warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner;

(4) Repealed by Session Laws 1977, c. 891, s. 4.

(5) Any law-enforcement officer acting within the course and scope of official duties, or any person employed in an official capacity by, or acting as an agent of, any law-enforcement agency or other agency charged with enforcing the provisions of this Article when acting within the course and scope of official duties; and

(6) A practitioner, as defined in G.S. 90-87(22)a., who is required to be licensed in North Carolina by his respective licensing board.

(d) The Commission may, by rule, waive the requirement for registration of certain classes of manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration shall be required at each principal place of business, research or professional practice where the registrant manufactures, distributes, dispenses or uses controlled substances.

(f) The North Carolina Department of Health and Human Services is authorized to inspect the establishment of a registrant, applicant for registration, or practitioner in accordance with rules adopted by the Commission.

(g) Practitioners licensed in North Carolina by their respective licensing boards may possess, dispense or administer controlled substances to the extent authorized by law and by their boards.

(h) A physician licensed by the North Carolina Medical Board pursuant to Article 1 of this Chapter may possess, dispense or administer tetrahydrocannabinols in duly constituted pharmaceutical form for human administration for treatment purposes pursuant to rules adopted by the Commission.

(i) A physician licensed by the North Carolina Medical Board pursuant to Article 1 of this Chapter may dispense or administer Dronabinol or Nabilone as scheduled in G.S. 90-90(5) only as an antiemetic agent in cancer chemotherapy. (1971, c. 919, s. 1; 1973, c. 1358, s. 12; 1977, c. 667, s. 3; c. 891, s. 4; 1979, c. 781; 1981, c. 51, s. 9; 1983, c. 375, s. 2; 1985, c. 439, s. 2; 1987, c. 412, s. 13; 1989 (Reg. Sess., 1990), c. 1040, s. 4; 1993, c. 384, s. 2; 1995, c. 94, ss. 26, 27; 1997-443, s. 11A.118(a); 1997-456, s. 27; 2003-335, s. 1; 2003-398, s. 1; 2010-127, s. 1; 2019-159, s. 1.1.)

§ 90-102. Additional provisions as to registration.

(a) The North Carolina Department of Health and Human Services shall register an applicant to manufacture or distribute controlled substances included in Schedules I through VI of this Article unless it determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of any controlled substances and any substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;
(2) Compliance with applicable federal, State and local law;
(3) Prior conviction record of applicant, its agents or employees under federal and State laws relating to the manufacture, distribution, or dispensing of such substances;
(4) Past experience in the manufacture of controlled substances, and the existence in the establishment or facility of effective controls against diversion; and
(5) Any factor relating to revocation, suspension, or denial of past registrations, licenses, or applications under this or any other State or federal law;
(6) Such other factors as may be relevant to and consistent with the public health and safety.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to manufacture and distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Individual practitioners licensed to dispense and authorized to conduct research under federal law with Schedules II through V substances must be registered with the North Carolina Department of Health and Human Services to conduct such research.

(d) Manufacturers and distributors registered or licensed under federal law to manufacture or distribute controlled substances included in Schedules I through VI of this Article are entitled to registration under this Article, but this registration is expressly made subject to the provisions of G.S. 90-103.

(e) The North Carolina Department of Health and Human Services shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any substances prior to January 1, 1972, and who are registered or licensed by the State. (1971, c. 919, s. 1; 1973, c. 1358, s. 14; 1977, c. 667, s. 3; 1985, c. 439, ss. 3, 4; 1997-443, s. 11A.118(a).)

§ 90-102.1. Registration of persons requiring limited use of controlled substances for training purposes in certain businesses.

(a) Definitions. – As used in this Article:

(1) "Commercial detection service" means any person, firm, association, or corporation contracting with another person, firm, association, or corporation for a fee or other valuable consideration to place, lease, or rent a trained drug detection dog with a dog handler.

(2) "Dog handler" means a person trained in the handling of drug detection dogs, including the care, feeding, and maintenance of drug detection dogs and the procedures necessary to train and control the behavior of drug detection dogs.

(3) "Drug detection dog" means a dog trained to locate controlled substances by scent.

(b) Registration. – A dog handler who is not exempt from registration under G.S. 90-101 who intends to use any controlled substance included in Schedules I through VI for the limited purpose of the initial training and maintenance training of drug detection dogs shall file an application for registration with the Department of Health and Human Services and pay the applicable fee as provided in G.S. 90-101.

(c) Prerequisites for Registration. – Upon receipt of an application, the Department of Health and Human Services shall conduct a background investigation, during the course of which the applicant shall be required to show that the applicant meets all the following requirements and qualifications:

(1) That the applicant is at least 21 years of age.

(2) That the applicant is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits:

a. Conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage;

b. Conviction of a felony or a crime involving an act of violence;

c. Conviction of a crime involving unlawful breaking or entering, burglary, larceny, or any offense involving moral turpitude; or

d. A history of addiction to alcohol or a narcotic drug;

provided that, for purposes of this subsection, conviction means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

(3) That the applicant has not been convicted of any felony involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(4) That the applicant has the necessary training, qualifications, and experience to demonstrate competency and fitness as a dog handler as the Department of Health and Human Services may determine by rule for all registrations to be approved by the Department.

(5) That the applicant affirms in writing that if the application for registration is approved, the applicant shall report all dog alerts to, or finds of, any controlled substance to a law enforcement agency having jurisdiction in the area where the dog alert occurs or where the controlled substance is found.

(d) Criminal Record Check. – The Department of Public Safety may provide a criminal record check to the Department of Health and Human Services for a person who has applied for a new or renewal registration. The Department of Health and Human Services shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Health and Human Services shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(e) Acquisition of Controlled Substances. – If the application for registration is approved, the registrant may lawfully obtain and possess controlled substances in the manner and to the extent authorized by the registration, in conformity with G.S. 90-105, other provisions of this Article, and rules promulgated by the Commission pursuant to G.S. 90-100.

(f) Record Keeping; Physical Security. – Each registrant shall keep records and maintain inventories in the manner specified in G.S. 90-104. Registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. Controlled substances shall be stored in a securely locked, substantially constructed cabinet, and the storage area shall be protected by an alarm system that is continuously monitored by an alarm company central station.

(g) Disclosure of Discovery of Controlled Substances. – A dog handler shall, upon a dog alert or finding of a controlled substance, notify the State or local law enforcement agency having jurisdiction over the area where the dog alert occurs or the controlled

substance is found. Before leaving the premises where the dog alert occurs or where the controlled substance is found, the dog handler shall inform law enforcement of the dog alert or the finding of a controlled substance and shall provide all relevant information concerning the dog alert or the discovery of the controlled substance.

(h) Commercial Detection Services; Dog Certification and Client Confidentiality. – Any drug detection dog utilized in a commercial detection service in this State shall first be certified by a canine certification association approved by the Department of Health and Human Services. Any person, including a nonresident, engaged in providing a commercial detection service in this State shall comply with the requirements of subsection (g) of this section regarding disclosure of the discovery of controlled substances. Client records of a dog handler who provides a commercial detection service for controlled substances shall be confidential unless the dog handler is required to report a dog alert or finding of a controlled substance in the course of a search, the records are lawfully subpoenaed, or the records are obtained by a law enforcement officer pursuant to a court order, a search warrant, or an exception to the search warrant requirement.

(i) Notice of Disclosure Requirement. – A dog handler shall provide conspicuous written notice to clients at the dog handler's place of business and in the contract for services stating that the dog handler is required by law to notify law enforcement of any dog alert or finding of a controlled substance.

Any person who contracts with a dog handler to provide commercial drug detection services shall provide conspicuous written notice to any person whose person or property may be subject to search stating that the premises is subject to search and that the dog handler is required by law to notify law enforcement of any dog alert or finding of a controlled substance.

(j) The Department of Health and Human Services shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this section involving individuals registered or applying to be registered under this section. The Department or the Commission may deny, suspend, or revoke a registration issued under this section if it is determined that the applicant or registrant has:

(1) Made any false statement or given any false information in connection with any application for a registration or for the renewal or reinstatement of a registration.
(2) Violated any provision of this Article.
(3) Violated any rule promulgated by the Department of Health and Human Services or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services pursuant to the authority contained in this Article.

(k) This section does not apply to law enforcement agencies, to dog handlers and drug detection dogs that are employed or under contract to law enforcement agencies, or to other persons who are exempt from registration under G.S. 90-101(c)(5). (2003-398, s. 2; 2014-100, s. 17.1(o).)

§ 90-103. Revocation or suspension of registration.

(a) A registration under G.S. 90-102 to manufacture, distribute, or dispense a controlled substance, may be suspended or revoked by the Commission upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this Article;

(2) Has been convicted of a felony under any State or federal law relating to any controlled substance; or

(3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The Commission may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the Commission shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the Commission at a time and place not less than 30 days after the date of service of the order, but in the case of a denial or renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with rules and regulations of the Commission required by Chapter 150B of the General Statutes, and subject to judicial review as provided in Chapter 150B of the General Statutes. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this Article or any law of the State.

(d) The Commission may suspend, without an order to show cause, any registration simultaneously with the institutions of proceedings under this section, or where renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Commission or dissolved by a court of competent jurisdiction.

(e) In the event the Commission suspends or revokes a registration granted under G.S. 90-102, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the Commission be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be ordered forfeited to the State.

(f) The Bureau shall promptly be notified of all orders suspending or revoking registration. (1971, c. 919, s. 1; 1973, c. 1331, s. 3; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1987, c. 827, s. 1.)

§ 90-104. Records of registrants or practitioners.

Each registrant or practitioner manufacturing, distributing, or dispensing controlled substances under this Article shall keep records and maintain inventories in conformance with the record-keeping and the inventory requirements of the federal law and shall conform to such rules and regulations as may be promulgated by the Commission. (1971, c. 919, s. 1; 1977, c. 667, s. 3; 1981, c. 51, s. 9.)

§ 90-105. Order forms.

Controlled substances included in Schedules I and II of this Article shall be distributed only by a registrant or practitioner, pursuant to an order form. Compliance with the provisions of the Federal Controlled Substances Act or its successor respecting order forms shall be deemed compliance with this section. (1971, c. 919, s. 1.)

§ 90-106. Prescriptions and labeling.

(a) Definitions. – As used in this section, the following terms have the following meanings:

(1) Acute pain. – Pain, whether resulting from disease, accident, intentional trauma, or other cause, that the practitioner reasonably expects to last for three months or less. The term does not include chronic pain or pain being treated as part of cancer care, hospice care, palliative care, or medication-assisted treatment for a substance use disorder. The term does not include pain being treated as part of cancer care, hospice care, or palliative care provided by a person licensed to practice veterinary medicine pursuant to Article 11 of this Chapter.

(2) Chronic pain. – Pain that typically lasts for longer than three months or that lasts beyond the time of normal tissue healing.

(3) Surgical procedure. – A procedure that is performed for the purpose of structurally altering the human body by incision or destruction of tissues as part of the practice of medicine or a procedure that is performed for the purpose of structurally altering the animal body by incision or destruction of tissues as part of the practice of veterinary medicine. This term includes the diagnostic or therapeutic treatment of conditions or disease processes by use of instruments such as lasers, ultrasound, ionizing, radiation, scalpels, probes, or needles that cause localized alteration or transportation of live human tissue, or live animal tissue in the practice of veterinary medicine, by cutting, burning, vaporizing, freezing, suturing, probing, or manipulating by closed reduction for major dislocations and fractures, or otherwise altering by any mechanical, thermal, light-based, electromagnetic, or chemical means.

(a1) Electronic Prescription Required; Exceptions. – Unless otherwise exempted by this subsection, a practitioner shall electronically prescribe all targeted controlled substances. This subsection does not apply to prescriptions for targeted controlled substances issued by any of the following:

(1) A practitioner, other than a pharmacist, who dispenses directly to an ultimate user.

(2) A practitioner who orders a controlled substance to be administered in a hospital, nursing home, hospice facility, outpatient dialysis facility, or residential care facility, as defined in G.S. 14-32.2(i).

(3) A practitioner who experiences temporary technological or electrical failure or other extenuating circumstance that prevents the prescription from being transmitted electronically. The practitioner, however, shall document the reason for this exception in the patient's medical record.

(4) A practitioner who writes a prescription to be dispensed by a pharmacy located on federal property. The practitioner, however, shall document the reason for this exception in the patient's medical record.

(5) A person licensed to practice veterinary medicine pursuant to Article 11 of this Chapter. A person licensed to practice veterinary medicine pursuant to Article 11 of this Chapter may continue to prescribe targeted controlled substances from valid written, oral, or facsimile prescriptions that are otherwise consistent with applicable laws.

(a2) Verification by Dispenser Not Required. – A dispenser is not required to verify that a practitioner properly falls under one of the exceptions specified in subsection (a1) of this section prior to dispensing a targeted controlled substance. A dispenser may continue to dispense targeted controlled substances from valid written, oral, or facsimile prescriptions that are otherwise consistent with applicable laws.

(a3) Limitation on Prescriptions Upon Initial Consultation for Acute Pain. – A practitioner shall not prescribe more than a five-day supply of any targeted controlled substance upon the initial consultation and treatment of a patient for acute pain, unless the prescription is for post-operative acute pain relief for use immediately following a surgical procedure. A practitioner shall not prescribe more than a seven-day supply of any targeted controlled substance for post-operative acute pain relief immediately following a surgical procedure. Upon any subsequent consultation for the same pain, the practitioner may issue any appropriate renewal, refill, or new prescription for a targeted controlled substance. This subsection does not apply to prescriptions for controlled substances issued by a practitioner who orders a controlled substance to be wholly administered in a hospital, nursing home licensed under Chapter 131E of the General Statutes, hospice facility, or residential care facility, as defined in G.S. 14-32.2(i). This subsection does not apply to prescriptions for controlled substances issued by a practitioner who orders a controlled substance to be wholly administered in an emergency facility, veterinary hospital, or animal hospital, as defined in G.S. 90-181.1. A practitioner who acts in accordance with the limitation on prescriptions as set forth in this subsection is immune from any civil liability or disciplinary action from the practitioner's occupational licensing agency for acting in accordance with this subsection.

(a4) Repealed by Session Laws 2019-76, s. 12(b) effective January 1, 2020, and applicable to offenses committed on or after that date.

(a5) Dispenser Immunity. – A dispenser is immune from any civil or criminal liability or disciplinary action from the Board of Pharmacy for dispensing a prescription written by a prescriber in violation of this section.

(b) Dispensing of Schedule II Controlled Substances. – No Schedule II substance shall be dispensed pursuant to a written or electronic prescription more than six months after the date it was prescribed. In emergency situations, as defined by rule of the Commission, Schedule II controlled substances may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the dispensing agent. Prescriptions shall be retained in conformity with the requirements of G.S. 90-104. No prescription for a Schedule II substance shall be refilled.

(c) Dispensing of Schedule III and IV Controlled Substances. – Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedules III or IV, except paregoric, U.S.P., as provided

in G.S. 90-91(e)1., shall be dispensed without a prescription, and oral prescriptions shall be promptly reduced to writing and filed with the dispensing agent. The prescription shall not be filled or refilled more than six months after the date of the prescription or be refilled more than five times after the date of the prescription.

(d) Dispensing of Schedule V Controlled Substances. – No controlled substance included in Schedule V of this Article or paregoric, U.S.P., shall be distributed or dispensed other than for a medical purpose.

(e) Dispensing of Schedule VI Controlled Substances. – No controlled substance included in Schedule VI of this Article shall be distributed or dispensed other than for scientific or research purposes by persons registered under, or permitted by, this Article to engage in scientific or research projects.

(f) Labeling Requirements. – No controlled substance shall be dispensed or distributed in this State unless the substance is in a container clearly labeled in accord with regulations lawfully adopted and published by the federal government or the Commission.

(g) Copies. – When a copy of a prescription for a controlled substance under this Article is given as required by G.S. 90-70, the copy shall be plainly marked: "Copy – for information only." Copies of prescriptions for controlled substances shall not be filled or refilled.

(h) Fill Date. – A pharmacist dispensing a controlled substance under this Article shall enter the date of dispensing on the prescription order pursuant to which the controlled substance was dispensed.

(i) Distribution of Complimentary Samples. – A manufacturer's sales representative may distribute a controlled substance as a complimentary sample only upon the written request of a practitioner. The request must be made on each distribution and must contain the names and addresses of the supplier and the requester and the name and quantity of the specific controlled substance requested. The manufacturer shall maintain a record of each request for a period of two years. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1975, c. 572; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 2007-248, s. 2; 2013-379, s. 5; 2017-74, s. 6; 2018-76, ss. 5, 7; 2019-76, s. 12(b).)

§ 90-106.1. Photo ID requirement for Schedule II controlled substances.

(a) Immediately prior to dispensing a Schedule II controlled substance, or any of the Schedule III controlled substances listed in subdivisions 1. through 8. of G.S. 90-91(d), each pharmacy holding a valid permit pursuant to G.S. 90-85.21 shall require the person seeking the dispensation to present one of the following valid, unexpired forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the pharmacy shall document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number. The pharmacy shall retain this identifying information on the premises or at a central location apart from the premises as part of its business records for a period of three years following dispensation.

(b) The pharmacy shall make the identifying information available to any person authorized under G.S. 90-113.74 to receive prescription information data in the controlled substances reporting system within 72 hours after a request for the identifying information. A pharmacy that submits the identifying information required under this section to the controlled substances reporting system established and maintained pursuant to G.S. 90-113.73 is deemed in compliance with this subsection.

(c) Nothing in this section shall be deemed to require that the person seeking the dispensation and the person to whom the prescription is issued be the same person, and nothing in this section shall apply to the dispensation of controlled substances to employees of "health care facilities", as that term is defined in G.S. 131E-256(b), when the controlled substances are delivered to the health care facilities for the benefit of residents or patients of such health care facilities. (2011-349, s. 1.)

§ 90-106.2: Recodified as G.S. 90-12.7 by Session Laws 2016-17, s. 1, effective June 20, 2016.

§ 90-106.3. Disposal of residual pain prescriptions following death of hospice or palliative care patient.

Any hospice or palliative care provider who prescribes a targeted controlled substance to be administered to a patient in his or her home for the treatment of pain as part of in-home hospice or palliative care shall, at the commencement of treatment, provide oral and written information to the patient and his or her family regarding the proper disposal of such targeted controlled substances. This information shall include the availability of permanent drop boxes or periodic "drug take-back" events that allow for the safe disposal of controlled substances such as those permanent drop boxes and events that may be identified through North Carolina Operation Medicine Drop. (2017-74, s. 7.)

§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.

Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article, and to authorized employees of the North Carolina Department of Health and Human Services. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (1971, c. 919, s. 1; 1973, c. 1358, s. 13; 1977, c. 667, s. 3; 1997-443, s. 11A.118(a).)

§ 90-107.1. Certified diversion investigator access to prescription records.

(a) A certified diversion investigator associated with a qualified law enforcement agency, as those terms are defined in G.S. 90-113.74(i), shall request and receive from a pharmacy copies of prescriptions and records related to prescriptions in connection with a

bona fide active investigation related to the enforcement of laws governing licit or illicit drugs by providing in writing or electronically all of the following:

(1) The certified diversion investigator's name and certification number.

(2) The name of the qualified law enforcement agency for whom the investigator works.

(3) The case number associated with the request.

(4) A description of the nature and purpose of the request.

(5) The first name, last name, and date of birth of each individual whose prescription and records related to the prescription the investigator seeks, including, when appropriate, any alternative name, spelling, or date of birth associated with each such individual.

(b) When a certified diversion investigator transmits such a request to a pharmacy, the certified diversion investigator shall also transmit a copy of the request to the North Carolina State Bureau of Investigation, Diversion and Environmental Crimes Unit. The North Carolina State Bureau of Investigation shall conduct periodic audits of a random sample of these requests.

(c) A pharmacy shall provide copies of requested prescriptions and records related to prescriptions as soon as practicable and no later than two business days after receipt of the request from the certified diversion investigator.

(d) No certified diversion investigator having knowledge by virtue of his office of any such prescription or record related to prescriptions shall divulge such knowledge other than to other law enforcement officials or agencies involved in the bona fide active investigation, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party, or as provided in G.S. 90-113.74 (i)(4), or as otherwise allowed by law.

(e) A pharmacy or pharmacist that in good faith complies with this section and provides copies of prescriptions and records related to prescriptions to a certified diversion investigator shall have no liability for improper use of information divulged to the certified diversion investigator. (2018-44, s. 8.)

§ 90-108. Prohibited acts; penalties.

(a) It shall be unlawful for any person:

(1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this Chapter to represent to any registrant or practitioner who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he or she is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this State.

(2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or G.S. 90-106.

(3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person.

(4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its successor.

(5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this Article.

(6) To refuse any entry into any premises or inspection authorized by this Article.

(7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article.

(8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his or her legitimate business, except pursuant to an order form as required by G.S. 90-105.

(9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person.

(10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this Article.

(12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance.

(13) To obtain controlled substances through the use of legal prescriptions which have been obtained by the knowing and willful misrepresentation to or by the intentional withholding of information from one or more practitioners.

(14) Who is a registrant or practitioner or an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances by virtue of employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use any controlled substance which shall have come into his or her possession or under his or her care.

(15) Who is not a registrant or practitioner nor an employee of a registrant or practitioner and who, by virtue of his or her occupation or profession, administers or provides medical care, aid, emergency treatment, or any combination of these to a person who is prescribed a controlled substance, to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use or to take, make away with,

or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use any controlled substance that is prescribed to another.

(b) Any person who violates this section shall be guilty of a Class 1 misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I felony unless one of the following applies:

(1) A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon.

(2) A person who violates subdivision (14) or (15) of subsection (a) of this section shall be punished as a Class G felon.

(3) A person who violates subdivision (14) or (15) of subsection (a) of this section and intentionally diverts any controlled substance by means of dilution or substitution or both shall be punished as a Class E felon. As used in this subdivision, the following terms have the following meanings:

a. Dilution. – The act of diluting or the state of being diluted; the act of reducing the concentration of a mixture or solution.

b. Substitution. – To take the place of or replace. (1971, c. 919, s. 1; 1973, c. 1358, s. 11; 1979, c. 760, ss. 5, 6; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1983, c. 294, s. 7; c. 773; 1991 (Reg. Sess., 1992), c. 1041, s. 1; 1993, c. 539, s. 622; 1994, Ex. Sess., c. 24, s. 14(c); 2013-90, s. 1; 2018-44, s. 9.)

§ 90-109. Licensing required.

A facility for drug treatment as defined in G.S. 122C-3(14)b. shall obtain the license required by Article 2 of Chapter 122C of the General Statutes permitting operation. Subject to rules governing the operation and licensing of these facilities set by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, the Department of Health and Human Services shall be responsible for issuing licenses. These licensing rules shall be consistent with the licensing rules adopted under Article 2 of Chapter 122C of the General Statutes. (1971, c. 919, s. 1; 1973, c. 1361; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1983, c. 718, s. 2; 1985, c. 589, s. 32; 1995, c. 509, s. 39; 1997-443, s. 11A.118(a).)

§ 90-109.1. Treatment.

(a) A person may request treatment and rehabilitation for drug dependence from a practitioner, and such practitioner or employees thereof shall not disclose the name of such person to any law-enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A practitioner may undertake the treatment and rehabilitation of such person or refer such person to another practitioner for such purpose and under the same requirement of confidentiality.

(b) An individual who requests treatment or rehabilitation for drug dependence in a program where medical services are to be an integral component of his treatment shall be examined and evaluated by a practitioner before receiving treatment and rehabilitation services. If a practitioner performs an initial examination and evaluation, the practitioner shall prescribe a proper

course of treatment and medication, if needed. That practitioner may authorize another practitioner to provide the prescribed treatment and rehabilitation services.

(c) Every practitioner that provides treatment or rehabilitation services to a person dependent upon drugs shall periodically as required by the Secretary of the North Carolina Department of Health and Human Services commencing January 1, 1972, make a statistical report to the Secretary of the North Carolina Department of Health and Human Services in such form and manner as the Secretary shall prescribe for each such person treated or to whom rehabilitation services were provided. The form of the report prescribed shall be furnished by the Secretary of the North Carolina Department of Health and Human Services. Such report shall include the number of persons treated or to whom rehabilitation services were provided; the county of such person's legal residence; the age of such person; the number of such persons treated as inpatients and the number treated as outpatients; the number treated who had received previous treatment or rehabilitation services; and any other data required by the Secretary. If treatment or rehabilitation services are provided to a person by a hospital, public agency, or drug treatment facility, such hospital, public agency, or drug treatment facility shall coordinate with the treating medical practitioner so that statistical reports required in this section shall not duplicate one another. The Secretary shall cause all such reports to be compiled into periodical reports which shall be a public record. (1971, c. 919, s. 1; 1977, c. 667, s. 3; 1985, c. 439, s. 5; 1997-443, s. 11A.118(a).)

§ 90-110. Injunctions.

(a) The superior court of North Carolina shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this Article.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the rules of the superior courts of North Carolina. (1971, c. 919, s. 1.)

§ 90-111. Cooperative arrangements.

The North Carolina Department of Health and Human Services and the Attorney General of North Carolina shall cooperate with federal and other State agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

(1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs on controlled substances for law enforcement at the local and State levels;

(3) Cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the State, and make such information available for federal, State, and local law-enforcement purposes. Provided that neither the Attorney General of North Carolina, the North Carolina Department of Health and Human Services nor any other State officer or agency shall be authorized to accept or file, or give out the names or other form of personal identification of drug-dependent persons who voluntarily seek treatment or assistance related to their drug dependency. (1971, c. 919, s. 1; 1977, c. 667, s. 3; 1997-443, s. 11A.118(a).)

§ 90-112. Forfeitures.

(a) The following shall be subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this Article;

(2) All money, raw material, products, and equipment of any kind which are acquired, used, or intended for use, in selling, purchasing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of the provisions of this Article;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) All conveyances, including vehicles, vessels, or aircraft, which are used or intended for use to unlawfully conceal, convey, or transport, or in any manner to facilitate the unlawful concealment, conveyance, or transportation of property described in (1) or (2), except that

a. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Article unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Article;

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

c. No conveyance shall be forfeited unless the violation involved is a felony under this Article;

d. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Article.

(b) Any property subject to forfeiture under this Article may be seized by any law-enforcement officer upon process issued by any district or superior court having jurisdiction over the property except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this Article.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law-enforcement agency seizing it, which may:

(1) Place the property under seal; or,

(2) Remove the property to a place designated by it; or,

(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Any property seized by a State, local, or county law enforcement officer shall be held in safekeeping as provided in this subsection until an order of disposition is properly entered by the judge.

(d) Whenever property is forfeited under this Article, the law-enforcement agency having custody of it may:

(1) Retain the property for official use; or

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expense of seizure, maintenance of custody, advertising, and court costs; or

(3) Transfer any conveyance including vehicles, vessels, or aircraft which are forfeited under the provisions of this Article to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said conveyance may be of official use to the North Carolina Department of Justice;

(4) Upon determination by the director of any law-enforcement agency that a vehicle, vessel or aircraft transferred pursuant to the provisions of this Article is of no further use to said agency for use in official investigations, such vehicle, vessel or aircraft may be sold as surplus property in the same manner as other vehicles owned by the law-enforcement agency and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle, vessel or aircraft was seized; provided, that any vehicle transferred to any law-enforcement agency under the provisions of this Article which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer or disposition other than as junk.

(d1) Notwithstanding the provisions of subsection (d), the law-enforcement agency having custody of money that is forfeited pursuant to this section shall pay it to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which the money was seized.

(e) All substances included in Schedules I through VI that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Article shall be deemed contraband and seized and summarily forfeited to the State. All substances included in Schedules I through VI of this Article which are seized or come into the possession of the State, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the State according to rules and regulations of the North Carolina Department of Justice.

All species of plants from which controlled substances included in Schedules I, II and VI of this Article may be derived, which have been planted or cultivated in violation of this Article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

The failure, upon demand by the Attorney General of North Carolina, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(f) All other property subject to forfeiture under the provisions of this Article shall be forfeited as in the case of conveyances used to conceal, convey, or transport intoxicating beverages. (1971, c. 919, s. 1; 1973, cc. 447, 542; c. 1446, s. 6; 1983, c. 528, ss. 1-3; 1989, c. 772, s. 4.)

§ 90-112.1. Remission or mitigation of forfeitures; possession pending trial.

(a) Whenever, in any proceeding in court for a forfeiture, under G.S. 90-112 of any conveyance seized for a violation of this Article the court shall have exclusive jurisdiction to continue, remit or mitigate the forfeiture.

(b) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (i) that he has an interest in such conveyance, as owner or otherwise, which he acquired in good faith; (ii) that he had no knowledge, or reason to believe, that it was being or would be used in the violation of laws of this State relating to controlled substances; (iii) that his interest is in an amount in excess or equal to the fair market value of such conveyance.

(c) If the court, in its discretion, allows the remission or mitigation the conveyance shall be returned to the claimant; and should there be joint request of any two or more claimants, whose claims are allowed, the court shall order the return of the conveyance to such of the joint requesting claimants as have the prior claim on lien. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the State. In all other cases the court shall order disposition of such conveyance as provided in G.S. 90-112, and after satisfaction of the expenses of the sale, and such claims as may be approved by the court, the funds shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which said vehicle was seized.

(d) If the court should determine that the conveyance should be held for purposes of evidence, then it may order the vehicle to be held until the case is heard. (1975, c. 601.)

§ 90-113. Repealed by Session Laws 1973, c. 540, s. 7.

§ 90-113.1. Burden of proof; liabilities.

(a) It shall not be necessary for the State to negate any exemption or exception set forth in this Article in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Article, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

(c) No liability shall be imposed by virtue of this Article upon any duly authorized officer, engaged in the lawful enforcement of this Article. (1971, c. 919, s. 1.)

§ 90-113.2. Judicial review.

All final determinations, findings, and conclusions of the Commission under this Article shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may obtain review of the decision as provided in Chapter 150B of the General Statutes. Findings of fact by the Commission, if supported by substantial evidence, shall be conclusive.

(1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1331, s. 3; 1977, c. 667, s. 3; c. 891, s. 5; 1981, c. 51, s. 9; 1987, c. 827, s. 1.)

§ 90-113.3. Education and research.

(a) The North Carolina Department of Public Instruction and the Board of Governors of the University of North Carolina are authorized and directed to carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with such programs, they are authorized to:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances; and

(3) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.

(b) The North Carolina Department of Public Instruction and the Board of Governors of the University of North Carolina or either of them may enter into contracts for educational activities related to controlled substances.

(c) The North Carolina Department of Health and Human Services is authorized and directed to encourage research on misuse and abuse of controlled substances. In connection with such research and in furtherance of the enforcement of this Article, it is authorized to:

(1) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;

(2) Make studies and undertake programs of research to:

a. Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Article;

b. Determine patterns of misuse and abuse of controlled substances and the social effect thereof; and

c. Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.

(3) Enter into contracts with other public agencies, any district attorney, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(d) The North Carolina Department of Health and Human Services may enter into contracts for research activities related to controlled substances, and the North Carolina Department of Public Instruction and the Board of Governors of the University of North Carolina or either of them may enter into contracts for educational activities related to controlled substances, without performance bonds.

(e) The North Carolina Department of Health and Human Services may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any State civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

(f) The North Carolina Department of Health and Human Services may authorize persons engaged in research to possess and distribute controlled substances in accordance with such restrictions as the authorization may impose. Persons who obtain this authorization shall be exempt from State prosecution for possession and distribution of controlled substances to the extent authorized by the North Carolina Department of Health and Human Services. (1971, c. 919, s. 1; c. 1244, s. 14; 1973, c. 476, s. 128; 1977, c. 667, s. 3; 1981, c. 218; 1997-443, s. 11A.118(a).)

§ 90-113.4. Repealed by Session Laws 1981, c. 500, s. 2, effective October 1, 1981.

§ 90-113.4A: Repealed by Session Laws 1989, c. 784, s. 4.

§ 90-113.5. State Board of Pharmacy, State Bureau of Investigation and peace officers to enforce Article.

It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors, and representatives, and all peace officers within the State, including agents of the State Bureau of Investigation, and all State's attorneys, to enforce all provisions of this Article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states, relating to controlled substances. The State Bureau of Investigation is hereby authorized to make initial investigation of all violations of this Article, and is given original but not exclusive jurisdiction in respect thereto with all other law-enforcement officers of the State. (1971, c. 919, s. 1; 2014-100, s. 17.1(hh).)

§ 90-113.6. Payments and advances.

(a) The Attorney General is authorized to pay any person, from funds appropriated for the North Carolina Department of Justice, for information concerning a violation of this Article, such sum or sums of money as he may find appropriate, without reference to any rewards to which such persons may otherwise be entitled by law.

(b) Moneys expended from appropriations of the North Carolina Department of Justice for the purchase of controlled substances or other substances proscribed by this Article which is subsequently recovered shall be reimbursed to the current appropriation for the Department.

(c) The Attorney General is authorized to direct the advance of funds by the State Treasurer in connection with the enforcement of this Article. (1971, c. 919, s. 1.)

§ 90-113.7. Pending proceedings.

(a) Prosecutions for any violation of law occurring prior to January 1, 1972, shall not be affected by these repealers, or amendments, or abated by reason, thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to January 1, 1972, shall not be affected by these repealers, or amendments, or abated by reason, thereof.

(c) All administrative proceedings pending on January 1, 1972, shall be continued and brought to final determination in accord with laws and regulations in effect prior to January 1, 1972. Such drugs placed under control prior to January 1, 1972, which are not included within Schedules I through VI of this Article shall automatically be controlled and listed in the appropriate schedule.

(d) The provisions of this Article shall be applicable to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings, and investigations which occur following January 1, 1972. (1971, c. 919, s. 1.)

§ 90-113.8. Continuation of regulations.

Any orders, rules, and regulations which have been promulgated under any law affected by this act [c. 919 of the 1971 Session Laws] and which are in effect on the day preceding January 1, 1972, shall continue in effect until modified, superseded, or repealed by proper authority. (1971, c. 919, s. 2.)

Article 5A.

North Carolina Toxic Vapors Act.

§ 90-113.8A. Title.

This Article shall be known and may be cited as the "North Carolina Toxic Vapors Act." (1971, c. 1208, s. 1.)

§ 90-113.9. Definitions.

For purposes of this Article, unless the context requires otherwise,

(1) "Intoxication" means drunkenness, stupefaction, depression, giddiness, paralysis, irrational behavior, or other change, distortion, or disturbance of the auditory, visual, or mental processes.

(2) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes. (1971, c. 1208, s. 1; 1979, c. 671, s. 1; 1981, c. 51, s. 10; 1995, c. 509, s. 40.)

§ 90-113.10. Inhaling fumes for purpose of causing intoxication.

It is unlawful for any person to knowingly breathe or inhale any compound, liquid, or chemical containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance for the purpose of inducing a condition of intoxication. This section does not apply to any person using as an inhalant any chemical substance pursuant to the direction of a licensed medical provider authorized by law to prescribe the inhalant or chemical substance possessed. (1971, c. 1208, s. 1; 1979, c. 671, s. 2; 2007-134, s. 1.)

§ 90-113.10A. Alcohol vaporizing devices prohibited.

It shall be unlawful for any person to knowingly manufacture, sell, give, deliver, possess, or use an alcohol vaporizing device. As used in this section, "alcohol vaporizing device" or "AVD" means a device, machine, apparatus, or appliance that is designed or marketed for the purpose of mixing ethyl alcohol with pure or diluted oxygen, or another gas, to produce an alcoholic vapor that an individual can inhale or snort. An AVD does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense either a substance prescribed by a licensed medical provider authorized by law to prescribe the inhalant or chemical substance possessed, or an over-the-counter medication approved by monograph or new drug application under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, et seq.), provided

the instrument is not used for the purpose of inducing a condition of intoxication through inhalation. Violation of this section is not a lesser included offense of G.S. 90-113.22. (2007-134, s. 2.)

§ 90-113.11. Possession of substances.

It is unlawful for any person to possess any compound, liquid, or chemical containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce a condition of intoxication through inhalation for the purpose of violating G.S. 90-113.10. (1971, c. 1208, s. 1; 1979, c. 671, s. 3; 2007-134, s. 3.)

§ 90-113.12. Sale of substance.

It is unlawful for any person to sell, offer to sell, deliver, give, or possess with the intent to sell, deliver, or give any other person any compound, liquid, or chemical containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance which will induce a condition of intoxication through inhalation if he has reasonable cause to suspect that the product sold, offered for sale, given, delivered, or possessed with the intent to sell, give, or deliver, will be used for the purpose of violating G.S. 90-113.10. (1971, c. 1208, s. 1; 1979, c. 671, s. 4; 2007-134, s. 4.)

§ 90-113.13. Violation a misdemeanor.

Violation of this Article is a Class 1 misdemeanor. (1979, c. 671, s. 5; 1993, c. 539, s. 623; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-113.14. Conditional discharge for first offenses.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal

under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete

the program successfully, the court shall revoke probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to G.S. 15A-145.3. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against the person under subsection (a) or (a1) of this section, such person, if he or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted.

(d) Whenever any person is charged with a misdemeanor under this Article or possessing drug paraphernalia as prohibited by G.S. 90-113.22 upon dismissal by the State of the charges against him or her or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under this Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c). (1971, c. 1078; 1975, c. 650, ss. 3, 4; 1977, c. 642, s. 3; 1979, c. 431, ss. 3, 4; 1981, c. 51, s. 11; c. 922, ss. 5-7; 1997-443, s. 11A.118(a); 2009-510, s. 9(a)-(d); 2009-577, s. 7; 2010-174, ss. 13-15.)

§§ 90-113.15 through 90-113.19. Reserved for future codification purposes.

Article 5B.

Drug Paraphernalia.

§ 90-113.20. Title.

This Article shall be known and may be cited as the "North Carolina Drug Paraphernalia Act." (1981, c. 500, s. 1.)

§ 90-113.21. General provisions.

(a) As used in this Article, "drug paraphernalia" means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body. "Drug paraphernalia" includes, but is not limited to, the following:

(1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
(2) Kits for manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
(3) Isomerization devices for increasing the potency of any species of plant which is a controlled substance;
(4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances;
(5) Scales and balances for weighing or measuring controlled substances;
(6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose for mixing with controlled substances;
(7) Separation gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;
(8) Blenders, bowls, containers, spoons, and mixing devices for compounding controlled substances;
(9) Capsules, balloons, envelopes and other containers for packaging small quantities of controlled substances;
(10) Containers and other objects for storing or concealing controlled substances;
(11) Hypodermic syringes, needles, and other objects for parenterally injecting controlled substances into the body;
(12) Objects for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, such as:
    a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
    b. Water pipes;
    c. Carburetion tubes and devices;
    d. Smoking and carburetion masks;
    e. Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
    f. Miniature cocaine spoons and cocaine vials;
    g. Chamber pipes;
    h. Carburetor pipes;
    i. Electric pipes;
    j. Air-driven pipes;
    k. Chillums;
    l. Bongs;

m. Ice pipes or chillers.

(b) The following, along with all other relevant evidence, may be considered in determining whether an object is drug paraphernalia:

(1) Statements by the owner or anyone in control of the object concerning its use;
(2) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;
(3) The proximity of the object to a violation of the Controlled Substances Act;
(4) The proximity of the object to a controlled substance;
(5) The existence of any residue of a controlled substance on the object;
(6) The proximity of the object to other drug paraphernalia;
(7) Instructions provided with the object concerning its use;
(8) Descriptive materials accompanying the object explaining or depicting its use;
(9) Advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;
(12) Possible legitimate uses of the object in the community;
(13) Expert testimony concerning its use;
(14) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act. (1981, c. 500, s. 1.)

§ 90-113.22. Possession of drug paraphernalia.

(a) It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a controlled substance other than marijuana which it would be unlawful to possess, or to inject, ingest, inhale, or otherwise introduce into the body a controlled substance other than marijuana which it would be unlawful to possess.

(b) Violation of this section is a Class 1 misdemeanor.

(c) Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object, or for residual amounts of a controlled substance contained in the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in G.S. 17C-2(3) and a "justice officer" as defined in G.S. 17E-2(3).

(d) Notwithstanding the provisions of subsection (a) of this section, it is not unlawful for (i) a person who introduces a controlled substance into his or her body, or

intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance or (ii) a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body. (1981, c. 500, s. 1; 1993, c. 539, s. 624; 1994, Ex. Sess., c. 24, s. 14(c); 2013-147, s. 1; 2014-119, s. 3(a); 2015-284, s. 2; 2019-159, s. 2.1.)

§ 90-113.22A. Possession of marijuana drug paraphernalia.

(a) It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal marijuana or to inject, ingest, inhale, or otherwise introduce marijuana into the body.

(b) A violation of this section is a Class 3 misdemeanor. A violation of this section shall be a lesser included offense of G.S. 90-113.22.

(c) Notwithstanding the provisions of subsection (a) of this section, it is not unlawful for (i) a person who introduces a controlled substance into his or her body, or intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance or (ii) a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body. (2014-119, s. 3(b); 2019-159, s. 2.2.)

§ 90-113.23. Manufacture or delivery of drug paraphernalia.

(a) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a controlled substance which it would be unlawful to possess, or that it will be used to inject, ingest, inhale, or otherwise introduce into the body a controlled substance which it would be unlawful to possess.

(b) Delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia is a separate offense.

(c) Violation of this section is a Class 1 misdemeanor. However, delivery of drug paraphernalia by a person over 18 years of age to someone under 18 years of age who is at least three years younger than the defendant shall be punishable as a Class I felony. (1981, c. 500, s. 1; c. 903, s. 1; 1993, c. 539, s. 625; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-113.24. Advertisement of drug paraphernalia.

(a) It is unlawful for any person to purchase or otherwise procure an advertisement in any newspaper, magazine, handbill, or other publication, or purchase or otherwise procure an advertisement on a billboard, sign, or other outdoor display, when he knows that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia described in this Article.

(b) Violation of this section is a Class 2 misdemeanor. (1981, c. 500, s. 1; c. 903, s. 1; 1993, c. 539, s. 626; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-113.25: Reserved for future codification purposes.

§ 90-113.26: Reserved for future codification purposes.

§ 90-113.27. Needle and hypodermic syringe exchange programs authorized; limited immunity.

(a) Any governmental or nongovernmental organization, including a local or district health department or an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, may establish and operate a needle and hypodermic syringe exchange program. The objectives of the program shall be to do all of the following:

(1) Reduce the spread of HIV, AIDS, viral hepatitis, and other bloodborne diseases in this State.

(2) Reduce needle stick injuries to law enforcement officers and other emergency personnel.

(3) Encourage individuals who use drugs illicitly to enroll in evidence-based treatment.

(4) Reduce the number of drug overdoses in this State.

(b) Programs established pursuant to this section shall offer all of the following:

(1) Disposal of used needles and hypodermic syringes.

(2) Needles, hypodermic syringes, and other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and other injection supplies are not shared or reused.

(3) Reasonable and adequate security of program sites, equipment, and personnel. Written plans for security shall be provided to the police and sheriff's offices with jurisdiction in the program location and shall be updated annually.

(4) Educational materials on all of the following:

a. Overdose prevention.

b. The prevention of HIV, AIDS, and viral hepatitis transmission.

c. Drug abuse prevention.

d. Treatment for mental illness, including treatment referrals.

e. Treatment for substance abuse, including referrals for medication assisted treatment.

(5) Access to naloxone kits that contain naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose, or referrals to programs that provide access to naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(6) For each individual requesting services, personal consultations from a program employee or volunteer concerning mental health or addiction treatment as appropriate.

(c) Notwithstanding any provision of the Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes or any other law, no employee, volunteer, or participant of a program established pursuant to this section shall be charged with or prosecuted for possession of any of the following:

(1) Needles, hypodermic syringes, or other injection supplies obtained from or returned to a program established pursuant to this section.

(2) Residual amounts of a controlled substance contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to a program established pursuant to this section.

The limited immunity provided in this subsection shall apply only if the person claiming immunity provides written verification that a needle, syringe, or other injection supplies were obtained from a needle and hypodermic syringe exchange program established pursuant to this section. In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution under this section shall not be subject to civil liability for the arrest or filing of charges.

(d) Prior to commencing operations of a program established pursuant to this section, the governmental or nongovernmental organization shall report to the North Carolina Department of Health and Human Services, Division of Public Health, all of the following information:

(1) The legal name of the organization or agency operating the program.

(2) The areas and populations to be served by the program.

(3) The methods by which the program will meet the requirements of subsection (b) of this section.

(e) Not later than one year after commencing operations of a program established pursuant to this section, and every 12 months thereafter, each organization operating such a program shall report the following information to the North Carolina Department of Health and Human Services, Division of Public Health:

(1) The number of individuals served by the program.

(2) The number of needles, hypodermic syringes, and needle injection supplies dispensed by the program and returned to the program.

(3) The number of naloxone kits distributed by the program.

(4) The number and type of treatment referrals provided to individuals served by the program, including a separate report of the number of individuals referred to programs that provide access to naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose. (2016-88, s. 4; 2017-74, s. 8; 2019-159, s. 3.1.)

§ 90-113.28: Reserved for future codification purposes.

§ 90-113.29: Reserved for future codification purposes.

Article 5C.

North Carolina Substance Abuse Professional Practice Act.

§ 90-113.30. Declaration of purpose.

The North Carolina Substance Abuse Professional Practice Board, established by G.S. 90-113.32, is recognized as the registering, certifying, and licensing authority for substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of credentialed substance abuse professionals, to provide for the establishment of standards for the education of credentialed substance abuse professionals, and to ensure the availability of credentialed substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant registration, certification, or licensure. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 1; 2005-431, s. 1.)

§ 90-113.31: Repealed by Session Laws 2005-431, s. 1, effective September 22, 2005.

§ 90-113.31A. Definitions.

The following definitions shall apply in this Article:

(1) Applicant. – A person who has initiated a process to become a substance abuse professional pursuant to this Article.

(2) Applicant supervisor. – A person who provides supervision as required by the Board to persons applying for registration, certification, or licensure as a substance abuse professional pursuant to this Article.

(3) Board. – The North Carolina Substance Abuse Professional Practice Board.

(4) Certified clinical supervisor. – A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(5) Certified criminal justice addictions professional. – A person certified by the Board to practice as a criminal justice addictions professional who, under supervision, provides direct services to clients or offenders exhibiting substance abuse disorders and works in a program determined by the Board to be involved in a criminal justice setting.

(6) Certified substance abuse counselor. – A person certified by the Board to practice under the supervision of a practice supervisor as a substance abuse counselor in accordance with the provisions of this Article.

(7) Certified substance abuse prevention consultant. – A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(8) Certified substance abuse residential facility director. – A person certified by the Board to practice as a substance abuse residential facility director in accordance with the provisions of this Article.

(9) Repealed by Session Laws 2008-130, s. 1, effective July 28, 2008.

(10) Clinical supervisor intern. – A person designated by the Board to practice as a clinical supervisor under the supervision of a certified clinical supervisor for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(11) Counseling. – The utilization of special skills to assist individuals, families, or groups in achieving objectives, including the following:

a. Exploring a problem and its ramifications.

b. Examining attitudes and feelings.

c. Considering alternative solutions.

d. Decision making.

(12) Credential. – Any registration, certification, or license issued by the Board.

(13) Credentialing body. – A board that licenses, certifies, registers, or otherwise regulates a profession or practice.

(14) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice substance abuse professional services. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(15) Deemed status. – Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a clinical addictions specialist may apply individually for licensure as a licensed clinical addictions specialist.

(16) Dual relationship. – A relationship in addition to the professional relationship with a person to whom the substance abuse professional delivers services in the Twelve Core Functions or the performance domains, both as defined in rules

adopted by the Board, or as provided in a supervisory capacity. These relationships may result in grounds for disciplinary action.

(17) Human services field. – An area of study that focuses on the biological, psychological, behavioral, and social aspects of human welfare with focus on the direct services designed to improve it.

(18) Independent study. – Any course of study that is not traditional classroom-based that must be preapproved by the Board or any organization that has deemed status with the Board.

(19) Licensed clinical addictions specialist. – A person licensed by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(19a) Licensed Clinical Addictions Specialist Associate. – A registrant who successfully completes 300 hours of Board-approved supervised practical training in pursuit of licensure as a clinical addictions specialist.

(20) Practice supervisor. – A certified clinical supervisor, clinical supervisor intern, or licensed clinical addictions specialist who provides oversight and responsibility in a face-to-face capacity for each certified substance abuse counselor or criminal justice addictions professional.

(21) Prevention. – The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyles and environments.

(22) Professional discipline. – A field of study characterized by the technical, educational, and ethical standards of a profession.

(23) Registrant. – A person who completes all requirements to be registered with the Board and is supervised by a certified clinical supervisor or clinical supervisor intern.

(24) Substance abuse counseling. – The assessment, evaluation, and provision of counseling and therapeutic service to persons suffering from substance abuse or dependency.

(25) Substance abuse counselor intern. – A registrant who successfully completes 300 hours of Board-approved supervised practical training in pursuit of credentialing as a substance abuse counselor.

(26) Substance abuse professional. – A registrant, certified substance abuse counselor, substance abuse counselor intern, certified substance abuse prevention consultant, certified clinical supervisor, licensed clinical addictions specialist associate, licensed clinical addictions specialist, certified substance abuse residential facility director, clinical supervisor intern, or certified criminal justice addictions professional. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s.2; 1999-164, s. 1; 1999-456, s. 24; 2001-370, s. 1; 2005-431, s. 1; 2008-130, s. 1; 2012-12, s. 2(hh); 2012-72, s. 5; 2015-181, s. 47.)

§ 90-113.31B. Scope of practice.

The scope of practice is the use by all substance abuse professionals and their ongoing supervisees of principles, methods, and procedures of the Twelve Core Functions or performance domains as prescribed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, and as limited by individual credential and supervisory requirements pursuant to this Article. Specifically, the scope of practice for each individual defined as a substance abuse professional under G.S. 90-113.31A is as follows:

(1) The practice of a certified substance abuse counselor consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, and referral to treat addictive disorder or disease and help prevent relapse.

(2) The practice of a certified substance abuse prevention consultant is based on knowledge in the performance domains to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease and help prevent relapse.

(3) The practice of a certified clinical supervisor is based on knowledge in the performance domains to supervise substance abuse professionals who work to treat, prevent, or reduce the conditions that place individuals at risk of developing addictive disorder or disease and help prevent relapse.

(4) The practice of a licensed clinical addictions specialist may be independent and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with other professionals in regard to client treatment and services, referral to reduce the conditions that place individuals at risk of developing addictive disorder or disease with co-occurring disorders, and treatment for addictive disorder or disease. The licensed clinical addictions specialist may provide supervision to maintain a professional credential as defined by this Article.

(5) The practice of a certified substance abuse residential facility director is a voluntary credential and consists of the Twelve Core Functions, including screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, report and record keeping, consultation with professionals in regard to client treatment and services, referral to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treatment for addictive disorder or disease, and the prevention of relapse as well as academic management training.

(6) The practice of a certified criminal justice addictions professional is based on knowledge in the performance domains of dynamics of addiction in criminal behavior; legal, ethical, and professional responsibility; criminal justice system and processes; screening, intake, and assessment; case management; monitoring; and client supervision and counseling to prevent or reduce the conditions that place individuals at increased risk of developing addictive disorder or disease, treat addictive disorder or disease, and help prevent relapse. (2005-431, s. 1.)

§ 90-113.32. Board; composition; voting.

(a) The Board is created as the authority to credential substance abuse professionals in North Carolina.

(b) Repealed by Session Laws 2008-130, s. 2, effective July 28, 2008.

(c) After the initial Board members' terms expire, the Board shall consist of the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals credentialed pursuant to this Article and elected by the credentialed professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominating and Elections Committee established by subsection (d) of this section and elected by the Board.

(3) Two members from the Department of Health and Human Services, appointed by the Chief of Community Policy Management of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, at least one of whom administers substance abuse services.

(4) One member of the public at large appointed by the Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified or licensed by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified or licensed under this Article when elected members' terms are due to expire. The certified or licensed professionals shall submit to the Committee all nominations

beginning 90 days and ending 28 days before the election of new Board members. The Committee shall furnish all certified or licensed professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified or licensed by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for four-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board shall, as soon as practicable, appoint temporary members to serve until the end of the unexpired terms. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, that member may fulfill the remainder of his or her term on the Board. (1993 (Reg. Sess., 1994), c. 685, s. 1; c. 773, s. 15.2(a), (b); 1997-443, s. 11A.118(a); 1997-492, s. 3; 1999-164, ss. 2-4; 2005-431, s. 1; 2008-130, ss. 2, 3.)

§ 90-113.33. Board; powers and duties.

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification and licensure to practice in this State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke licensure, certification, or registration to practice in this State or reprimand or otherwise discipline a license, certificate, or registration holder in this State.

(3) Deal with issues concerning reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining exists.

(5) Employ and fix the compensation of personnel and legal counsel that the Board determines is necessary to carry out the provisions of this Article. The Board's employment of legal counsel is subject to the provisions of G.S. 114-2.3. The Board may purchase or rent necessary office space, equipment, and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case", as defined in Chapter 150B, arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is desirable.

(8) Establish fees for applications for examination, registration, certificates of certification, licensure, and renewal, and other services provided by the Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article, including rules related to the approval of a substance abuse specialty curricula developed by a school, college, or university.

(10) Request that the Department of Public Safety conduct criminal history record checks of applicants for registration, certification, or licensure pursuant to G.S. 143B-941.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 4; 1999-164, s. 5; 2001-370, ss. 2, 3; 2005-431, s. 1; 2011-254, s. 3; 2014-100, s. 17.1(ii).)

§ 90-113.33A. Officers may administer oaths, and subpoena witnesses, records, and other materials.

The President or other presiding officer of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any client records, documents, or other materials concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any counselor-client or physician-patient privilege with respect to such records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to the provisions of G.S. 90-113.34, except that in any proceeding before the Board, record of any hearing before the Board, and notice of charges against any person credentialed by the Board, the Board shall withhold from public disclosure the identity of a client, including information relating to dates and places of treatment, or any other information that tends to identify the client unless the client or the client's representative has expressly consented to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid. (1999-164, s. 6; 2005-431, s. 1.)

§ 90-113.34. Records to be kept; copies of records.

(a) The Board shall keep a regular record of its proceedings, together with the names of the members of the Board present, the names of the applicants for registration, certification, and licensure as well as other information relevant to its actions. The Board shall cause a record to be kept that shall show the name, last known place of business, last known place of residence, and date and number of the credential assigned to each substance abuse professional meeting the standards set forth in this Article. Any interested person in the State is entitled to obtain a copy of Board records upon application to the Board and payment of a reasonable charge that is based on the costs involved in providing the copy.

(b) The Board may in a closed session receive evidence regarding the provision of substance abuse counseling or other treatment and services provided to a client who has not expressly or through implication consented to the public disclosure of such treatment as may be necessary for the protection of the rights of the client or of the accused registrant or substance abuse professional and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by the Board, its members, or

employees as a result of investigations, inquiries, or interviews conducted in connection with awarding a credential or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges, or notice of hearing shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or interview. If any record, paper, or other document containing information collected and compiled by the Board as provided in this subsection is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record.

(c) Notwithstanding any provision to the contrary, the Board may, in any proceeding, record of any hearing, and notice of charges, withhold from public disclosure the identity of a client who has not expressly or through implication consented to such disclosure of treatment by the accused substance abuse professional. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 5; 1999-164, s. 7; 2005-431, s. 1.)

§ 90-113.35. Disposition of funds.

All fees and other moneys collected and received by the Board shall be used to implement this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board. (1993 (Reg. Sess., 1994), c. 685, s. 1.)

§ 90-113.36. Credentials.

(a) The Board shall furnish a certificate of certification or licensure to each applicant successfully completing the requirements for his or her credential.

(b) The Board may furnish a certificate of certification or licensure to any person in another state or territory if the individual's qualifications were, at the date of registration, certification, or licensure, substantially equal to the requirements under this Article. However, an out-of-state applicant shall first file application and pay any required fees. (1993 (Reg. Sess., 1994), c. 685, s. 1; 2005-431, s. 1.)

§ 90-113.37: Repealed by Session Laws 2005-431, s. 1, effective September 22, 2005.

§ 90-113.37A. Renewal of credential; lapse.

(a) Every person credentialed pursuant to this Article who desires to maintain his or her credentials shall apply to the Board for a renewal of certification or licensure every other year and pay to the treasurer the prescribed fee.

(b) Renewal of licensure is subject to completion of at least 40 hours of the continuing education requirements established by the Board. Renewal of substance abuse counselor or substance abuse prevention consultant certification is subject to completion of at least 60 hours of the continuing education requirements established by the Board. A certified substance abuse counselor shall submit a Board-approved supervision contract signed by the applicant and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board. Any person certified by the Board as a certified alcoholism counselor or certified drug abuse counselor shall become a certified substance abuse counselor.

A clinical supervisor shall complete at least 15 hours of substance abuse clinical supervision training prior to the certificate being renewed. A substance abuse residential facility director shall complete at least 10 hours of substance abuse training for renewal. A certified criminal justice

addictions professional shall complete at least 40 hours of continuing education that must be earned in the certified criminal justice addictions professional performance domains. A certified criminal justice addictions professional shall submit a Board-approved supervision contract signed by the criminal justice addictions professional and a practice supervisor documenting ongoing supervision at a ratio of one hour of supervision to every 40 hours of practice after certification is granted by the Board on a form provided by the Board.

(c) Independent study hours shall compose no more than fifty percent (50%) of the total number of hours required for renewal.

(d) A credential that is not renewed automatically lapses, unless the Board approves the late renewal of a credential upon the payment of a late fee.

(e) No late renewal shall be granted more than five years after a certification or licensure expires.

(f) A suspended credential may be renewed as provided in this section. This renewal does not entitle the credentialed person to engage in conduct or activity in violation of the order or judgment by which the credential was suspended, until the credential is reinstated. If a credential revoked on disciplinary grounds is reinstated and requires renewal, the credentialed person shall pay the renewal fee and any applicable late fee.

(g) The Board shall establish the manner in which lapsed certification or licensure may be revived or extended. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 6; 1999-164, s. 8; 2005-431, s. 1.)

§ 90-113.38. Maximums for certain fees.

(a) The fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, substance abuse residential facility director, or certified criminal justice addictions professional may not exceed four hundred seventy-five dollars ($475.00). The fee to renew a certificate may not exceed one hundred fifty dollars ($150.00).

(b) The fee to obtain a certificate of licensure for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred fifty dollars ($150.00). The fee to renew a license for a clinical addictions specialist pursuant to deemed status shall not exceed one hundred dollars ($100.00). The fee to obtain a license for a clinical addictions specialist pursuant to all other procedures authorized by this Article shall not exceed four hundred seventy-five dollars ($475.00). The fee to renew the license shall not exceed one hundred fifty dollars ($150.00).

(b1) The fee to obtain a registration as a registrant shall not exceed one hundred fifty dollars ($150.00). The fee to renew a registration shall not exceed one hundred fifty dollars ($150.00).

(c) There shall be a reexamination fee of one hundred fifty dollars ($150.00) which shall be paid for each reexamination in addition to the fees authorized pursuant to subsection (a) of this section. There shall be a fee not to exceed twenty-five dollars ($25.00) for rescheduling any examination.

(d) There shall be a fee not to exceed twenty-five dollars ($25.00) to obtain a written verification or additional copy of a credential issued by the Board.

(e) There shall be a late renewal fee not to exceed one hundred twenty-five dollars ($125.00).

(f) In addition to any other prescribed fees, the Board shall charge a fee not to exceed one hundred fifty dollars ($150.00) for each administration of the test an applicant must pass to be credentialed as a United States Department of Transportation substance abuse professional. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 7; 1998-217, s. 25(a); 2001-370, s. 4; 2005-431, s. 1.)

§ 90-113.39. Standards for credentials.

The Board shall establish standards to credential substance abuse professionals. The credentialing standards of the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations may be used as guidelines for the Board's standards. The Board shall publish these required standards. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 8; 1999-164, s. 9; 2005-431, s. 1.)

§ 90-113.40. Requirements for certification and licensure.

(a) The Board shall issue a certificate certifying an applicant as a "Certified Substance Abuse Counselor" or as a "Certified Substance Abuse Prevention Consultant" if:

(1) The applicant is of good moral character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the Board.

(5a) The applicant submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(6) The applicant has completed 270 hours of Board-approved education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting. Independent study hours shall not compose more than fifty percent (50%) of the total number of hours required for initial credentialing.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical Training, has provided a Board-approved supervision contract between the applicant and an applicant supervisor, and has been deemed recommended by the applicant supervisor to advance in the credentialing process.

(8) The applicant for substance abuse counselor has completed a total of 6,000 hours of supervised experience in the field, whether paid or volunteer. The applicant for substance abuse prevention consultant has completed a total of 6,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field from a regionally accredited college or university.

(9) The applicant has obtained a passing score on a written examination.

(b) The Board shall issue a certificate certifying an individual as a "Certified Clinical Supervisor" if the applicant:

(1) Submits proof of designation by the Board as a clinical supervisor intern.

(2) Submits proof that the applicant has a minimum of a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(3) Has 4,000 hours experience as a substance abuse clinical supervisor as documented by his or her certified clinical supervisor.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the Twelve Core Functions in the applicant's clinical application and practice and may also be counted toward the applicant's renewal as a substance abuse counselor or a clinical addictions specialist.

(5) Submits a letter of reference from a certified clinical supervisor who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) Obtains a passing score on a written examination administered by the Board.

(b1) The Board shall designate an applicant as a "Clinical Supervisor Intern" if, in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant meets the following qualifications:

(1) Submits an application, resume, and official transcript showing that the applicant has obtained a master's degree in a human services field with a clinical application from a regionally accredited college or university.

(2) Submits verification statements.

(3) Submits proof of credentialing as a licensed clinical addictions specialist.

(4) Submits documentation establishing that the applicant has completed at least fifty percent of the required clinical supervision specific training hours as defined by the Board.

(c) The Board shall issue a license credentialing an applicant as a "Licensed Clinical Addictions Specialist" if, in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant meets one of the following criteria:

(1) Criteria A. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training from either a regionally accredited college or university, which may include unlimited independent study, or from training events of which no more than fifty percent (50%) shall be in independent study. All hours shall be credited according to the standards set forth in G.S. 90-113.41A.

f. The applicant has documented completion of a minimum of 300 hours of supervised practical training and has provided a Board-approved supervision contract between the applicant and an applicant supervisor.

(2) Criteria B. – The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university.

b. Has been certified as a substance abuse counselor.

c. Repealed by Session Laws 2008-130, s. 4, effective July 28, 2008.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from either licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(3) Criteria C. – The applicant:

a. Has a minimum of a master's degree in a human services field with both a clinical application and a substance abuse specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education and training pursuant to G.S. 90-113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on a master's level written examination administered by the Board.

d. Submits three letters of reference from licensed clinical addictions specialists or certified substance abuse counselors who have obtained master's degrees.

(4) Criteria D. – The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a "Substance Abuse Residential Facility Director" if the applicant:

(1) Has been credentialed as a substance abuse counselor or a clinical addictions specialist.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof. Independent study may compose up to fifty percent (50%) of the total number of hours required for initial credentialing.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(d1) The Board shall issue a certificate certifying an applicant as a "Certified Criminal Justice Addictions Professional", with the acronym "CCJP", if in addition to meeting the requirements of subdivisions (a)(1) through (5a) of this section, the applicant:

(1) Has attained 270 hours of Board-approved education or training, unless the applicant has attained a minimum of a masters degree with a clinical application and a substance abuse specialty from a regionally accredited college or university whereby the applicant must only obtain 180 hours. The hours of education shall be specifically related to the knowledge and skills necessary to perform the tasks within the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated, "IC&RC/AODA,

Inc.," criminal justice addictions professional performance domains as they relate to both adults and juveniles. Independent study may compose up to fifty percent (50%) of the total number of hours obtained for initial certification or renewal.

(2) Has documented 300 hours of Board-approved supervised practical training. This supervision shall mean the administrative, clinical, and evaluative process of monitoring, assessing, and enhancing professional performance. A minimum of 10 hours of supervision in each criminal justice domain established by the IC&RC/AODA, Inc., is required.

(3) Has provided documentation of supervised work experience providing direct service to clients or offenders involved in one of the three branches of the criminal justice system, which include law enforcement, the judiciary, and corrections. The applicant must meet one of the following criteria:

a. Criteria A. – In addition to having a high school diploma or an adult high school equivalency diploma, the applicant has a minimum of 6,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that have been obtained during the past 10 years.

b. Criteria B. – In addition to having an associate degree, the applicant has a minimum of 5,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services obtained during the past 10 years.

c. Criteria C. – In addition to having at least a bachelors degree, the applicant has a minimum of 4,000 hours of documented work experience in direct services in criminal justice or addictions services, or any combination of these services, and this experience has been obtained during the past 10 years.

d. Criteria D. – In addition to having at least a masters degree in a human services field, the applicant has a minimum of 2,000 hours of documented work experience in direct services in criminal justice or addictions services or any combination of these services that has been obtained during the past 10 years.

e. Criteria E. – In addition to having at least a masters degree in a human services field with a specialty from a regionally accredited college or university that includes 180 hours of substance abuse specific education or training, the applicant has a minimum of 2,000 hours of postgraduate supervised substance abuse counseling experience.

f. Criteria F. – In addition to having obtained the credential of a certified clinical addictions specialist or other advanced credential in a human services field from an organization that has obtained deemed status with the Board, the applicant has a minimum of 1,000 hours of documented work experience in direct services in criminal justice or addictions services that has been obtained during the past 10 years.

(4) Has passed the IC&RC/AODA, Inc., certified criminal justice addictions professional written examination.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience.

(f) Effective January 1, 2003, only a person who is certified as a certified clinical supervisor or a clinical supervisor intern shall be qualified to supervise applicants for certified clinical supervisor and certified substance abuse counselor and applicants for licensed clinical addictions specialist who meet the qualifications of their credential other than through deemed status as provided in G.S. 90-113.40(c)(4). (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 9; 1998-217, s. 10; 1999-164, s. 10; 2005-431, s. 1; 2008-130, s. 4; 2014-115, s. 28(c).)

§ 90-113.40A. Requirements for registration.

(a) Upon application and payment of the required fee, the Board shall issue a registration designating an applicant as a registrant if the applicant:

(1) Provides documentation that he or she has received a high school diploma, or the equivalent, and evidence of any baccalaureate or advanced degrees the applicant has received.

(2) Completes a registration application on a form provided by the Board.

(3) Provides documentation of three hours of educational training in ethics.

(4) Signs a form attesting to the applicant's commitment to adhere to the ethical standards adopted by the Board.

(4a) Submits to a complete criminal history record check pursuant to G.S. 90-113.46A.

(5) Signs a supervision contract provided by the Board that documents the proposed supervision process by an applicant supervisor.

(b) Registrant status shall be maintained for a period of up to five years while the registrant is in the process of completing his or her requirements for credentials pursuant to this Article. If at the end of a five-year period a registrant has not obtained a credential under this Article, the Board shall renew the registration for up to an additional five-year period after the registrant pays the required fee and complies with all requirements for registration pursuant to G.S. 90-113.40A. The Board shall terminate the registration of any registrant who fails to renew his or her registration.

(c) The registrant shall notify the Board of any criminal conviction imposed during the period of registration. (2001-370, s. 5; 2005-431, s. 1.)

§ 90-113.40B. Applicant supervision.

The Board shall designate a person as an applicant supervisor of individuals applying for registration, certification, or licensure as a substance abuse professional as follows:

(1) A certified clinical supervisor shall supervise a clinical supervisor intern.

(2) A certified clinical supervisor or a clinical supervisor intern shall supervise a substance abuse residential facility director applicant, a clinical addictions specialist applicant, or a substance abuse counselor applicant.

(3) Repealed by Session Laws 2005-431, s. 1, effective September 22, 2005.

(4) A certified substance abuse prevention consultant with a minimum of three years of professional experience, a certified clinical supervisor, or a clinical supervisor intern shall supervise a registrant applying for certification as a prevention consultant.

(5) Pursuant to the deemed status procedure under G.S. 90-113.41A, the supervision requirements described in subdivisions (1) through (4) of this section shall not apply to persons applying for licensure as a licensed clinical addictions specialist.

(6) A criminal justice addictions professional applicant shall be supervised by a certified clinical supervisor or clinical supervisor intern. (2001-370, s. 6; 2005-431, s. 1.)

§ 90-113.41. Examination.

(a) Except for those individuals applying for licensure under G.S. 90-113.41A, applicants for certification or licensure under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification or licensure under this Article shall be tested in an examination developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Incorporated and the standards adopted by professional disciplines granted deemed status or their successor organizations.

(c) Applicants for certification or licensure shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts and agreements between Board-authorized test development companies. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 10; 1999-164, s. 11; 2005-431, s. 1.)

§ 90-113.41A. Deemed status.

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse credentialing program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.

c. Individual, group, and family counseling.

d. Treatment, planning, reporting, and record keeping.

e. Crisis intervention.

f. Case management and treatment resources.

g. Ethics, legal issues, and confidentiality.

h. Psychological, emotional, personality, and developmental issues.

i. Co-occurring physical and mental disabilities.

j. Special population issues, including age, gender, race, ethnicity, and health status.

k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for the credential of licensed clinical addictions specialist.

(d) The Standards Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a professional discipline's credential may be discontinued by a two-thirds vote of the Board. (1997-492, s. 11; 2005-431, s. 1.)

§ 90-113.41B. Change of name or address.

Every person licensed, certified, or registered under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 business days after the change takes place. (2001-370, s. 8; 2005-431, s. 1.)

§ 90-113.42. Violations; exemptions.

(a) It shall be unlawful for any person not licensed or otherwise credentialed as a substance abuse professional pursuant to this Article to engage in those activities set forth in the scope of practice of a substance abuse professional under G.S. 90-113.31B, unless that person is regulated by another profession or is a registrant or intern as defined by this Article.

(b) It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession.

(c) This Article does not apply to any person registered, certified, or licensed by the State or federal government to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(d) Only individuals registered, certified, or licensed under this Article may use the title "Certified Substance Abuse Counselor", "Certified Substance Abuse Prevention Consultant", "Certified Clinical Supervisor", "Licensed Clinical Addictions Specialist Associate", "Certified Substance Abuse Residential Facility Director", "Certified Criminal Justice Addictions Professional", "Substance Abuse Counselor Intern", "Provisional Licensed Clinical Addictions Specialist", "Clinical Supervisor Intern", or "Registrant".

(1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 12; 2005-431, s. 1; 2008-130, s. 5; 2012-72, s. 6.)

§ 90-113.43. Illegal practice; misdemeanor penalty.

(a) Except as otherwise authorized in this Article, no person shall:

(1) Offer substance abuse professional services, practice, attempt to practice, or supervise while holding himself or herself out to be a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, licensed clinical addictions specialist, licensed clinical addictions specialist associate, certified substance abuse residential facility director, certified criminal justice addictions professional, clinical supervisor intern, substance abuse counselor intern, or registrant without first having obtained a notification of registration, certification, or licensure from the Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, licensed clinical addictions specialist, certified substance abuse residential facility director, substance abuse counselor intern, certified criminal justice addictions professional, or licensed clinical addictions specialist associate, unless this person is registered, certified, or licensed pursuant to this Article.

(3) Practice or attempt to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, licensed clinical addictions specialist, certified criminal justice addictions professional, substance abuse counselor intern, licensed clinical addictions specialist associate, clinical supervisor intern, certified substance abuse residential facility director or registrant with a revoked, lapsed, or suspended certification or license.

(4) Aid, abet, or assist any person to practice as a certified substance abuse counselor, certified substance abuse prevention consultant, certified criminal justice addictions professional, certified clinical supervisor, licensed clinical addictions specialist, certified substance abuse residential facility director, registrant, substance abuse counselor intern, licensed clinical addictions specialist associate, or clinical supervisor intern in violation of this Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a registrant, certified substance abuse counselor, certified substance abuse prevention consultant, certified criminal justice addictions professional, certified clinical supervisor, licensed clinical addictions specialist, certified substance abuse residential facility director, substance abuse counselor intern, licensed clinical addictions specialist associate, or clinical supervisor intern unless that person is registered, certified, or licensed under this Article.

(6) Repealed by S.L. 1997-492, s. 13.

(7) Repealed by Session Laws 2008-130, s. 6, effective July 28, 2008.

(b) A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and

separate offense. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 13; 2005-431, s. 1; 2008-130, s. 6; 2012-72, s. 7.)

§ 90-113.44. Grounds for disciplinary action.

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain licensure, certification, or registration or renewal of licensure, certification, or registration.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is affected.

(2a) The use of drugs or alcoholic beverages to the extent that a substance abuse professional suffers impairment.

(3) Conviction of an offense under any municipal, State, or federal law other than traffic laws as prescribed by Chapter 20 of the General Statutes.

(4) Conviction of a felony or other public offense involving moral turpitude. Conviction of a Class A-E felony shall result in an immediate suspension of licensure, certification, or registration for a minimum of one year.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be established by a licensed psychologist or psychiatrist.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence while serving as a substance abuse professional, intern, or registrant.

(8) Repealed by Session Laws 2005-431, s. 1, effective September 22, 2005.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) Entering into a dual relationship that impairs professional judgment or increases the risk of exploitation with a client or supervisee.

(11) Practicing as a credentialed substance abuse professional outside of his or her scope of practice pursuant to G.S. 90-113.31B.

(b) Denial of an applicant's licensure, certification, or registration or the granting of licensure, certification, or registration on a probationary or other conditional status shall be subject to substantially the same rules and procedures prescribed by the Board for review and disciplinary actions against any person holding a license, certificate, or registration. A suspension of a credential resulting from impairment due to substance use, mental health, or medical disorder shall be imposed for at least six months beginning from the date of successful discharge from a residential substance abuse treatment program or other appropriate treatment modality determined as a result of an assessment by a Board-approved assessor. Disciplinary actions involving a clinical addictions specialist whose licensure is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the discretionary authority to hear the initial disciplinary action involving a credentialed professional. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 14; 2001-370, s. 7; 2005-431, s. 1.)

§ 90-113.45. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article or of the rules adopted pursuant to it, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain that person from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section is the superior court of any county in which the illegal acts are alleged to have been committed or in the county where the defendant resides. (1993 (Reg. Sess., 1994), c. 685, s. 1.)

§ 90-113.46. Application of requirements of Article.

All persons credentialed by the North Carolina Substance Abuse Professional Practice Board, Inc., as of July 1, 1994, shall be credentialed by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it. (1993 (Reg. Sess., 1994), c. 685, s. 1; 1997-492, s. 15; 2005-431, s. 1.)

§ 90-113.46A. Criminal history record checks of applicants for registration, certification, or licensure.

(a) All applicants for registration, certification, or licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration, certification, or licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Public Safety for providing this service, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

(b) If an applicant's criminal history record check reveals one or more convictions as defined in G.S. 90-113.31A(14), the conviction shall not automatically bar issuance of a credential by the Board to the applicant. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-113.44 exist, the Board may deny registration, certification, or licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(c) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration, certification, or licensure to an applicant based on information provided in the applicant's criminal history record check. (2005-431, s. 1; 2014-100, s. 17.1(o).)

§ 90-113.47. Repealed by Session Laws 1999-199, s. 3.1.

§ 90-113.48. Reserved for future codification purposes.

§ 90-113.49. Reserved for future codification purposes.

Article 5D.

Control of Methamphetamine Precursors.

§ 90-113.50. Title.

This Article shall be known and may be cited as the "Methamphetamine Lab Prevention Act of 2005." (2005-434, s. 1.)

§ 90-113.51. Definitions.

(a) For purposes of this Article, "pseudoephedrine product" means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.

(b) For purposes of this Article, a "retailer" means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.

(c) For purposes of this Article, the "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. (2005-434, s. 1.)

§ 90-113.52. Pseudoephedrine: restrictions on sales.

(a) A pseudoephedrine product in the form of a tablet, caplet, or gel cap shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a

pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification and to provide, in print or orally, a current valid personal residential address. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons.

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article. (2005-434, s. 1; 2006-186, s. 1; 2012-35, s. 2.)

§ 90-113.52A. Electronic record keeping.

(a) A retailer shall, before completing a sale of a product containing a pseudoephedrine product, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), provided that the NPLEx system is available to retailers in the State without a charge for accessing the system and the retailer has Internet access. The seller shall not complete the sale if the system generates a stop alert. Absent negligence, wantoness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

(b) If a pharmacy selling a product containing a pseudoephedrine product experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail

establishment shall record that the sale was made without submission to the NPLEx system in the record of disposition required under G.S. 90-113.52.

(c) The NADDI shall forward North Carolina transaction records in NPLEx to the State Bureau of Investigation weekly and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the State as authorized by the SBI, provided that the SBI executes a memorandum of understanding with NADDI governing access.

(d) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in G.S. 90-113.52. The system shall contain an override function that may be used by a dispenser of a pseudoephedrine product who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized shall be logged by the system. (2011-240, s. 2.)

§ 90-113.53. Pseudoephedrine transaction limits.

(a) No person shall deliver to any one person, attempt to deliver to any one person, purchase, or attempt to purchase at retail more than 3.6 grams of any pseudoephedrine products per calendar day. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than 9 grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article. (2005-434, s. 1; 2006-186, s. 2; 2012-35, s. 1.)

§ 90-113.54. Posting of signs.

(a) A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale substantially similar to the following: "North Carolina law strictly prohibits the purchase of more than 3.6 grams total of certain products containing pseudoephedrine per day, and more than 9 grams total of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers.

(b) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article. (2005-434, s. 1; 2006-186, s. 3; 2012-194, s. 60.5.)

§ 90-113.55. Training of employees.

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine product for which the Commission issues an order pursuant to G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a program conducted by or approved by the Commission pursuant to G.S. 90-113.59. (2005-434, s. 1.)

§ 90-113.56. Penalties.

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.52A, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52A, G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bona fide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article shall be fined up to five hundred dollars ($500.00) for the first violation, up to seven hundred fifty dollars ($750.00) for the second violation, and up to one thousand dollars ($1,000) for a third or subsequent violation of this section. (2005-434, s. 1; 2011-240, s. 3.)

§ 90-113.57. Immunity.

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products. (2005-434, s. 1.)

§ 90-113.58. Commission authority to control pseudoephedrine products.

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from

requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

(b) In making a determination, the Commission shall make findings with respect thereto and shall issue an order adding or deleting the specific product from requirements of this Article. The order shall be published in the North Carolina Register at least 60 days prior to the time that the addition or deletion of a specific product from the requirements of this Article becomes effective.

(c) The Commission may adopt temporary and permanent rules in accordance with this section. (2005-434, s. 1.)

§ 90-113.59. Commission development of employee training programs.

The Commission shall develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale and shall approve such programs for implementation by retailers. The Commission may also conduct employee training programs for retail establishments. The Commission may adopt temporary and permanent rules in this regard. (2005-434, s. 1.)

§ 90-113.60. Preemption.

This Article shall preempt all local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine. (2005-434, s. 1.)

§ 90-113.61. Regulation of pseudoephedrine products in the form of liquids, liquid capsules, gel capsules, and pediatric products.

Except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article, any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction shall not be subject to requirements under this Article, but such products shall be subject to the requirements of the Combat Methamphetamine Act of 2005, Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177. (2006-186, s. 4.)

§ 90-113.62: Reserved for future codification purposes.

§ 90-113.63: Reserved for future codification purposes.

§ 90-113.64. SBI annual report.

Beginning with the 2011 calendar year, the State Bureau of Investigation shall determine the number of methamphetamine laboratories discovered in the State each calendar year and report its findings to the Joint Legislative Oversight Committee on Justice and Public Safety and to the Legislative Commission on Methamphetamine Abuse by March 1, 2012, for the 2011 calendar year and each March 1 thereafter for the preceding calendar year. The State Bureau of Investigation shall participate in the High Intensity Drug Trafficking Areas (HIDTA) program, assist in coordinating the drug control efforts

between local and State law enforcement agencies, and monitor the implementation and effectiveness of the electronic record-keeping requirements included in G.S. 90-113.52A and G.S. 90-113.56. The SBI shall include its findings in the report to the Commission required by this section. (2011-240, s. 4; 2015-241, s. 16B.5(b).)

§ 90-113.65: Reserved for future codification purposes.

§ 90-113.66: Reserved for future codification purposes.

§ 90-113.67: Reserved for future codification purposes.

§ 90-113.68: Reserved for future codification purposes.

§ 90-113.69: Reserved for future codification purposes.

Article 5E.

North Carolina Controlled Substances Reporting System Act.

§ 90-113.70. Short title.

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act." (2005-276, s. 10.36(a).)

§ 90-113.71. Legislative findings and purpose.

(a) The General Assembly makes the following findings:

(1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.

(2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.

(3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.

(4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.

(5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).

(6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.

(7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.

(8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.

(9) Review of data from controlled substances reporting systems help:

a. Support the legitimate medical use of controlled substances.

b. Identify and prevent diversion of prescribed controlled substances.
c. Reduce morbidity and mortality from unintentional drug overdoses.
d. Reduce the costs associated with the misuse and abuse of controlled substances.
e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.
f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances. (2005-276, s. 10.36(a).)

§ 90-113.72. Definitions.

The following definitions apply in this Article:

(1) Commission. – The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
(2) Controlled substance. – A controlled substance as defined in G.S. 90-87(5).
(3) Department. – The Department of Health and Human Services.
(4) Dispenser. – A person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:
a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.
b. Repealed by Session Laws 2013-152, s. 1, effective January 1, 2014, and applicable to prescriptions delivered on or after that date.
c. A wholesale distributor of a Schedule II through V controlled substance.
d. A person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.
(4a) Pharmacy. – A person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.
(5) Ultimate user. – A person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household. (2005-276, s. 10.36(a); 2013-152, s. 1; 2017-74, s. 9.)

§ 90-113.73. Requirements for controlled substances reporting system; civil penalties for failure to properly report.

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser who is unable to

submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section no later than the close of the next business day after the prescription is delivered; however, dispensers are encouraged to report the information no later than 24 hours after the prescription was delivered. The information shall be submitted in a format as determined annually by the Department based on the format used in the majority of the states operating a controlled substances reporting system. In the event the dispenser is unable to report the information within the time frame required by this section because the system is not operational or there is some other temporary electrical or technological failure, this inability shall be documented in the dispenser's records. Once the electrical or technological failure has been resolved, the dispenser shall promptly report the information.

(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

(1) The dispenser's DEA number.

(2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:

a. Full address, including city, state, and zip code.

b. Telephone number.

c. Date of birth.

(3) The date the prescription was written.

(4) The date the prescription was filled.

(5) The prescription number.

(6) Whether the prescription is new or a refill.

(7) Metric quantity of the dispensed drug.

(8) Estimated days of supply of dispensed drug, if provided to the dispenser.

(9) National Drug Code of dispensed drug.

(10) Prescriber's DEA number.

(10a) Prescriber's national provider identification number, for any prescriber that has a national provider identification number. A pharmacy shall not be subject to a civil penalty under subsection (e) of this section for failure to report the prescriber's national provider identification number when it is not received by the pharmacy.

(11) Method of payment for the prescription.

(c) A dispenser shall not be required to report instances in which a controlled substance is provided directly to the ultimate user and the quantity provided does not exceed a 48-hour supply.

(d) A dispenser shall not be required to report instances in which a Schedule V non-narcotic, non-anorectic Schedule V controlled substance is provided directly to the ultimate user for the purpose of assessing a therapeutic response when prescribed according to indications approved by the United States Food and Drug Administration.

(e) The Department shall assess, against any pharmacy that employs dispensers found to have failed to report information in the manner required by this section within a reasonable period of time after being informed by the Department that the required information is missing or incomplete, a civil penalty of not more than one hundred dollars ($100.00) for a first violation, two hundred fifty dollars ($250.00) for a second violation, and five hundred dollars ($500.00) for each subsequent violation if the pharmacy fails to report as required under this section, up to a maximum of five thousand dollars ($5,000) per pharmacy per calendar year. Each day of a continuing violation shall constitute a separate violation. A pharmacy acting in good faith that attempts to report the information required by this section shall not be assessed any civil penalty. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules to implement this subsection that include factors to be considered in determining the amount of the penalty to be assessed.

(f) For purposes of this section, a "dispenser" includes a person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes when that person dispenses any Schedule II through V controlled substances. Notwithstanding subsection (b) of this section, the Commission shall adopt rules requiring the information to be reported by a person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.

(g) Expired pursuant to Session Laws 2018-76, s. 10, effective October 1, 2019. (2005-276, s. 10.36(a); 2005-345, s. 17; 2009-438, s. 1; 2013-152, s. 2; 2014-115, s. 41.5; 2017-74, s. 10; 2018-44, s. 10; 2018-76, s. 6.)

§ 90-113.73A. Expand monitoring capacity; report.

(a) The North Carolina Controlled Substances Reporting System shall expand its monitoring capacity by establishing data use agreements with the Prescription Behavior Surveillance System. In order to participate, the CSRS shall establish a data use agreement with the Center of Excellence at Brandeis University no later than January 1, 2016.

(b) Beginning September 1, 2016, and every two years thereafter, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services shall report on its participation with the Prescription Behavior Surveillance System to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Justice and Public Safety. (2015-241, s. 12F.16(j), (k).)

§ 90-113.74. Confidentiality.

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used (i) for investigative or evidentiary purposes related to violations of State or federal law, (ii) for regulatory activities, or (iii) to inform medical records or clinical care. Except as otherwise provided by this section, prescription information shall not be

disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(b1) The Department may review the prescription information data in the controlled substances reporting system and upon review may:

(1) Notify practitioners that a patient may have obtained prescriptions for controlled substances in a manner that may represent abuse, diversion of controlled substances, or an increased risk of harm to the patient.

(1a) Notify practitioners and their respective licensing boards of prescribing behavior that (i) increases risk of diversion of controlled substances, (ii) increases risk of harm to the patient, or (iii) is an outlier among other practitioner behavior.

(2) Report information regarding the prescribing practices of a practitioner to the agency responsible for licensing, registering, or certifying the practitioner pursuant to rules adopted by the agency as set forth below in subsection (b2) of this section.

(b2) In order to receive a report pursuant to subdivision (2) of subsection (b1) of this section, an agency responsible for licensing, registering, or certifying a practitioner with prescriptive or dispensing authority shall adopt rules setting the criteria by which the Department may report the information to the agency. The criteria for reporting established by rule shall not establish the standard of care for prescribing or dispensing, and it shall not be a basis for disciplinary action by an agency that the Department reported a practitioner to an agency based on the criteria.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves this delegation.

The administrator of a hospital emergency department or hospital acute care facility shall provide the Department with a list of prescribers who are authorized to prescribe controlled substances for the purpose of providing medical care for patients of the hospital emergency department or hospital acute care facility and a list of delegates who are authorized to receive data on behalf of the providers listed. The administrator acting under this paragraph shall submit the lists to the Department no later than December 1 of the calendar year preceding the year during which the delegates are to receive data and may provide updated lists at any time during the course of the year. Within one week of receiving the initial or updated lists described in this paragraph, the Department shall establish all of the delegate accounts necessary to enable each delegate listed by the administrator of the hospital emergency department or hospital acute care facility to receive data on behalf of the listed prescribers.

Delegations made pursuant to this paragraph are valid during the calendar year for which submitted by the administrator.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication. SBI agents assigned to the Diversion & Environmental Crimes Unit may then provide this information to other SBI agents who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The Attorney General of North Carolina, or a designee who is a full-time employee in the North Carolina Department of Justice, shall have access to the system to monitor requests for inspection of records.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a sheriff or designated deputy sheriff or a police chief or a designated police investigator who is assigned to investigate the diversion and illegal use of prescription medication or pharmaceutical products identified in Article 5 of this Chapter of the General Statutes as Schedule II through V controlled substances and who is engaged in a bona fide specific investigation related to the enforcement of laws governing licit drugs pursuant to a lawful court order specifically issued for that purpose.

(5a) Local law enforcement officers pursuant to subsection (i) of this section.

(6) The Division of Health Benefits for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

(9) The federal Drug Enforcement Administration's Office of Diversion Control or Tactical Diversion Squad in North Carolina.

(10) The North Carolina Health Information Exchange Authority (NC HIE Authority), established under Article 29B of this Chapter, through Web-service calls.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the

findings should be reported to the SBI and the appropriate sheriff for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall, on a quarterly basis, purge from the controlled substances reporting system database all information more than six years old. The Department shall maintain in a separate database all information purged from the controlled substances reporting system database pursuant to this subsection and may release data from that separate database only as provided in subsection (d) of this section.

(g) Nothing in this Article shall prohibit a person authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes from disclosing or disseminating data regarding a particular patient obtained under subsection (c) of this section to another person (i) authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes and (ii) authorized to receive the same data from the Department under subsection (c) of this section.

(h) Nothing in this Article shall prevent persons licensed or approved to practice medicine or perform medical acts, tasks, and functions pursuant to Article 1 of Chapter 90 of the General Statutes from retaining data received pursuant to subsection (c) of this section in a patient's confidential health care record.

(i) Data released by the Department from the controlled substances reporting system to local law enforcement officers is subject to all of the following conditions and requirements:

(1) The Department shall release data in the controlled substances reporting system to a local law enforcement officer only if all of the following conditions are satisfied:

a. The local law enforcement officer is a certified diversion investigator.

b. The agency that supervises the investigator is a qualified law enforcement agency.

c. The request is reasonably related to a bona fide active investigation involving a specific violation of any State or federal law involving a controlled substance.

d. The request has been reviewed and approved by the State Bureau of Investigation, Diversion & Environmental Crimes Unit.

(2) In the event a special agent of the State Bureau of Investigation, Diversion & Environmental Crimes Unit, takes action upon a request by a certified diversion investigator for access to data in the controlled substances reporting system, the special agent shall not incur criminal or civil liability for such action or for actions taken by the certified diversion investigator making the request.

(3) The conditions outlined in this subsection shall create an audit trail that may be used to investigate or prosecute violations of this section. The Department shall grant access to the system to the Attorney General of North Carolina or a designee and Special Agents of the State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit for the purpose of reviewing the audit trail. The State Bureau of Investigation shall conduct periodic audits of a random sample of requests from certified diversion investigators for access to data in the controlled substances reporting system.

(4) Data obtained by certified diversion investigators from the controlled substances reporting system in the manner prescribed by this subsection may be shared with other law enforcement personnel or prosecutorial officials (i) only upon the direction of the certified diversion investigator who originally requested the information and (ii) in the case of law enforcement personnel from other law enforcement agencies, only with law enforcement personnel who are directly participating in an official joint investigation or as provided in subdivision (5) of this subsection.

(5) In the event the data provided to the local law enforcement officer indicates transactions solely outside of that local law enforcement officer's jurisdiction, the matter shall be referred to the State Bureau of Investigation, Diversion & Environmental Crimes Unit, or to a certified diversion investigator employed by a qualified law enforcement agency with jurisdiction over the transactions at issue.

(6) Certified diversion investigators may not request or receive prescription data from other states through PMP Interconnect or any other mechanism established by the Department to facilitate interstate connectivity of the controlled substances reporting system.

(7) As used in this subsection, the following terms have the following meanings:

a. Bona fide active investigation. – An investigation of one or more specific persons conducted with a reasonable, good-faith belief based on specific facts and circumstances equivalent to those normally necessary for the issuance of a court order, as described in G.S. 90-113.74(c)(5).

a1. Certified diversion investigator. – An officer affiliated with a qualified law enforcement agency who is certified as a diversion investigator by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission. If for any reason a certified diversion investigator leaves a position involving diversion investigation, the qualified law enforcement agency shall notify the North Carolina Department of Health and Human Services Controlled Substance Reporting System and the State Bureau of Investigation, Diversion & Environmental Crimes Unit, within 72 hours after the effective date of the change.

b. Certified diversion supervisor. – The head of a municipal police department, a county police department, a sheriff's office, or the designee of the agency head with supervisory authority over that agency's diversion investigators who is certified as a diversion supervisor by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

c. Qualified law enforcement agency. – Any of the following entities whose head is a certified diversion investigator or that employs at least one certified diversion investigator and at least one certified diversion supervisor:

1. A municipal police department.
2. A county police department.
3. A sheriff's office.

(j) The Department shall do all of the following:

(1) Enable each certified diversion investigator associated with a qualified law enforcement agency to register with the controlled substances reporting system by providing, at a minimum, all of the following information:

a. The investigator's name and certification number.

b. The name of the qualified law enforcement agency for whom the investigator works.

c. The name and certification number of each certified diversion supervisor with whom the investigator works.

(2) Enable each certified diversion investigator associated with a qualified law enforcement agency to request and receive data in connection with a bona fide active investigation involving a specific violation of any state or federal law involving a controlled substance by providing, at a minimum, all of the following:

a. The case number associated with the request.

b. A description of the nature and purpose of the request.

c. The first name, last name, and date of birth of each individual whose prescription data the investigator seeks, including, when appropriate, any alternative name, spelling, or date of birth associated with each such individual.

d. An acknowledgement that the certified diversion investigator is aware of the penalties associated with improperly obtaining, disclosing, or disseminating data from the controlled substances reporting system.

(3) Enable the State Bureau of Investigation, Diversion & Environmental Crimes Unit, to review each request for data from a certified diversion investigator associated with a qualified law enforcement agency and, upon such review, to determine if the request is approved, denied, or delayed pending further review or investigation.

(4) Create an audit trail that may be used to investigate or prosecute violations of this Part and ensure that the Attorney General of North Carolina or a designee and Special Agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit have access to the system to review the audit trail.

(k) In addition to the civil penalties provided in G.S. 90-113.75(a) and any other applicable civil or criminal penalties, the following criminal penalties apply to any individual authorized to access data in the controlled substances reporting system when that access is authorized by subdivisions (3) through (10) of subsection (c) of this section:

(1) An individual who knowingly and intentionally accesses prescription information in the controlled substances reporting system for a purpose not authorized by this section shall be guilty of a Class I felony.

(2) An individual who knowingly and intentionally discloses or disseminates prescription information from the system for a purpose not authorized by this section shall be guilty of a Class I felony.

(3) An individual who willfully and maliciously obtains, discloses, or disseminates prescription information for a purpose not authorized by this section and with the intent to use such information for commercial advantage or personal gain, or to maliciously harm any person, shall be guilty of a Class H felony.

Any person who is convicted of a criminal offense under this subsection is permanently barred from accessing the controlled substances reporting system.

(*l*) The State Bureau of Investigation, Diversion & Environmental Crimes Unit, may investigate suspected violations of this section and shall notify the Department of any charges or convictions pursuant to this section. (2005-276, s. 10.36(a); 2009-438, s. 2; 2013-152, s. 3; 2015-241, s. 12F.16(d); 2016-94, s. 12F.6; 2017-74, s. 11; 2018-44, s. 11(a), (b); 2019-81, s. 15(a).)

§ 90-113.74A. Mandatory prescriber registration for access to controlled substances reporting system (See editor's note for contingency).

Within 30 days after obtaining an initial or renewal license that confers the authority to prescribe a controlled substance for the purpose of providing medical care for a patient, the licensee shall demonstrate to the satisfaction of the licensing board that he or she is registered for access to the controlled substances reporting system. A violation of this section may constitute cause for the licensing board having jurisdiction over the licensee to suspend or revoke the license. (2016-94, s. 12F.7(c).)

§ 90-113.74B. Mandatory dispenser registration for access to controlled substances reporting system; exception.

(a) Within 30 days after obtaining an initial or renewal license to practice pharmacy, the licensee shall demonstrate to the satisfaction of the North Carolina Board of Pharmacy that he or she is registered for access to the controlled substances reporting system. A violation of this section may constitute cause for the Board of Pharmacy to suspend or revoke the license.

(b) This section does not apply to a licensee employed in a pharmacy practice setting where a Schedule II, III, or IV controlled substance will not be dispensed. (2017-74, s. 12.)

§ 90-113.74C. Practitioner use of controlled substances reporting system; mandatory reporting of violations.

(a) Prior to initially prescribing a targeted controlled substance to a patient, a practitioner shall review the information in the controlled substances reporting system pertaining to the patient for the 12-month period preceding the initial prescription. For every subsequent three-month period that the targeted controlled substance remains a part of the patient's medical care, the practitioner shall review the information in the controlled substances reporting system pertaining to the patient for the 12-month period preceding the determination that the targeted controlled substance should remain a part of the patient's medical care. Each instance in which the practitioner reviews the information in the controlled substances reporting system pertaining to the patient shall be documented in the

patient's medical record. In the event the practitioner is unable to review the information in the controlled substances reporting system pertaining to the patient because the system is not operational or there is some other temporary electrical or technological failure, this inability shall be documented in the patient's medical record. Once the electrical or technological failure has been resolved, the practitioner shall review the information in the controlled substances reporting system pertaining to the patient and the review shall be documented in the patient's medical record.

(b) A practitioner may, but is not required to, review the information in the controlled substances reporting system pertaining to a patient prior to prescribing a targeted controlled substance to the patient in any of the following circumstances:

(1) The controlled substance is to be administered to a patient in a health care setting, hospital, nursing home, outpatient dialysis facility, or residential care facility, as defined in G.S. 14-32.2.

(2) The controlled substance is prescribed for the treatment of cancer or another condition associated with cancer.

(3) The controlled substance is prescribed to a patient in hospice care or palliative care.

(c) The Department shall conduct periodic audits of the review of the controlled substances reporting system by prescribers. The Department shall determine a system for selecting a subset of prescriptions to examine during each auditing period. The Department shall report to the appropriate licensing board any prescriber found to be in violation of this section. A violation of this section may constitute cause for the licensing board to suspend or revoke a prescriber's license.

(d) For purposes of this section, a "practitioner" does not include a person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes. (2017-74, s. 12; 2018-76, s. 4.)

§ 90-113.74D. Dispenser use of controlled substances reporting system.

(a) Prior to dispensing a targeted controlled substance, a dispenser shall review the information in the controlled substances reporting system pertaining to the patient for the preceding 12-month period and document this review under any of the following circumstances:

(1) The dispenser has a reasonable belief that the ultimate user may be seeking a targeted controlled substance for any reason other than the treatment of the ultimate user's existing medical condition.

(2) The prescriber is located outside of the usual geographic area served by the dispenser.

(3) The ultimate user resides outside of the usual geographic area served by the dispenser.

(4) The ultimate user pays for the prescription with cash when the patient has prescription insurance on file with the dispenser.

(5) The ultimate user demonstrates potential misuse of a controlled substance by any one or more of the following:

a. Over-utilization of the controlled substance.

b. Requests for early refills.
c. Utilization of multiple prescribers.
d. An appearance of being overly sedated or intoxicated upon presenting a prescription.
e. A request by an unfamiliar ultimate user for an opioid drug by a specific name, street name, color, or identifying marks.

(b) If a dispenser has reason to believe a prescription for a targeted controlled substance is fraudulent or duplicative, the dispenser shall withhold delivery of the prescription until the dispenser is able to contact the prescriber and verify that the prescription is medically appropriate.

(c) A dispenser shall be immune from any civil or criminal liability for actions authorized by this section. Failure to review the system in accordance with subsection (a) of this section shall not constitute medical negligence. (2017-74, s. 12.)

§ 90-113.74E. Certification of diversion investigators and diversion supervisors.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, in consultation with the Department of Justice, North Carolina Justice Academy, and State Bureau of Investigation, shall ensure that educational materials are created and that training programs are conducted for the certification of diversion investigators and diversion supervisors, as defined in G.S. 90-113.74(i). (2018-44, s. 13.)

§ 90-113.75. Civil penalties; other remedies; immunity from liability.

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this Article or a rule adopted pursuant to this Article shall be assessed a civil penalty by the Department not to exceed ten thousand dollars ($10,000) per violation and shall be temporarily barred from accessing the system until further findings by the Department. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be considered in determining the amount of the penalty to be assessed.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this Article or a rule adopted pursuant to this Article may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.
(2) The amount of actual damages, if any, sustained by the individual.

(c) Notwithstanding the foregoing, G.S. 8-53, G.S. 75-65, or any other provision of international, federal, State, or local law, a practitioner as defined in G.S. 90-87, a

dispenser, or other person or entity permitted access to or required or permitted to submit or transmit reports or other records, data, or information, including, without limitation, any protected health information or any other individually identifying or personal information, under this Article that, in good faith, submits or transmits such reports or other records, data, or information as required or allowed by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of submitting or transmitting such reports or other records, data, or information, or as a result of any subsequent actual or attempted access to or use or disclosure of such reports or other records, data, or information, whether by the Department, any law enforcement officer or agency, or any other person or entity. (2005-276, s. 10.36(a); 2013-152, s. 4; 2013-410, s. 18.5; 2018-44, s. 12.)

§ 90-113.75A. Creation of Controlled Substances Reporting System Fund.

(a) The Controlled Substances Reporting System Fund is created within the Department as a special revenue fund. The Department shall administer the Fund. The Department shall use the Fund only for operation of the controlled substances reporting system and to carry out the provisions of this Article.

(b) The Fund shall consist of the following:

(1) Any moneys appropriated to the Fund by the General Assembly.

(2) Any moneys received from State, federal, private, or other sources for deposit into the Fund.

(c) All interest that accrues to the Fund shall be credited to the Fund. Any balance remaining in the Fund at the end of any fiscal year shall remain in the Fund and shall not revert to the General Fund. (2017-74, s. 12.)

§ 90-113.75B. Annual report to General Assembly and licensing boards.

Annually on February 1, beginning February 1, 2019, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services, the North Carolina Medical Board, the North Carolina Board of Podiatry Examiners, the North Carolina Board of Nursing, the North Carolina Dental Board, the North Carolina Veterinary Medical Board, and the North Carolina Board of Pharmacy on data reported to the controlled substances reporting system. The report shall include at least all of the following information about targeted controlled substances reported to the system during the preceding calendar year:

(1) The total number of prescriptions dispensed, broken down by Schedule.

(2) Demographics about the ultimate users to whom prescriptions were dispensed.

(3) Statistics regarding the number of pills dispensed per prescription.

(4) The number of ultimate users who were prescribed a controlled substance by two or more practitioners.

(5) The number of ultimate users to whom a prescription was dispensed in more than one county.

(6) The categories of practitioners prescribing controlled substances and the number of prescriptions authorized by each category of practitioner. For the purpose of this subdivision, medical doctors, surgeons, palliative care

practitioners, oncologists and other practitioners specializing in oncology, pain management practitioners, practitioners who specialize in hematology, including the treatment of sickle cell disease, and practitioners who specialize in treating substance use disorder shall be treated as distinct categories of practitioners.

(7) Any other data deemed appropriate and requested by the Joint Legislative Oversight Committee on Health and Human Services, the North Carolina Medical Board, the North Carolina Board of Podiatry Examiners, the North Carolina Board of Nursing, the North Carolina Dental Board, the North Carolina Veterinary Medical Board, or the North Carolina Board of Pharmacy. (2017-74, s. 12.)

§ 90-113.75C: Reserved for future codification purposes.

§ 90-113.75D: Reserved for future codification purposes.

§ 90-113.75E. Opioid and Prescription Drug Abuse Advisory Committee; statewide strategic plan.

(a) There is hereby created the Opioid and Prescription Drug Abuse Advisory Committee, to be housed in and staffed by the Department. The Committee shall develop and, through its members, implement a statewide strategic plan to combat the problem of opioid and prescription drug abuse. The Committee shall include representatives from the following, as well as any other persons designated by the Secretary of Health and Human Services:

(1) The Department's Division of Health Benefits.
(2) The Department's Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(3) The Department's Division of Public Health.
(4) The Office of Rural Health, DHHS.
(5) The Divisions of Adult Correction and Juvenile Justice of the Department of Public Safety.
(6) The State Bureau of Investigation.
(7) The Attorney General's Office.
(8) The following health care regulatory boards with oversight of prescribers and dispensers of opioids and other prescription drugs:
    a. North Carolina Board of Dental Examiners.
    b. North Carolina Board of Nursing.
    c. North Carolina Board of Podiatry Examiners.
    d. North Carolina Medical Board.
    e. North Carolina Board of Pharmacy.
    f. North Carolina Veterinary Medical Board
(9) The UNC Injury Prevention Research Center.
(10) The substance abuse treatment community.
(11) Governor's Institute on Substance Abuse, Inc.
(12) The Department of Insurance's drug take-back program.

After developing the strategic plan, the Committee shall be the State's steering committee to monitor achievement of strategic objectives and receive regular reports on progress made toward reducing opioid and prescription drug abuse in North Carolina.

(b) In developing the statewide strategic plan to combat the problem of opioid and prescription drug abuse, the Opioid and Prescription Drug Abuse Advisory Committee shall, at a minimum, complete the following steps:

(1) Identify a mission and vision for North Carolina's system to reduce and prevent opioid and prescription drug abuse.

(2) Scan the internal and external environment for the system's strengths, weaknesses, opportunities, and challenges (a SWOC analysis).

(3) Compare threats and opportunities to the system's ability to meet challenges and seize opportunities (a GAP analysis).

(4) Enforcement of State laws for the misuse and diversion of controlled substances.

(5) Any other appropriate mechanism identified by the Committee.

(d) The Department, in consultation with the Opioid and Prescription Drug Abuse Advisory Committee, shall develop and implement a formalized performance management system that connects the goals and objectives identified in the statewide strategic plan to operations of the Controlled Substances Reporting System and Medicaid lock-in program, law enforcement activities, and oversight of prescribers and dispensers. The performance management system must be designed to monitor progress toward achieving goals and objectives and must recommend actions to be taken when performance falls short.

(e) Beginning on December 1, 2016, and annually thereafter, the Department shall submit an annual report on the performance of North Carolina's system for monitoring opioid and prescription drug abuse to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Justice and Public Safety, and the Fiscal Research Division. (2015-241, s. 12F.16(m)-(q); 2017-57, s. 11F.10; 2018-76, s. 9; 2019-81, s. 15(a).)

§ 90-113.76. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this Article. (2005-276, s. 10.36(a).)

§ 90-113.77. Reserved for future codification purposes.

§ 90-113.78. Reserved for future codification purposes.

§ 90-113.79. Reserved for future codification purposes.

Article 5F.

Control of Potential Drug Paraphernalia Products.

§ 90-113.80. Title.

This Article shall be known and may be cited as the "Drug Paraphernalia Control Act of 2009." (2009-205, s. 1.)

§ 90-113.81. Definitions.

For the purposes of this Article:

(a) "Glass tube" means an object which meets all of the following requirements:

(1) A hollow glass cylinder, either open or closed at either end.

(2) No less than two or more than seven inches in length.

(3) No less than one-eighth inch or more than three-fourths inch in diameter.

(4) May be used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body.

(5) Sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive.

(b) "Retailer" means an individual or entity that is the general owner of an establishment where glass tubes or splitters are available for sale.

(c) "Splitter" means a ring-shaped device that does both of the following:

(1) Allows the insertion of a wrapped tobacco product, such as a cigar, so that it can be pulled through the device.

(2) Cuts or slices the wrapping of the tobacco product along the product's length as it is drawn through the device. (2009-205, s. 1.)

§ 90-113.82. Glass tubes or splitters; restrictions on sales.

(a) Glass tubes or splitters shall not be offered for retail sale by self-service, but shall be stored and sold from behind a counter where the general public cannot access them without the assistance of a retailer's agent or employee.

(b) The retailer shall require any member of the public to whom it transfers a glass tube or splitter, with or without consideration, to do all of the following:

(1) Present identification that includes a photograph that is an accurate depiction of the person and that also includes the person's name and current address.

(2) Enter his or her name and current address on a record that the retailer shall maintain solely for the purposes of this section.

(3) Sign his or her name, verifying by signature the glass tube or splitter will not be used as drug paraphernalia in violation of the criminal laws of the State of North Carolina.

(c) The retailer shall maintain the record described in subsection (b) of this section for a period of two years from the date of each transaction, after which it may be destroyed.

(d) The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency.

(e) The retailer shall train its agents and employees on the requirements of this section. (2009-205, s. 1.)

§ 90-113.83. Penalties.

(a) A retailer, or an employee of the retailer, who willfully and knowingly violates any one of the subsections of G.S. 90-113.82 shall be guilty of a Class 2 misdemeanor.

(b) Any person who knowingly makes a false statement or representation in fulfilling the requirements in G.S. 90-113.82(b) shall be guilty of a Class 1 misdemeanor. (2009-205, s. 1.)

§ 90-113.84. Immunity.

A retailer, or an employee of the retailer, who, reasonably and in good faith, (i) reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of glass tubes or splitters or (ii) refuses to sell a glass tube or splitter to a person reasonably believed to be purchasing it for use as drug paraphernalia is immune from civil liability for that conduct, except in cases of willful misconduct. (2009-205, s. 1.)

§ 90-113.85: Reserved for future codification purposes.

§ 90-113.86: Reserved for future codification purposes.

§ 90-113.87: Reserved for future codification purposes.

§ 90-113.88: Reserved for future codification purposes.

§ 90-113.89: Reserved for future codification purposes.

§ 90-113.90: Reserved for future codification purposes.

§ 90-113.91: Reserved for future codification purposes.

§ 90-113.92: Reserved for future codification purposes.

§ 90-113.93: Reserved for future codification purposes.

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§ 90-113.95: Reserved for future codification purposes.

§ 90-113.96: Reserved for future codification purposes.

§ 90-113.97: Reserved for future codification purposes.

§ 90-113.98: Reserved for future codification purposes.

§ 90-113.99: Reserved for future codification purposes.

Article 5G.

Epilepsy Alternative Treatment Act.

§ 90-113.100. (Repealed effective July 1, 2021) Short title.

(a) This act may be cited as the "North Carolina Epilepsy Alternative Treatment Act."

(b) The purpose of this act is to permit the use of hemp extract as an alternative treatment for intractable epilepsy.

(c) The General Assembly finds that there are children in this State suffering from intractable epilepsy for which currently available treatment options have been ineffective. Hemp extract shows promise in treating children with intractable epilepsy. (2014-53, s. 2; 2015-154, s. 2.)

§ 90-113.101. (Repealed effective July 1, 2021) Definitions.

The following definitions apply in this Article:

(1) Caregiver. – An individual that is at least 18 years of age and a resident of North Carolina who is a parent, legal guardian, or custodian of a patient and is registered with the Department of Health and Human and Services under G.S. 90-113.102 who possesses a written statement dated and signed by a neurologist that states all of the following:
   a. The patient has been examined and is under the care of the neurologist.
   b. The patient suffers from intractable epilepsy.
   c. The patient may benefit from treatment with hemp extract.

(2) Repealed by Session Laws 2015-154, s. 3, effective July 16, 2015.

(3) Database. – The Intractable Epilepsy Alternative Treatment database, established by the Department of Health and Human Services pursuant to this Article.

(4) Department. – The Department of Health and Human Services.

(5) Hemp Extract. – An extract from a cannabis plant, as defined in G.S. 90-94.1(a).

(6) Intractable Epilepsy. – A seizure disorder that, as determined by a neurologist, does not respond to three or more treatment options overseen by the neurologist.

(7) Neurologist. – An individual who is licensed under Article 1 of Chapter 90 of the General Statutes, who is board certified in neurology, and is affiliated with the neurology department at one or more hospitals licensed in this State.

(8) Patient. – A person who has been diagnosed by a neurologist with intractable epilepsy.

(9) Repealed by Session Laws 2015-154, s. 3, effective July 16, 2015. (2014-53, s. 2; 2015-154, s. 3; 2015-264, ss. 14(a), 48.5.)

§ 90-113.102. (Repealed effective July 1, 2021) Intractable Epilepsy Alternative Treatment database; departmental duties.

(a) The Department shall create a secure and electronic Intractable Epilepsy Alternative Treatment database registry for the registration of neurologists, caregivers, and patients as provided by this Article. All caregivers shall be required to register with the Department. Law enforcement agencies are authorized to contact the Department to

confirm a caregiver's registration. The database shall consist of the following information to be provided by the caregivers at the time of registration:

(1) The name and address of the caregiver.

(2) The name and address of the caregiver's patient.

(3) Repealed by Session Laws 2015-154, s. 4, effective July 16, 2015.

(4) The name, address, and hospital affiliation of the neurologist recommending hemp extract as an alternative treatment for intractable epilepsy for the patient.

(b) Repealed by Session Laws 2015-154, s. 4, effective July 16, 2015.

(c) If at any time following registration, the name, address, or hospital affiliation of the patient's neurologist changes, the caregiver shall notify the Department and provide the Department with the patient's new neurologist's name, address, and hospital affiliation. (2014-53, s. 2; 2015-154, s. 4.)

§§ 90-113.103, 90-113.104: Repealed by Session Laws 2015-154, ss. 5, 6, effective July 16, 2015.

§ 90-113.105. (Repealed effective July 1, 2021) Immunity for neurologists; confidentiality.

(a) On a case-by-case basis, neurologists may approve of dispensation to a registered caregiver, as approved by this Article, hemp extract acquired from another jurisdiction.

(a1) Neurologists who approve of dispensation of hemp extract to a registered caregiver, as approved by this Article, shall inform the registered caregiver of the requirement that disposal must be done at a secure collection box pursuant to G.S. 90-94.1.

(b) A neurologist shall not be subject to arrest or prosecution, penalized or disciplined in any manner, or denied any right or privilege for approving or recommending the use of hemp extract or providing a written statement for the use of hemp extract pursuant to this Article.

(c) Repealed by Session Laws 2015-154, s. 7, effective July 16, 2015.

(d) The identities of the caregivers, patients, and neurologists reported to the Department pursuant to this Article are confidential and are not matters of public record. However, this information may be provided to law enforcement agencies pursuant to G.S. 9-113.102. (2014-53, s. 2; 2015-154, s. 7; 2018-36, s. 2.)

§ 90-113.106. (Repealed effective July 1, 2021) Rule making.

The Department shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes to implement the provisions of this Article. (2014-53, s. 2.)

Article 6.

Optometry.

§ 90-114. Optometry defined.

Any one or any combination of the following practices shall constitute the practice of optometry:

(1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or

(2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or

(3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa. (1909, c. 444, s. 1; C.S., s. 6687; 1923, c. 42, s. 1; 1977, c. 482, s. 1; 1997-75, s. 1.)

§ 90-115. Practice without registration unlawful.

After the passage of this Article it shall be unlawful for any person to practice optometry in the State unless he has first obtained a certificate of registration as hereinafter provided. Within the meaning of this Article, a person shall be deemed as practicing optometry who does, or attempts to, sell, furnish, replace, or duplicate, a lens, frame, or mounting, or furnishes any kind of material or apparatus for ophthalmic use, without a written prescription from a person authorized under the laws of the State of North Carolina to practice optometry, or from a person authorized under the laws of North Carolina to practice medicine: Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles, without advice or aid as to the selection thereof, as merchandise from permanently located or established places of business, nor shall it prohibit persons or corporations from making mechanical repairs to frames for spectacles; nor shall it prohibit any person, firm, or corporation engaged in grinding lenses and filling prescriptions from replacing or duplicating lenses on original prescriptions issued by a duly licensed optometrist, and oculist. (1909, c. 444, s. 2; C.S., s. 6688; 1935, c. 63; 1967, c. 691, s. 43.)

§ 90-115.1. Acts not constituting the unlawful practice of optometry.

In addition to the exemptions from this Article otherwise existing the following acts or practices shall not constitute the unlawful practice of optometry:

(1) The practice of optometry, in the discharge of their official duties, by optometrists in any branch of the Armed Forces of the United States or in the full employ of any agency of the United States.

(2) The teaching of optometry, in optometry schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Examiners in Optometry, by any person or persons licensed to practice optometry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of optometry by any person or persons licensed in any jurisdiction other than a place in the United States must first be approved by the North Carolina State Board of Examiners in Optometry.

(3) The practice of optometry by students enrolled in optometry schools or colleges approved by the North Carolina State Board of Examiners in Optometry when such practice is performed as a part of the student's course of instruction, is under the direct supervision of an optometrist who is either duly licensed in North Carolina or qualified under subdivision (2) above as a teacher, and is conducted in accordance with such rules as may be established for such practice by the North Carolina State Board of Examiners in Optometry. Additionally, the practice of optometry by such students at any location upon patients or inmates of institutions wholly owned or operated by the State of North Carolina or any political subdivision or subdivisions thereof when, in the opinion of the dean of such optometry school or college or his designee, the student's optometric education and experience is adequate therefor, subject to review and approval by the said Board of Examiners in Optometry, and such practice is a part of the course of instruction of such students, is performed under the supervision of a duly licensed optometrist acting as a teacher or instructor and is without remuneration except for expenses and subsistence as defined and permitted by the rules and regulations of said Board of Examiners in Optometry.

(4) The temporary practice of optometry by licensed optometrists of another state or of any territory or country when the same is performed, as clinicians, at meetings or organized optometric societies, associations, colleges or similar optometric organizations, or when such optometrists appear in emergency cases upon the specific call of and in consultation with an optometrist duly licensed to practice in this State.

(5) The practice of optometry by a person who is a graduate of an optometric school or college approved by the North Carolina State Board of Examiners in Optometry and who is not licensed to practice optometry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Examiners in Optometry pursuant to the terms and provisions of this Article, and when such practice of optometry complies with the conditions of said intern permit, or provisional license.

(6) Any act or acts performed by an optometric assistant or technician to an optometrist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(7) Optometric assisting and related functions as a part of their instructions by optometric assistant students enrolled in a course conducted in this State and approved by the Board, when such functions are performed under the supervision of an optometrist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of optometry pursuant to the provisions of subdivision (2) above. (1975, c. 733; 1989, c. 321; 2011-183, s. 61.)

§ 90-116. Board of Examiners in Optometry.

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated

optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term. (1909, c. 444, s. 3; 1915, c. 21, s. 1; C.S., s. 6689; 1935, c. 63; 1981, c. 496, s. 1; 1987, c. 827, s. 1; 2000-189, s. 5.)

§ 90-117. Officers; common seal.

The North Carolina State Board of Examiners in Optometry shall, at each annual meeting thereof, elect one of its members president and one secretary-treasurer. The common seal which has already been adopted by said Board, pursuant to law, shall be continued as the seal of said Board. (1909, c. 444, s. 4; C.S., s. 6690; 1935, c. 63; 1953, c. 1041, s. 11; 1973, c. 800, s. 1.)

§ 90-117.1. Quorum; adjourned meetings.

A majority of the members of said Board shall constitute a quorum for the transaction of business. If a majority of members are not present at the time and the place appointed for a Board meeting, those members of the Board in attendance may adjourn from day to day until a quorum is present, and the action of the Board taken at any adjourned meeting thus had shall have the same force and effect as if had upon the day and at the hour of the meeting called and adjourned from day to day. (1973, c. 800, s. 2; 1981, c. 496, s. 2.)

§ 90-117.2. Records and transcripts.

The said Board shall keep a record of its transactions at all annual or special meetings and shall provide a record book in which shall be entered the names and proficiency of all persons to whom licenses may be granted under the provisions of law. The said book shall show, also, the license number and the date upon which such license was issued and shall show such other matters as in the opinion of the Board may be necessary or proper. Said book shall be deemed a book of record of said Board and a transcript of any entry therein or a certification that there is not entered therein the name, proficiency and license number or date of granting such license, certified under the hand of the secretary-treasurer, attested by the seal of the North Carolina State Board of Examiners in Optometry, shall be admitted as evidence in any court of this State when the same shall otherwise be competent. (1973, c. 800, s. 3.)

§ 90-117.3. Annual and special meetings.

The North Carolina State Board of Examiners in Optometry shall meet annually in June of each year at such place as may be determined by the Board, and at such other times and places as may be determined by action of the Board or by a majority of the members thereof. Notice of the place of the annual meeting and of the time and place of any special or called meeting shall be given in writing, by registered or certified mail or personally, to each member of the Board at least 10 days prior to said meeting; provided the requirements of notice may be waived by any member of the Board. At the annual meeting or at any special or called meeting, the said Board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice. (1973, c. 800, s. 4; 1981, c. 496, s. 3.)

§ 90-117.4. Judicial powers; additional data for records.

The president of the North Carolina State Board of Examiners in Optometry, and/or the secretary-treasurer of said Board, shall have the power to administer oaths, issue subpoenas requiring the attendance of persons and the production of papers and records before said Board in any hearing, investigation or proceeding conducted by it. The sheriff or other proper official of any county of the State shall serve the process issued by said president or secretary-treasurer of said Board pursuant to its requirements and in the same manner as process issued by any court of record. The said Board shall pay for the service of all process, such fees as are provided by law for the service of like process in other cases.

Any person who shall neglect or refuse to obey any subpoena requiring him to attend and testify before said Board or to produce books, records or documents shall be guilty of a Class 1 misdemeanor.

The Board shall have the power, upon the production of any papers, records or data, to authorize certified copies thereof to be substituted in the permanent record of the matter in which such books, records or data shall have been introduced in evidence. (1973, c. 800, s. 5; 1993, c. 539, s. 627; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-117.5. Bylaws and regulations.

The North Carolina State Board of Examiners in Optometry shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this Article, regarding any matter referred to in this Article and for the purpose of facilitating the transaction of business by the said Board. (1973, c. 800, s. 6.)

§ 90-118. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses; educational requirements for prescription and use of pharmaceutical agents.

(a) The North Carolina State Board of Examiners in Optometry shall grant licenses to practice optometry to such applicants who are graduates of an accredited optometric institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of optometry, subject, however, to the further provisions of this section and to the provisions of this Article.

(b) The applicant shall be of good moral character and at least 18 years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character; has an academic education, the standard of which shall be determined by the said Board; and that he is a graduate of and has a diploma from an accredited optometric college or the optometric department of an accredited university or college recognized and approved as such by the said Board.

(c) The North Carolina State Board of Examiners in Optometry is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception, or fraud during such examination, or whose examination discloses, to the satisfaction of the Board, a deficiency in academic education. The Board may employ such optometrists found qualified therefor by the Board in examining applicants for licenses as it deems appropriate.

(d) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(e) The Board shall not license any person to practice optometry in the State of North Carolina beyond the scope of the person's educational training as determined by the Board. No optometrist presently licensed in this State shall prescribe and use pharmaceutical agents in the practice of optometry unless and until he (i) has submitted to the Board evidence of satisfactory completion of all educational requirements established by the Board to prescribe and use pharmaceutical agents in the practice of optometry and (ii) has been certified by the Board as educationally qualified to prescribe and use pharmaceutical agents.

Provided, however, that no course or courses in pharmacology shall be approved by the Board unless (i) taught by an institution having facilities for both the didactic and clinical instruction in pharmacology and which is accredited by a regional or professional accrediting organization that is recognized and approved by the Council on Postsecondary Accreditation or the United States Office of Education and (ii) transcript credit for the course or courses is certified to the Board by the institution as being equivalent in both hours and content to those courses in pharmacology required by the other licensing boards in this Chapter whose licensees or registrants are permitted the use of pharmaceutical agents in the course of their professional practice. (1909, c. 444, s. 5; 1915, c. 21, ss. 2, 3, 4; C.S., s. 6691; 1923, c. 42, ss. 2, 3; 1935, c. 63; 1949, c. 357; 1959, c. 464; 1973, c. 800, s. 7; 1975, c. 19, s. 23; 1977, c. 482, s. 2; 1981, c. 496, ss. 4, 5; 1997-75, s. 4.1.)

§ 90-118.1. Contents of original license.

The original license granted by the North Carolina State Board of Examiners in Optometry shall bear a serial number, the full name of the applicant, the date of issuance and shall be signed by the president and a majority of the members of the said Board and attested by the seal of said

Board and the secretary thereof. The certificate of renewal of license shall bear a serial number which need not be the serial number of the original license issued, the full name of the applicant and the date of issuance. (1973, c. 800, s. 8.)

§ 90-118.2. Displaying license and current certificate of renewal.

The license and the current certificate of renewal of license to practice optometry issued, as herein provided, shall at all times be displayed in a conspicuous place in the office of the holder thereof and whenever requested the license and the current certificate of renewal shall be exhibited to or produced before the North Carolina State Board of Examiners in Optometry or to its authorized agents.

A licensee who practices in more than one office location shall make application to the Board for a duplicate license for each branch office for display as required by this section. In issuing a duplicate license, the address of the branch office location and the original certificate number shall be included. At the time of the annual renewal of licenses, those optometrists who have been issued a duplicate license for a branch office, shall make application to the North Carolina Board of Examiners in Optometry on a form provided by the Board for the renewal of the license in the same manner as provided for in G.S. 90-118.10 for the renewal of his license. The holder of a certificate for a branch office may cancel it by returning the certificate to the Secretary of the Board. (1973, c. 800, s. 9; 1981, c. 811, s. 1.)

§ 90-118.3. Refusal to grant renewal of license.

For nonpayment of fee or fees required by this Article, or for violation of any of the terms or provisions of G.S. 90-121.2, the North Carolina State Board of Examiners in Optometry may refuse to issue a certificate of renewal of license. (1973, c. 800, s. 10; 1981, c. 811, s. 2.)

§ 90-118.4. Duplicate licenses.

When a person is a holder of a license to practice optometry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina State Board of Examiners in Optometry for the issuance of a copy or a duplicate thereof accompanied by a reasonable fee set by the Board. Upon the filing of the application and the payment of the fee, the said Board shall issue a copy or duplicate. (1973, c. 800, s. 11.)

§ 90-118.5. Licensing practitioners of other states.

(a) If an applicant for licensure is already licensed in another state in optometry, the North Carolina State Board of Examiners in Optometry shall issue a license to practice optometry to the applicant without examination other than a clinical practicum examination upon evidence that:

(1) The applicant is currently an active, competent practitioner in good standing, and
(2) The applicant has practiced at least three out of the five years immediately preceding his or her application, and
(3) The applicant currently holds a valid license in another state, and
(4) No disciplinary proceeding or unresolved complaint is pending anywhere at the time a license is to be issued by this State, and
(5) The licensure requirements in the other state are equivalent to or higher than those required by this State.

(b) Application for license to be issued under the provisions of this section shall be accompanied by a certificate from the optometry board or like board of the state from which said applicant removed, certifying that the applicant is the legal holder of a license to practice optometry in that state, and for a period of at least three out of five years immediately preceding the application has engaged in the practice of optometry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the criminal laws of the state or the United States, or for the violation of the ethics of the profession of optometry.

(c) Application for a license under this section shall be made to the North Carolina State Board of Examiners in Optometry within six months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from an accredited, recognized and approved optometry college, school or optometry department of a college or university.

(d) Any license issued upon the application of any optometrist from any other state or territory shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina State Board of Examiners in Optometry upon examination of applicants and the rights and privileges to practice the profession of optometry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this Article on optometrists originally examined by the North Carolina State Board of Examiners in Optometry. (1973, c. 800, s. 12; 1981, c. 496, ss. 6, 7.)

§ 90-118.6. Certificate issued to optometrist moving out of State.

Any optometrist duly licensed by the North Carolina State Board of Examiners in Optometry, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said Board, upon application to said Board and the payment to it of the fee in this Article provided, shall be issued a certificate showing his full name and address, the date of license originally issued to him, the date and number of his renewal of license, and whether any charges have been filed with the Board against him. The Board may provide forms for such certificate, requiring such additional information as it may determine proper. (1973, c. 800, s. 13.)

§ 90-118.7. Licensing former optometrists who have moved back into State or resumed practice.

Any person who shall have been licensed by the North Carolina State Board of Examiners in Optometry to practice optometry in this State who shall have retired from practice or who shall have moved from the State and shall have returned to the State, may, upon a satisfactory showing to said Board of his proficiency in the profession of optometry and his good moral character during the period of his retirement, or absence from the State, be granted by said Board a license to resume the practice of optometry upon making application to the said Board in such form as it may require. The license to resume practice, after issuance thereof, shall be subject to all the provisions of this Article. (1973, c. 800, s. 14.)

§§ 90-118.8 through 90-118.9. Repealed by Session Laws 1981, c. 811, ss. 4, 5.

§ 90-118.10. Annual renewal of licenses.

Since the laws of North Carolina now in force provided for the annual renewal of any license issued by the North Carolina State Board of Examiners in Optometry, it is hereby declared to be the policy of this State that all licenses heretofore issued by the North Carolina State Board of Examiners in Optometry, or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Examiners in Optometry is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each optometrist engaged in the practice of optometry in North Carolina shall make application to the North Carolina State Board of Examiners in Optometry and receive from said Board, subject to the further provisions of this section and of this Article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe by regulation.

If the application for such renewal certificate, accompanied by the fee required by this Article, is not received by the Board before January 31 of each year, an additional fee of fifty dollars ($50.00) shall be charged for renewal certificate. If such application accompanied by the renewal fee is not received by the Board before March 31 of each year, every person thereafter continuing to practice optometry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of optometry and shall be subject to the penalties prescribed by G.S. 90-118.11.

In issuing a certificate of renewal, the Board shall expressly state whether such person, otherwise licensed in the practice of optometry, has been certified to prescribe and use pharmaceutical agents. (1973, c. 800, s. 17; c. 1092, s. 1; 1977, c. 482, s. 3; 1987, c. 645, s. 3.)

§ 90-118.11. Unauthorized practice; penalty for violation of Article.

If any person shall practice or attempt to practice optometry in this State without first having passed the examination and obtained a license from the North Carolina State Board of Examiners in Optometry; or without having obtained a provisional license from said Board; or if he shall practice optometry after March 31 of each year without applying for a certificate of renewal of license, as provided in G.S. 90-118.10; or shall practice or attempt to practice optometry while his license is revoked, or suspended, or when a certificate of renewal of license has been refused; or shall practice or attempt to practice optometry by means or methods that the Board has determined is beyond the scope of the person's educational training; or shall violate any of the provisions of this Article for which no specific penalty has been provided; or shall practice, or attempt to practice, optometry in violation of the provisions of this Article; or shall practice optometry under any name other than his own name, said person shall be guilty of a Class 1 misdemeanor. Each day's violation of this Article shall constitute a separate offense. (1973, c. 800, s. 18; 1977, c. 482, s. 4; 1981, c. 496, s. 10; 1993, c. 539, s. 628; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-119. Persons in practice before passage of statute.

Every person who had been engaged in the practice of optometry in the State for two years prior to the date of the passage of this Article shall hereafter file an affidavit as proof thereof with the Board. The secretary shall keep a record of such persons who shall be exempt from the provisions of the preceding section [G.S. 90-118]. Upon payment of three dollars ($3.00) he shall

issue to each of them certificates of registration without the necessity of an examination. Failure on the part of a person so entitled within six months of the enactment of this Article to make written application to the Board for the certificate of registration accompanied by a written statement, signed by him and duly verified before an officer authorized to administer oaths within this State, fully setting forth the grounds upon which he claims such certificate, shall be deemed a waiver of his right to a certificate under the provisions of this section. A person who has thus waived his right may obtain a certificate thereafter by successfully passing examination and paying a fee as provided herein. (1909, c. 444, ss. 6, 7, 9; C.S., s. 6692.)

§§ 90-120 through 90-121. Repealed by Session Laws 1973, c. 800, ss. 19, 20.

§ 90-121.1. Board may enjoin illegal practices.

In view of the fact that the illegal practice of optometry imminently endangers the public health and welfare, and is a public nuisance, the North Carolina State Board of Examiners in Optometry may, if it shall find that any person is violating any of the provisions of this Article, apply to the superior court for a temporary or permanent restraining order or injunction to restrain such person from continuing such illegal practices. If upon such application, it shall appear to the court that such person has violated, or is violating, the provisions of this Article, the court shall issue an order restraining any further violating thereof. All such actions by the Board for injunctive relief shall be governed by the provisions of Article 37 of Chapter 1 of the General Statutes: provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under the provisions of G.S. 90-124. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business. (1973, c. 800, s. 19; 1981, c. 496, s. 11; 1987 (Reg. Sess., 1988), c. 1037, s. 101.)

§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;

(2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice optometry;

(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;

(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;

(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any State or federal narcotic or barbiturate law;

(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;

(7) Is mentally, emotionally, or physically unfit to practice optometry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice optometry unless or until such person shall have been subsequently lawfully declared to be mentally competent;

(8) Repealed by Session Laws 1981, c. 496, s. 12.

(9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of optometry or in attempting to fraudulently obtain a license to practice optometry;

(10) Has engaged in such immoral conduct as to discredit the optometry profession;

(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;

(12) Has been negligent in the practice of optometry;

(13) Has employed a person not licensed in this State to do or perform any act of service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article can lawfully be done or performed only by an optometrist licensed in this State;

(14) Is incompetent in the practice of optometry;

(15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients, including false or misleading advertising;

(16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;

(17) Has committed any fraudulent or misleading acts in the practice of optometry;

(18) Repealed by Session Laws 1981, c. 496, s. 12.

(19) Has, in the practice of optometry, committed an act or acts constituting malpractice;

(20) Repealed by Session Laws 1981, c. 496, s. 12.

(21) Has permitted an optometric assistant in his employ or under his supervision to do or perform any act or acts violative to this Article or of the rules and regulations promulgated by the Board;

(22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of optometry;

(23) Has persistently maintained, in the practice of optometry, unsanitary offices, practices, or techniques;

(24) Is a menace to the public health by reason of having a serious communicable disease;

(25) Has engaged in any unprofessional conduct as the same may be from time to time defined by the rules and regulations of the Board.

In addition to and in conjunction with the actions described above, the Board may make a finding adverse to a licensee or applicant but withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. The Board may administer a public or private reprimand or a private letter of concern, and the private reprimand and private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be disclosed to any person except the licensee. The Board may require a licensee to: (i) make specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for disciplinary costs.

(b) If any person engages in or attempts to engage in the practice of optometry while his license is suspended, his license to practice optometry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license and intern permit.

(g) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice optometry, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice. (1973, c. 800, s. 20; 1981, c. 496, ss. 12, 13; 2000-184, s. 6.)

§ 90-121.3. Hearings.

(a) The Board shall grant any person whose license is affected the right to be heard before the Board, before any of the following action is finally taken, the effect of which would be:

(1) To deny permission to take an examination for licensing for which application has been duly made; or

(2) To deny a license after examination for any cause other than failure to pass an examination; or
(3) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
(4) To suspend a license; or
(5) To revoke a license; or
(6) To revoke or suspend a provisional license or an intern permit; or
(7) To invoke any other disciplinary measures, censure, or probative terms against a licensee, a provisional licensee, or an intern.

(b) Proceedings under this section shall be conducted in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(c) In lieu of or as a part of such hearings and subsequent proceedings the Board is authorized and empowered to enter any consent order relative to the discipline, censure, or probation of a licensee, an intern, or an applicant for a license, or relative to the revocation or suspension of a license, provisional license, or intern permit.

(d) Following the service of the notice of hearing as required by Chapter 150B of the General Statutes, the Board and the person upon whom such notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process as might be necessary or proper to effect the purposes of this subsection; provided, however, that no member of the Board shall be subject to examination hereunder. (1973, c. 800, s. 21; c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 90-121.4. Restoration of revoked license.

Whenever any optometrist has been deprived of his license, the North Carolina State Board of Examiners in Optometry in its discretion may restore said license upon due notice being given and hearing had, and satisfactory evidence produced or proper reformation of the licentiate, before restoration. (1973, c. 800, s. 22.)

§ 90-121.5. Confidentiality of investigative information; cooperation with law enforcement; self-reporting requirements.

(a) The Board may, in a closed session, receive information or evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of the treatment when necessary for the protection of the rights of the patient or the accused licensee and the full presentation of relevant evidence.

(b) All records, papers, investigative files, investigative notes, reports, other investigative information, and other documents containing information in the possession of or received, gathered, or completed by the Board, its members, staff, employees, attorneys, or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a license, complaint, assessment, potential impairment, disciplinary matter, or report of professional liability insurance awards or settlements shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Such documents are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its

employees or consultants involved in the application for licensure, impairment assessment, or discipline of a licensee, except as provided in this section. However, any notice or statement of charges against any licensee or applicant, any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that the documentation may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, the documents shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of professional services to a patient who has not consented to the public disclosure of the treatment or services.

For purposes of this subsection, "investigative information" includes (i) formal or informal complaints received or information relating to the identity of, or a report made by, another licensee or other person performing an expert review or similar analysis for the Board or (ii) transcripts of any deposition taken or affidavit or statement obtained by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing.

(c) When the Board receives a complaint regarding a licensee's care of a patient, the Board shall determine whether there is reasonable cause to believe that a licensee has violated a statute or rule governing the practice of optometry. In making such determination, the Board shall provide the licensee with a copy of the complaint and ask for a response. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care.

(d) If information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed.

(e) The Board shall cooperate with and assist a law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing information that is relevant to the criminal investigation or prosecution to the investigating agency or district attorney. Information disclosed by the Board to an investigative agency or district attorney remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(f) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

(1) Any felony arrest or indictment.

(2) Any arrest for driving while impaired or driving under the influence.

(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(g) The Board, its members, attorneys, and staff may release confidential or nonpublic information to any health care licensure board in this State or another state or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities about (i) the issuance, denial, annulment, suspension, revocation, or other public disciplinary action taken concerning a license, (ii) the voluntary surrender to the Board of a license by a licensee, including the reasons for the action, or (iii) any disciplinary action taken by the Board. The Board shall notify the licensee in writing within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information transmitted but shall be liable for the reasonable expense of the copies. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities. (2011-336, s. 1.)

§ 90-121.6. Reporting and publication of judgments, awards, payments, and settlements.

(a) All optometrists licensed or applying for licensure by the Board shall report to the Board:

(1) All medical malpractice judgments or awards affecting or involving the optometrist.

(2) All settlements in the amount of seventy-five thousand dollars ($75,000) or more related to an incident of alleged medical malpractice affecting or involving the optometrist where the settlement occurred on or after May 1, 2008.

(3) All settlements in the aggregate amount of seventy-five thousand dollars ($75,000) or more related to any one incident of alleged medical malpractice affecting or involving the optometrist not already reported pursuant to subdivision (2) of this subsection where, instead of a single payment of seventy-five thousand dollars ($75,000) or more occurring on or after May 1, 2008, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed seventy-five thousand dollars ($75,000).

(b) The report required under subsection (a) of this section shall contain the following information:

(1) The date of the judgment, award, payment, or settlement.

(2) The city, state, and country in which the incident occurred that resulted in the judgment, award, payment, or settlement.

(3) The date the incident occurred that resulted in the judgment, award, payment, or settlement.

(c) The Board shall publish on the Board's Web site or other publication information collected under this section. The Board shall publish this information for seven years from the date of the judgment, award, payment, or settlement. The Board shall not release or publish individually identifiable numeric values of the reported judgment, award, payment, or settlement. The Board shall not release or publish the identity of the patient associated with the judgment, award, payment, or settlement. The Board shall allow the optometrist to publish a statement explaining the circumstances that led to the judgment, award, payment, or settlement, and whether the case is under appeal. The Board shall ensure these statements:

(1) Conform to the ethics of optometry.

(2) Not contain individually identifiable numeric values of the judgment, award, payment, or settlement.

(3) Not contain information that would disclose the patient's identity.

(d) The term "settlement" for the purpose of this section includes a payment made from personal funds, a payment by a third party on behalf of the optometrist, or a payment from any other source of funds.

(e) Nothing in this section shall limit the Board from collecting information needed to administer this Article. (2011-336, s. 2.)

§ 90-122. Compensation and expenses of Board.

Notwithstanding G.S. 93B-5(a), each member of the North Carolina State Board of Examiners in Optometry shall receive as compensation for his services in the performance of his duties under this Article two hundred dollars ($200.00) for each day actually engaged in the performance of the duties of his office, and all legitimate and necessary expenses incurred in attending meetings of the said Board.

All per diem allowances and all expenses paid as provided in this section shall be paid upon vouchers drawn by the Executive Director of the Board in accordance with Board policy.

The Board is authorized and empowered to expend from funds collected such sum or sums as it may determine necessary in the administration and enforcement of this Article, and employ such personnel as it may deem requisite to assist in carrying out the administrative functions required by this Article and by the Board. (1909, c. 444, s. 11; C.S., s. 6695; 1923, c. 42, s. 4; 1935, c. 63; 1959, c. 574; 1973, c. 800, s. 23; 1979, c. 771, s. 3; 1987, c. 645, s. 2; 2001-493, s. 1.)

§ 90-123. Fees.

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties of devolving upon the North Carolina State Board of Examiners in Optometry, the Board is authorized to charge and collect the following fees:

(1) Each application for general optometry examination $800.00

(2) Each general optometry license renewal, which fee shall be annually fixed by the Board, and not later than December 15 of each year written notice of the amount of the renewal fee shall be given to each optometrist licensed to practice in this State by mailing the notice to the last address of record with

the Board of each such optometrist.....300.00

(3) Each certificate of license to a resident optometrist desiring to change to another state or territory 300.00

(4) Each license issued to a practitioner of another state or territory to practice in this State.....350.00

(5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has removed from and returned to this State.....350.00

(6) Each application for registration as an optometric assistant or renewal thereof 100.00

(7) Each application for registration as an optometric technician or renewal thereof 100.00

(8) Each duplicate license or renewal thereof for each branch office .....100.00.

(1909, c. 444, s. 12; C.S., s. 6696; 1923, c. 42, s. 5; 1933, c. 492; 1937, c. 362, s. 1; 1959, c. 477; 1969, c. 624; 1973, c. 1092, s. 2; 1979, c. 771, ss. 1, 2; 1981, c. 909; 1987, c. 645, s. 1; 2001-493, s. 2.)

§ 90-123.1. Continuing education courses required.

All registered optometrists now or hereafter licensed in the State of North Carolina are and shall be required to take annual courses of study in subjects relating to the practice of the profession of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The length of study shall be prescribed by the Board but shall not exceed 25 hours in any calendar year. Attendance must be at a course or courses approved by the Board. Attendance at any course or courses of study are to be certified to the Board upon a form approved by the Board and shall be submitted by each registered optometrist at the time he makes application to the Board for the renewal of his license and payment of his renewal fee. The Board is authorized to use up to one half of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals for the providing of educational programs that meet this requirement. The Board is further authorized to treat funds set aside for the purpose of continuing education as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. In no instance may the Board require a greater number of hours of study than are available at approved courses held within the State, and shall be allowed to waive this requirement in cases of certified illness or undue hardship. (1969, c. 354; 1981, c. 811, s. 3.)

§ 90-124. Rules and regulations of Board; violation a misdemeanor.

Rules and regulations adopted by the Board shall become effective 30 days after passage, and the same may be proven, as evidence, by the president and/or the secretary-treasurer of the Board, and/or by certified copy under the hand and seal of the secretary-treasurer. A certified copy of any rule or regulation shall be receivable in all courts as prima facie evidence thereof if otherwise competent, and any person, firm, or corporation violating any such rule or regulation shall be guilty of a Class 2 misdemeanor, and each day that this section is violated shall be considered a separate offense.

The Board shall issue every two years to each licensed optometrist a compilation or supplement of the Optometric Practice Act and the Board Rules and Regulations, and upon written request by such licensed optometrist, a directory of optometrists. (1909, c. 444, s. 13; C.S., s. 6697; 1935, c. 63; 1953, c. 189; c. 1041, s. 12; 1955, c. 996; 1973, c. 800, s. 24; 1993, c. 539, s. 629; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-125. Practicing under other than own name or as a salaried or commissioned employee.

Except as provided for in Chapter 55B of the General Statutes of North Carolina, it shall be unlawful for any person licensed to practice optometry under the provisions of this Article to advertise, practice, or attempt to practice under a name other than his own, except as an associate of or assistant to an optometrist licensed under the laws of the State of North Carolina; and it shall be likewise unlawful for any corporation, lay body, organization, group, or lay individuals to engage, or undertake to engage, in the practice of optometry through means of engaging the services, upon a salary or commission basis, of one licensed to practice optometry or medicine in any of its branches in this State. Likewise, it shall be unlawful for any optometrist licensed under the provisions of this Article to undertake to engage in the practice of optometry as a salaried or commissioned employee of any corporation, lay body, organization, group, or lay individual. (1935, c. 63; 1937, c. 362, s. 2; 1969, c. 718, s. 16.)

§§ 90-126 through 90-126.1. Repealed by Session Laws 1973, c. 800, s. 26.

§ 90-127. Application of Article.

Nothing in this Article shall be construed to apply to physicians and surgeons authorized to practice under the laws of North Carolina, except the provisions contained in G.S. 90-125, or prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located and established places of business. (1909, c. 444, s. 15; C.S., s. 6699; 1937, c. 362, s. 3.)

§ 90-127.1. Free choice by patient guaranteed.

No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed optometrist or duly licensed physician as the provider of care or services which are within the scope of practice of the profession of optometry as defined in this Chapter. (1965, c. 396, s. 3; 1973, c. 800, s. 25.)

§ 90-127.2. Filling prescriptions.

Legally licensed druggists of this State may fill prescriptions of optometrists duly licensed by the North Carolina State Board of Examiners in Optometry to prescribe, apply or use pharmaceutical agents. (1977, c. 482, s. 5.)

§ 90-127.3. Copy of prescription furnished on request.

All persons licensed or registered under this Chapter shall upon request give each patient having received an eye examination a copy of his spectacle prescription. No person, firm or corporation licensed or registered under Article 17 of this Chapter shall fill a prescription or dispense lenses, other than spectacle lenses, unless the prescription specifically states on its face that the prescriber intends it to be for contact lenses and includes the type and specifications of the

contact lenses being prescribed. The prescriber shall state the expiration date on the face of every prescription, and the expiration date shall be no earlier than 365 days after the examination date.

Any person, firm or corporation that dispenses contact lenses on the prescription of a practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the lenses, inform the recipient both orally and in writing that he return to the prescriber for insertion of the lens, instruction on lens insertion and care, and to ascertain the accuracy and suitability of the prescribed lens. The statement shall also state that if the recipient does not return to the prescriber after delivery of the lens for the purposes stated above, the prescriber shall not be responsible for any damages or injury resulting from the prescribed lens, except that this sentence does not apply if the dispenser and the prescriber are the same person.

Prescriptions filled pursuant to this section shall be kept on file by the prescriber and the person filling the prescription for at least 24 months after the prescription is filled. (1981, c. 496, s. 14.)

§ 90-128: Repealed by Session Laws 1973, c. 800, s. 26.

Article 6A.

Optometry Peer Review.

§ 90-128.1. Peer review agreements.

(a) The North Carolina State Board of Examiners in Optometry may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina State Optometric Society (Society), for the purpose of conducting peer review activities. Peer review activities to be covered by such agreements shall be limited in peer review proceedings to review of clinical outcomes as they relate to the quality of health care delivered by optometrists licensed by the Board.

(b) Peer review agreements shall include provisions for the Society to receive relevant information from the Board and other sources, provide assurance of confidentiality of nonpublic information and of the review process, and make reports to the Board. Peer review agreements shall include provisions assuring due process.

(c) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Society pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case.

(d) Peer review activities conducted in good faith pursuant to any agreement under this section are deemed to be State directed and sanctioned and shall constitute State action for the purposes of application of antitrust laws. The Board shall be responsible for legal fees arising from peer review activities. (1997-75, s. 3.)

§§ 90-128.2 through 90-128.6. Reserved for future codification purposes.

Article 7.

Osteopathy.

§ 90-129: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-130: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-131: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-132: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-133: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-134: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-135: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-136: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-137: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

§ 90-138: Repealed by Session Laws 2009-447, s. 2, effective August 7, 2009.

Article 8.

Chiropractic.

§ 90-139. Creation and membership of Board of Examiners.

(a) The State Board of Chiropractic Examiners is created to consist of eight members appointed by the Governor and General Assembly. Six of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State for at least eight consecutive years immediately preceding their appointments; four of these six members shall be appointed by the Governor, and two by the General Assembly in accordance with G.S. 120-121, one each upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. No more than three members of the Board may be graduates of the same college or school of chiropractic. The other two members shall be persons chosen by the Governor to represent the public at large. The public members shall not be health care providers nor the spouses of health care providers. For purposes of Board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive terms, except that each member shall serve until his successor is chosen and qualifies. The initial appointment of the General Assembly upon the recommendation of the President of the Senate shall be for a term to expire June 30, 1986, and the initial appointment of the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for a term to expire June 30, 1985, subsequent appointments upon the recommendation of the President Pro Tempore of the Senate shall be for terms of three years, subsequent appointments

upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years.

(c) The Governor and General Assembly, respectively, may remove any member appointed by them for good cause shown. In addition, upon the request of the Speaker of the House of Representatives or the President Pro Tempore of the Senate concerning a person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, the Governor may remove such appointee for good cause shown, if the request is made and removal occurs either (i) when the General Assembly has adjourned to a date certain, which date is more than 10 days after the date of adjournment, or (ii) after sine die adjournment of the regular session. The Governor may appoint persons to fill vacancies of persons appointed by him to fill unexpired terms. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122. (1917, c. 73, s. 1; C.S., s. 6710; 1979, c. 108, s. 1; 1981, c. 766, s. 1; 1983, c. 717, ss. 100-104; 1995, c. 490, s. 11; 1999-405, s. 3; 1999-431, s. 3.9; 2000-181, s. 2.7(a); 2005-421, s. 2.7(b).)

§ 90-140. Selection of chiropractic members of Board.

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo. (1917, c. 73, s. 2; C.S., s. 6711; 1933, c. 442, s. 1; 1963, c. 646, s. 1; 1979, c. 108, s. 2; 1981, c. 766, s. 2; 1983, c. 717, s. 106; 1987, c. 827, s. 1; 1995, c. 490, s. 11.1; 2000-189, s. 6.)

§ 90-141. Organization; quorum.

The Board of Chiropractic Examiners shall elect such officers as they may deem necessary. Four members of the Board shall constitute a quorum for the transaction of business. (1917, c. 73, s. 4; C.S., s. 6713; 1933, c. 442, s. 1; 1981, c. 766, s. 3.)

§ 90-142. Rules and regulations.

The State Board of Chiropractic Examiners may adopt suitable rules and regulations for the performance of their duties and the enforcement of the provisions of this Article. (1919, c. 148, s. 4; C.S., s. 6714; 1967, c. 263, s. 2.)

§ 90-142.1. Supervised training programs authorized.

(a) As used in this section, "preceptorship program" means a clinical program of an approved chiropractic college in which a student of chiropractic, under the supervision of a licensed chiropractor, observes the licensed chiropractor and may perform the duties of a certified chiropractic clinical assistant as specified in G.S. 90-143.4.

(b) Each student enrolled in a chiropractic college that meets the accreditation requirements of G.S. 90-143 may participate in a preceptorship program. (2017-57, s. 11J.3(a).)

§ 90-143. Definitions of chiropractic; examinations; educational requirements.

(a) "Chiropractic" is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body.

(b) It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as "Board") to examine for licensure to practice chiropractic in this State any applicant who is or will become, within 60 days of examination, a graduate of a four-year chiropractic college that is either accredited by the Council on Chiropractic Education or deemed by the Board to be the equivalent of such a college and who furnishes to the Board, in the manner prescribed by the Board, all of the following:

(1) Satisfactory evidence of good moral character.

(2) Proof that the applicant has received a baccalaureate degree from a college or university accredited by a regional accreditation body recognized by the United States Department of Education.

(3) A transcript confirming that the applicant has received at least 4,200 hours of accredited chiropractic education. The Board shall not count any hours earned at an institution that was not accredited by the Council on Chiropractic Education or was not, as determined by the Board, the equivalent of such an institution at the time the hours were earned.

The examination shall include the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, North Carolina jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice of chiropractic, and any other related studies as the Board may consider necessary to determine an applicant's fitness to practice. The Board may include as part of the examination any examination developed and administered by the National Board of Chiropractic Examiners or its successor organization that the Board considers appropriate, and the examination may be administered by a national testing service. The Board shall set the passing scores for all parts of the examination.

(c) The Board shall not issue a license to any applicant until the applicant exhibits a diploma or other proof that the Doctor of Chiropractic degree has been conferred.

(d) The Board may grant a license to an applicant if the applicant's scores on all parts of the examination required by the Board equal or exceed passing scores set by the Board and the applicant satisfies all other requirements for licensure as provided in this Article. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; C.S., s. 6715; 1933, c. 442, s. 1; 1937, c. 293, s. 1; 1963, c. 646, s. 2; 1967, c. 263, s. 3; 1977, c. 1109, s. 1; 1981, c. 766, s. 4; 1987, c. 304; 1989, c. 555, ss. 2, 3, 4; 1997-230, s. 1; 2003-155, s. 1.)

§ 90-143.1. Applicants licensed in other states.

If an applicant for licensure is already licensed in another state to practice chiropractic, the Board shall issue a license to practice chiropractic to the applicant upon evidence that:

(1) The applicant is currently an active, competent practitioner and is in good standing; and
(2) The applicant has practiced at least one year out of the three years immediately preceding his or her application; and
(3) The applicant currently holds a valid license in another state; and
(4) No disciplinary proceeding or unresolved complaint is pending anywhere at the time a license is to be issued by this State; and
(5) The licensure requirements in the other state are equivalent to or higher than those required by this State.

Any license issued upon the application of any chiropractor from any other state shall be subject to all of the provisions of this Article with reference to the license issued by the State Board of Chiropractic Examiners upon examination, and the rights and privileges to practice the profession of chiropractic under any license so issued shall be subject to the same duties, obligations, restrictions, and conditions as imposed by this Article on chiropractors originally examined by the State Board of Chiropractic Examiners. (1981, c. 766, s. 5.)

§ 90-143.2. Certification of diagnostic imaging technicians.

(a) The State Board of Chiropractic Examiners shall certify the competence of any person employed by a licensed chiropractor practicing in the State if the employee's duties include the production of diagnostic images, whether by X ray or other imaging technology. Applicants for certification must demonstrate proficiency in the following subjects:

(1) Physics and equipment of radiographic imaging;
(2) Principles of radiographic exposure;
(3) Radiographic protection;
(4) Anatomy and physiology;
(5) Radiographic positioning and procedure.

The State Board of Chiropractic Examiners may adopt rules pertaining to initial educational requirements, examination of applicants, and continuing education requirements as are reasonably required to enforce this provision.

(b) Any person seeking to renew a certification of competence previously issued by the Board shall pay to the secretary of the Board a fee as prescribed and set by the Board which fee shall not be more than fifty dollars ($50.00). (1991, c. 633, s. 1; 2002-59, s. 1.)

§ 90-143.3. Criminal record checks of applicants for licensure.

(a) Any person applying for licensure as a chiropractic physician in this State shall provide to the Board a fingerprint card in a format acceptable to the Board and a form signed by the applicant consenting to a criminal record check and the use of the applicant's fingerprints and such other identifying information as may be required by the State or national data banks. The Board shall submit these documents to the Department of Public Safety, along with a request for a criminal record check of the applicant.

(b) Upon receipt of the Board's submission, the Department of Public Safety shall commence the requested criminal record check. The Department of Public Safety shall forward a set of the applicant's fingerprints to the State Bureau of Investigation for a search

of the State's criminal records, and the State Bureau of Investigation shall forward a set of the applicant's fingerprints to the Federal Bureau of Investigation for a search of national criminal records. The Department of Public Safety may charge the licensure applicant a fee for performing the criminal record check.

(c) The Board shall keep all information obtained from criminal record checks privileged and confidential, in accordance with applicable State law and federal guidelines, and the information shall not be a public record under Chapter 132 of the General Statutes. If the Board refuses to issue a license based in whole or part on information obtained from a criminal record check, the Board may disclose the relevant information to the applicant but shall not provide a copy of the record check to the applicant.

(d) When acting in good faith and in conformity with this section, the Board, its officers, and employees shall be immune from civil liability for initially refusing licensure based on information contained in a criminal record check supplied by the Department of Public Safety, even if the information relied upon is later shown to be erroneous. (2007-525, s. 1; 2014-100, s. 17.1(o).)

§ 90-143.4. Chiropractic clinical assistants; certification of competency.

(a) "Chiropractic clinical assistant" means a nonlicensed employee of a chiropractic physician whose duties include (i) collecting general health data, such as the taking of an oral history or vital sign measurements, (ii) applying therapeutic procedures, such as thermal, sound, light and electrical modalities, and hydrotherapy, and (iii) monitoring prescribed rehabilitative activities. Nothing in this section shall be construed to allow a chiropractic clinical assistant to provide a chiropractic adjustment, manual therapy, nutritional instruction, counseling, or any other therapeutic service that requires individual licensure.

(b) Any person employed as a chiropractic clinical assistant shall obtain a certificate of competency from the State Board of Chiropractic Examiners (Board) within 180 days after the person begins employment. Certification shall not be required for employees whose duties are limited to administrative activities of a nonclinical nature. Except as otherwise provided in G.S. 90-142.1 and this section, it shall be unlawful for any person to practice as a chiropractic clinical assistant unless duly certified by the Board.

(c) An applicant for certification under this section shall be (i) at least 18 years of age, (ii) a high school graduate or the equivalent, (iii) of good moral character, and (iv) able to demonstrate proficiency in the following subjects:

(1) Basic anatomy.
(2) Chiropractic philosophy and terminology.
(3) Utilization of standard therapeutic modalities.
(4) Contraindications and response to emergencies.
(5) Jurisprudence and patient privacy protection.

(d) If an applicant for certification is already certified or registered as a chiropractic clinical assistant in another state, the Board shall issue a certificate of competency upon evidence that the applicant is in good standing in the other state, provided the requirements

for certification or registration in the other state are substantially similar to or more stringent than the requirements for certification in this State.

(e) Any certificate issued under this section shall expire at the end of the calendar year unless renewed in a time and manner established by the Board. Applicants for initial certification or renewal of certification shall pay to the secretary of the Board a fee as prescribed and set by the Board, which fee shall not exceed fifty dollars ($50.00).

(f) The Board may adopt rules pertaining to initial educational requirements, course approval, instructor credentials, examination of applicants, grandfathering, reciprocity, continuing education requirements, and the submission and processing of applications as are reasonably necessary to enforce this section. (2013-290, s. 1; 2016-117, s. 1(a); 2017-57, s. 11J.3(b).)

§ 90-144. Meetings of Board of Examiners.

The North Carolina Board of Chiropractic Examiners shall meet at least once a year at such time and place as said Board shall determine at which meetings applicants for license shall be examined. (1917, c. 73, s. 6; C.S., s. 6716; 1933, c. 442, s. 1; 1949, c. 785, s. 1; 1985, c. 760, s. 1.)

§ 90-145. Grant of license.

The Board of Chiropractic Examiners shall grant to each applicant who is found to be competent, upon examination, a license authorizing him or her to practice chiropractic in North Carolina. (1917, c. 73, s. 7; C.S., s. 6717; 1949, c. 785, s. 2; 1981, c. 766, s. 6.)

§ 90-146. Graduates from other states.

A graduate of a regular chiropractic school who comes into this State from another state may be granted a license by the Board of Examiners as required in this Article. (1917, c. 73, s. 8; C.S., s. 6718.)

§ 90-147. Practice without license a misdemeanor; injunctions.

Any person practicing chiropractic in this State without possessing a license as provided in this Article shall be guilty of a Class 1 misdemeanor.

The Board of Chiropractic Examiners may appear in its own name in the superior court in an action for injunctive relief to prevent violation of this section, and the superior court shall have the power to grant such injunction regardless of whether criminal prosecution has been or may be instituted. An action under this section shall be commenced in the superior court district in which the respondent resides or has his principal place of business or in which the alleged violation occurred. (1917, c. 73, s. 9; C.S., s. 6719; 1993, c. 539, s. 631; 1994, Ex. Sess., c. 24, s. 14(c); 2001-281, s. 4.)

§ 90-148. Records of Board.

The secretary of the Board of Chiropractic Examiners shall keep a record of the proceedings of the Board, giving the name of each applicant for license, and the name of each applicant licensed and the date of such license. (1917, c. 73, s. 10; C.S., s. 6720.)

§ 90-149. Application fee.

Each applicant shall pay the secretary of the Board a fee as prescribed and set by the Board which fee shall not be more than three hundred dollars ($300.00). (1917, c. 73, s. 11; C.S., s. 6721; 1977, c. 922, s. 1; 2001-493, s. 6.)

§ 90-150. Repealed by Session Laws 1967, c. 218, s. 4.

§ 90-151. Extent and limitation of license.

Any person obtaining a license from the Board of Chiropractic Examiners shall have the right to practice the science known as chiropractic, in accordance with the method, thought, and practice of chiropractors, as taught in recognized chiropractic schools and colleges, but shall not prescribe for or administer to any person any medicine or drugs, nor practice osteopathy or surgery. (1917, c. 73, s. 12; C.S., s. 6722; 1933, c. 442, s. 3.)

§ 90-151.1. Selling nutritional supplements to patients.

A chiropractic physician may sell nutritional supplements at a chiropractic office to a patient as part of the patient's plan of treatment but may not otherwise sell nutritional supplements at a chiropractic office. A chiropractic physician who sells nutritional supplements to a patient must keep a record of the sale that complies with G.S. 105-164.24, except that the record may not disclose the name of the patient. (1997-369, s. 1.)

§ 90-152. Repealed by Session Laws 1967, c. 691, s. 59.

§ 90-153. Licensed chiropractors may practice in public hospitals.

A licensed chiropractor in this State may have access to and practice chiropractic in any hospital or sanitarium in this State that receives aid or support from the public, and shall have access to diagnostic X-ray records and laboratory records relating to the chiropractor's patient. (1919, c. 148, s. 3; C.S., s. 6724; 1977, c. 1109, s. 2.)

§ 90-154. Grounds for professional discipline.

(a) The Board of Chiropractic Examiners may impose any of the following sanctions, singly or in combination, when it finds that a practitioner or applicant is guilty of any offense described in subsection (b):

(1) Permanently revoke a license to practice chiropractic.
(2) Suspend a license to practice chiropractic.
(3) Refuse to grant a license.
(4) Censure a practitioner.
(5) Issue a letter of reprimand.
(6) Place a practitioner on probationary status and require him to report regularly to the Board upon the matters which are the basis of probation.

(b) Any one of the following is grounds for disciplinary action by the Board under subsection (a):

(1) Advertising services in a false or misleading manner.
(2) Conviction of a felony or of a crime involving moral turpitude.
(3) Addiction to or severe dependency upon alcohol or any other drug that impairs the ability to practice safely.
(4) Unethical conduct as defined in G.S. 90-154.2.

(5) Negligence, incompetence, or malpractice in the practice of chiropractic.
(6) Repealed by Session Laws 1995, c. 188, s. 1.
(7) Not rendering acceptable care in the practice of the profession as defined in G.S. 90-154.3.
(8) Lewd or immoral conduct toward a patient.
(9) Committing or attempting to commit fraud, deception, or misrepresentation.
(10) Offering to waive a patient's obligation to pay any deductible or copayment required by the patient's insurer.
(11) Failing to honor promptly a patient's request for a copy of any claim form submitted to the patient's insurer.
(12) Rebating or offering to rebate to a patient any portion of the funds received from the patient's insurer, unless the sum rebated constitutes the refund of an overpayment to which the patient is lawfully entitled.
(13) Advertising any free or reduced rate service without prominently stating in the advertisement the usual fee for that service.
(14) Charging an insurer or other third-party payor a fee greater than a patient would be charged for the same service if the patient were paying directly.
(15) Charging an insurer or other third-party payor a fee greater than the advertised fee for the same service.
(16) Violating the provisions of G.S. 90-154.1.
(17) Physical, mental, or emotional infirmity of such severity as to impair the ability to practice safely.
(18) Violating the provisions of G.S. 90-151 regarding the extent and limitation of license.
(19) Concealing information from the Board or failing to respond truthfully and completely to an inquiry from the Board concerning any matter affecting licensure.
(20) Failing to comply with a decision of the Board that is final.
(21) Committing an act on or after October 1, 2007, which demonstrates a lack of good moral character which would have been a basis for denying a license under G.S. 90-143(b)(1), had it been committed before application for a license.

(c) If a licensee is found guilty in a contested case arising under subsection (b) of this section, the Board may assess the licensee the reasonable cost of the hearing held to make such a determination if the Board finds that the licensee's defense at the hearing was dilatory or not asserted in good faith. (1917, c. 73, s. 14; C.S., s. 6725; 1949, c. 785, s. 3; 1963, c. 646, s. 3; 1981, c. 766, s. 7; 1983 (Reg. Sess., 1984), c. 1067, s. 1; 1985, c. 367, ss. 1, 2; c. 760, ss. 2, 3; 1995, c. 188, s. 1; 1999-430, s. 1; 2007-525, s. 4; 2016-117, s. 1(b).)

§ 90-154.1. Collection of certain fees prohibited.

(a) Any patient or any other person responsible for payment has the right to refuse to pay, cancel payment, or be reimbursed for payment for any service, examination, or treatment other than the advertised reduced rate service, examination or treatment which is performed as a result of and within 72 hours of responding to any advertisement for a free or reduced rate service, free or reduced rate examination, or free or reduced rate treatment. Any further treatment shall be agreed upon in writing and signed by both parties.

(b) Any chiropractic advertisement that offers a free or reduced rate service, examination or treatment shall contain the following notice to prospective patients: "If you decide to purchase additional treatment, you have the legal right to change your mind within three days and receive a refund." If the advertisement is published in print, the foregoing notice shall appear in capital letters clearly distinguishable from the rest of the text. If the advertisement is broadcast on radio or television, the foregoing notice shall be recited at the end of the advertisement.

(c) Repealed by Session Laws 1995, c. 188, s. 2.

(d) Any bill sent to a patient or any other person responsible for payment as a result of the patient responding to a chiropractic advertisement shall clearly contain the language of the first sentence of subsection (a) and have distinguished on its face the charge for the reduced rate services, including an itemization of free services, and the separate charge for any services, examinations or treatments other than the advertised free or reduced rate services, examinations, or treatments. The reduced rate charges shall be labeled "Free or Reduced Rate Charges" and any other charges shall be labeled "Non-advertised Services, Examinations, or Treatments". (1985, c. 367, s. 3; 1987, c. 733; 1995, c. 188, s. 2.)

§ 90-154.2. Unethical conduct.

Unethical conduct is defined as:

(1) The over-utilization or improper use, in the providing of treatment, physiological therapeutics, radiographics, or any other service not commensurate with the stated diagnosis and clinical findings. This determination shall be based upon the collective findings and experience of the Board utilizing the best available, relative information and advice. There must be a rationale for the services provided the patient.

(2) The billing or otherwise charging of a fee to a third party payor for a service offered by the doctor as a free service, which service is accepted as a free service by any patient when, in fact, the doctor of chiropractic is transmitting any charge to a third-party payor for payment.

(3) The over-utilization of ionizing radiation in the re-X-ray of a patient. The acceptable guidelines for re-X-ray are:

a. When fractures are evident;

b. When bone pathologies are under evaluation;

c. When soft tissue pathologies are under evaluation;

d. When there is reinjury;

e. When the original X-ray findings have revealed limitations of ranges and motion, re-X-ray may be done after clinical progress has revealed objective improvement, but not within 12 days and only limited views would be indicated.

(4) Any licensee's failure to use the words Chiropractic Physician, Chiropractor or the initials D.C. in conjunction with the use of his name in his capacity as a Chiropractor on all reports, statements of claim for services rendered and on all signs, letterheads, business cards, advertising, and any other items of identification.

(5) Violation of the Rules of Ethics of Advertising and Publicity.

(6) The allowance of any unlicensed person to practice chiropractic in the office of a licensed chiropractic. (1985, c. 760, s. 4.)

§ 90-154.3. Acceptable care in the practice of chiropractic.

(a) It shall be unlawful for a doctor of chiropractic to examine, treat, or render any professional service to a patient that does not conform to the standards of acceptable care.

(b) For purposes of disciplinary action, the Board of Chiropractic Examiners may adopt rules that establish and define standards of acceptable care with respect to:

(1) Examination and diagnosis;
(2) The use of chiropractic adjustive procedures;
(3) Physiological therapeutic agents;
(4) Diagnostic radiology;
(5) The maintenance of patient records; and
(6) Sanitation, safety, and the adequacy of clinical equipment.

(c) If the Board has not defined a standard of acceptable care by rule, then the standard of acceptable care shall be the usual and customary method as taught in the majority of recognized chiropractic colleges.

(d) Nothing in this section shall alter the lawful scope of practice of chiropractic as defined in G.S. 90-143 or the limitation of license as defined in G.S. 90-151. (1985, c. 760, s. 5; 1995, c. 188, s. 3.)

§ 90-154.4. Enticements prohibited.

(a) For purposes of this section, an enticement is anything of monetary value offered by a chiropractor to a prospective patient as an incentive to enter treatment. Except as permitted in subsection (b) of this section, it shall be an unlawful rebate, in violation of G.S. 90-154(b)(12), for a chiropractor to offer an enticement to a prospective patient if, at the time the offer is made, the chiropractor knows or has reason to believe that the prospective patient's treatment expenses will be paid in whole or part by an insurer or other third-party payor.

(b) Unless prohibited by other State or federal law, the following marketing practices shall not be construed as violations of subsection (a) of this section:

(1) Free or reduced rates, services, examinations, or treatments advertised and delivered in conformity with G.S. 90-154.1.
(2) Cash or point-of-service discounts not more than 30 percentage points lower than the charges customarily billed to third-party payors.
(3) Prepaid wellness plans covering only services that can be performed entirely by the offering chiropractor or the chiropractor's staff within the confines of the chiropractor's office.
(4) Merchandise with a value of not more than ten dollars ($10.00) given to a prospective patient for promotional purposes. (2007-525, s. 3.)

§ 90-155. Annual fee for renewal of license.

Any person practicing chiropractic in this State, in order to renew a license, shall, on or before the first Tuesday after the first Monday in January in each year after a license is issued as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee as prescribed and set by the said Board which fee shall not be more than three hundred dollars ($300.00), and shall furnish the Board evidence of having attended two days of educational sessions or programs approved by the Board during the

preceding 12 months, provided the Board may waive this educational requirement due to sickness or other hardship of the applicant.

Any license or certificate granted by the Board under this Article shall automatically be canceled if the holder of the license or certificate fails to secure a renewal within 30 days from the time herein provided; but any license thus canceled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of the renewal fee and an additional twenty-five dollars ($25.00) reinstatement fee.

If any licensee of the Board retires from active practice, the licensee may renew his or her license annually by paying the license fee and shall not be required to furnish the Board proof of continuing education; however, if at a later time the licensee desires to resume active practice, the licensee shall first appear before the Board and the Board shall determine the licensee's competency to practice. (1917, c. 73, s. 15; C.S., s. 6726; 1933, c. 442, s. 4; 1937, c. 293, s. 2; 1963, c. 646, s. 4; 1971, c. 715; 1977, c. 922, ss. 2, 3; 1985, c. 760, s. 6; 2001-493, s. 4; 2016-117, s. 1(c).)

§ 90-156. Pay of Board and authorized expenditures.

Notwithstanding G.S. 93B-5(a), the members of the Board of Chiropractic Examiners shall receive as compensation for their services a sum not to exceed two hundred dollars ($200.00) for each day during which they are engaged in the official business of the Board and their actual expenses, including transportation and lodging, when meeting for the purpose of holding examinations, and performing any other duties placed upon them by this Article, to be paid by the treasurer of the Board out of the moneys received by him as license fees, or from renewal fees. The Board shall also expend out of such fund so much as may be necessary for preparing licenses, securing seal, providing for programs for licensed doctors of chiropractic in North Carolina, and all other necessary expenses in connection with the duties of the Board. (1917, c. 73, s. 16; C.S., s. 6727; 1949, c. 785, s. 4; 1981, c. 766, s. 8; 2001-493, s. 5.)

§ 90-157. Chiropractors subject to State and municipal regulations.

Chiropractors shall observe and be subject to all State and municipal regulations relating to the control of contagious and infectious diseases. (1917, c. 73, s. 17; C.S., s. 6728.)

§ 90-157.1. Free choice by patient guaranteed.

No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose a duly licensed chiropractor as the provider of care or services which are within the scope of practice of the profession of chiropractic as defined in this Chapter. (1977, c. 1109, s. 3.)

§ 90-157.2. Chiropractor as expert witness.

A Doctor of Chiropractic, for all legal purposes, shall be considered an expert in his field and, when properly qualified, may testify in a court of law as to:

(1) The etiology, diagnosis, prognosis, and disability, including anatomical, neurological, physiological, and pathological considerations within the scope of chiropractic, as defined in G.S. 90-151; and

(2) The physiological dynamics of contiguous spinal structures which can cause neurological disturbances, the chiropractic procedure preparatory to, and complementary to the correction thereof, by an adjustment of the articulations of the vertebral column and other articulations. (1977, c. 1109, s. 3; 1989, c. 555, s. 1.)

§ 90-157.3. Ownership of chiropractic practices limited.

(a) Each partner in a partnership that is engaged in the practice of chiropractic shall be licensed under this Article.

(b) Each general partner in a limited partnership that is engaged in the practice of chiropractic and each limited partner who takes part in the control of the practice shall be licensed under this Article.

(c) The provisions of Chapter 55B of the General Statutes shall apply to all business corporations organized under Chapter 55 of the General Statutes and engaged in the practice of chiropractic. (1999-430, s. 2.)

Article 9.

Nurse Practice Act.

§§ 90-158 through 90-171.18: Recodified as §§ 90-171.19 through 90-171.47.

§ 90-171.19. Legislative findings.

The General Assembly of North Carolina finds that mandatory licensure of all who engage in the practice of nursing is necessary to ensure minimum standards of competency and to provide the public safe nursing care. (1981, c. 360, s. 1.)

§ 90-171.20. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Board" means the North Carolina Board of Nursing.

(2) "Health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this Article, a person enrolled in a program that prepares the person to be a licensed health care professional or an allied health professional shall be deemed a health care provider.

(3) "License" means a permit issued by the Board to practice nursing as a registered nurse or as a licensed practical nurse, including a renewal thereof.

(3a) "Licensee" means any person issued a license by the Board, whether the license is active or inactive, including an inactive license by means of surrender.

(4) "Nursing" is a dynamic discipline which includes the assessing, caring, counseling, teaching, referring and implementing of prescribed treatment in the maintenance of health, prevention and management of illness, injury, disability or the achievement of a dignified death. It is ministering to; assisting; and sustained, vigilant, and continuous care of those acutely or chronically ill;

supervising patients during convalescence and rehabilitation; the supportive and restorative care given to maintain the optimum health level of individuals, groups, and communities; the supervision, teaching, and evaluation of those who perform or are preparing to perform these functions; and the administration of nursing programs and nursing services. For purposes of this Article, the administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute nursing.

(5) "Nursing program" means any educational program in North Carolina offering to prepare persons to meet the educational requirements for licensure under this Article.

(6) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.

(7) The "practice of nursing by a registered nurse" consists of the following 10 components:

a. Assessing the patient's physical and mental health, including the patient's reaction to illnesses and treatment regimens.

b. Recording and reporting the results of the nursing assessment.

c. Planning, initiating, delivering, and evaluating appropriate nursing acts.

d. Teaching, assigning, delegating to or supervising other personnel in implementing the treatment regimen.

e. Collaborating with other health care providers in determining the appropriate health care for a patient but, subject to the provisions of G.S. 90-18.2, not prescribing a medical treatment regimen or making a medical diagnosis, except under supervision of a licensed physician.

f. Implementing the treatment and pharmaceutical regimen prescribed by any person authorized by State law to prescribe the regimen.

g. Providing teaching and counseling about the patient's health.

h. Reporting and recording the plan for care, nursing care given, and the patient's response to that care.

i. Supervising, teaching, and evaluating those who perform or are preparing to perform nursing functions and administering nursing programs and nursing services.

j. Providing for the maintenance of safe and effective nursing care, whether rendered directly or indirectly.

(8) The "practice of nursing by a licensed practical nurse" consists of the following seven components:

a. Participating in the assessment of the patient's physical and mental health, including the patient's reaction to illnesses and treatment regimens.

b. Recording and reporting the results of the nursing assessment.

c. Participating in implementing the health care plan developed by the registered nurse and/or prescribed by any person authorized by State law to prescribe such a plan, by performing tasks assigned or delegated by and performed under the supervision or under orders or directions of a

registered nurse, physician licensed to practice medicine, dentist, or other person authorized by State law to provide the supervision.

c1. Assigning or delegating nursing interventions to other qualified personnel under the supervision of the registered nurse.

d. Participating in the teaching and counseling of patients as assigned by a registered nurse, physician, or other qualified professional licensed to practice in North Carolina.

e. Reporting and recording the nursing care rendered and the patient's response to that care.

f. Maintaining safe and effective nursing care, whether rendered directly or indirectly. (1981, c. 360, s. 1; 2001-98, s. 1; 2013-154, s. 1(d); 2019-180, s. 3.)

§ 90-171.21. Board of Nursing; composition; selection; vacancies; qualifications; term of office; compensation.

(a) The Board shall consist of 14 members. Eight members shall be registered nurses. Three members shall be licensed practical nurses. Three members shall be representatives of the public.

(b) Selection. – The North Carolina Board of Nursing shall conduct an election each year to fill vacancies of nurse members of the Board scheduled to occur during the next year. Nominations of candidates for election of registered nurse members shall be made by written petition signed by not less than 10 registered nurses eligible to vote in the election. Nominations of candidates for election of licensed practical nurse members shall be made by written petition signed by not less than 10 licensed practical nurses eligible to vote in the election. Every licensed registered nurse holding an active license shall be eligible to vote in the election of registered nurse board members. Every licensed practical nurse holding an active license shall be eligible to vote in the election of licensed practical nurse board members. The list of nominations shall be filed with the Board after January 1 of the year in which the election is to be held and no later than midnight of the first day of April of such year. Before preparing ballots, the Board shall notify each person who has been duly nominated of the person's nomination and request permission to enter the person's name on the ballot. A member of the Board who is nominated for reelection and who does not withdraw the member's name from the ballot is disqualified to participate in conducting the election. Elected members shall begin their term of office on January 1 of the year following their election.

Nominations of persons to serve as public members of the Board may be made to the Governor or the General Assembly by any citizen or group within the State. The Governor shall appoint one public member to the Board, and the General Assembly shall appoint two public members to the Board. Of the public members appointed by the General Assembly, one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

Board members shall be commissioned by the Governor upon their election or appointment.

(c) Vacancies. – All unexpired terms of Board members appointed by the General Assembly shall be filled within 45 days after the term is vacated. The Governor shall fill all other unexpired terms on the Board within 30 days after the term is vacated. For vacancies of registered nurse or licensed practical nurse members, the Governor shall appoint the person who received the next highest number of votes to those elected members at the most recent election for board members. Appointees shall serve the remainder of the unexpired term and until their successors have been duly elected or appointed and qualified.

(d) Qualifications. – Of the eight registered nurse members on the Board, one shall be a nurse administrator employed by a hospital or a hospital system, who shall be accountable for the administration of nursing services and not directly involved in patient care; one shall be an individual who meets the requirements to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist, or a nurse practitioner; two shall be staff nurses, defined as individuals who are primarily involved in direct patient care regardless of practice setting; one shall be an at-large registered nurse who meets the requirements of sub-subdivisions (1) a., a1., and b. of this subsection, but is not currently an educator in a program leading to licensure or any other degree-granting program; and three shall be nurse educators. Minimum ongoing employment requirements for every registered nurse and licensed practical nurse shall include continuous employment equal to or greater than fifty percent (50%) of a full-time position that meets the criteria for the specified Board member position. Of the three nurse educators, one shall be a practical nurse educator, one shall be an associate degree or diploma nurse educator, and one shall be a baccalaureate or higher degree nurse educator. All nurse educators shall meet the minimum education requirement as established by the Board's education program standards for nurse faculty. Candidates eligible for election to the Board as nurse educators are not eligible for election as the at-large member.

(1) Except for the at-large member, every registered nurse member shall meet the following criteria:
    - a. Hold an active, unencumbered license to practice as a registered nurse in North Carolina.
    - a1. Be a resident of North Carolina.
    - b. Have a minimum of five years of experience as a registered nurse.
    - c. Have been engaged continuously in a position that meets the criteria for the specified Board position for at least three years immediately preceding election.
    - d. Show evidence that the employer of the registered nurse is aware that the nurse intends to serve on the Board.

(2) Every licensed practical nurse member shall meet the following criteria:
    - a. Hold an active, unencumbered license to practice as a licensed practical nurse in North Carolina.
    - a1. Be a resident of North Carolina.
    - c. Have a minimum of five years of experience as a licensed practical nurse.

d. Have been engaged continuously in the position of a licensed practical nurse for at least three years immediately preceding election.

e. Show evidence that the employer of the licensed practical nurse is aware that the nurse intends to serve on the Board.

(3) A public member shall not be a licensed nurse or licensed health care professional or employed by a health care institution, health care insurer, or a health care professional school. No public member or person in the public member's immediate family as defined by G.S. 90-405(8) shall be currently employed as a licensed nurse or been previously employed as a licensed nurse.

(4) The nurse practitioner, nurse anesthetist, nurse midwife, or clinical nurse specialist member shall be recognized by the Board as a registered nurse who meets the following criteria:

a. Has graduated from or completed a graduate level advanced practice nursing education program accredited by a national accrediting body.

b. Maintains current certification or recertification from a national credentialing body approved by the Board or meets other requirements established by rules adopted by the Board.

c. Practices in a manner consistent with rules adopted by the Board and other applicable law.

(e) Term. – Members of the Board shall serve four-year staggered terms. No member shall serve more than two consecutive four-year terms or eight consecutive years after January 1, 2005.

(f) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from Board business until the charges are resolved.

(g) Compensation. – Board members are entitled to receive compensation and reimbursement for all expenses proper and necessary as determined by the Board to discharge its duties and to enforce the laws regulating the practice of nursing. The per diem compensation of Board members shall not exceed two hundred dollars ($200.00) per member for time spent in the performance and discharge of duties as a member. (1981, c. 360, s. 1; c. 852, s. 1; 1987, c. 651, s. 2; 1991, c. 643, s. 1; 1991 (Reg. Sess., 1992), c. 1011, s. 3; 1997-456, s. 27; 2001-98, s. 2; 2003-146, s. 1; 2004-199, s. 26(a); 2006-264, s. 47; 2019-180, s. 4.)

§ 90-171.22. Officers.

The officers of the Board shall be a chair, a vice-chair, and any other officers the Board considers necessary. All officers shall be elected annually by the Board for terms of one year and shall serve until their successors have been elected and qualified. (1981, c. 360, s. 1; 2003-146, s. 2.)

§ 90-171.23. Duties, powers, and meetings.

(a) Meetings. – The Board shall hold at least two meetings each year to transact its business. The Board shall adopt rules with respect to calling, holding, and conducting regular and special meetings and attendance at meetings. The majority of the Board members constitutes a quorum.

(b) Duties; powers. – The Board is empowered to:

(1) Administer this Article.

(2) Issue its interpretations of this Article.

(3) Adopt, amend or repeal rules and regulations as may be necessary to carry out the provisions of this Article.

(4) Establish qualifications of, employ, and set the compensation of an executive officer who shall be a registered nurse and who shall not be a member of the Board.

(5) Employ and fix the compensation of other personnel that the Board determines are necessary to carry into effect this Article and incur other expenses necessary to effectuate this Article.

(6) Examine, license, and renew the licenses of duly qualified applicants for licensure.

(6a) Determine whether an applicant or licensee is mentally and physically capable of practicing nursing with reasonable skill and safety. The Board may require an applicant or licensee to submit to a mental health examination by a licensed mental health professional designated by the Board and to a physical examination by a physician or other licensed health care professional designated by the Board. The Board may order an applicant or licensee to be examined before or after charges are presented against the applicant or licensee. The results of the mental health examination or physical examination shall be reported directly to the Board and shall be admissible into evidence in a hearing before the Board.

(7) Determine and administer appropriate disciplinary action against all regulated parties who are found to be in violation of this Article or rules adopted by the Board.

(8) Establish standards to be met by the students, and to pertain to faculty, curricula, facilities, resources, and administration for any nursing program as provided in G.S. 90-171.38.

(9) Review all nursing programs at least every eight years or more often as considered necessary by the Board or program director.

(10) Grant, deny, or withdraw approval for nursing programs as provided in G.S. 90-171.39.

(11) Upon request, grant or deny approval of continuing education programs for nurses as provided in G.S. 90-171.42.

(12) Keep a record of all proceedings and make an annual summary of all actions available.

(13) Appoint, as necessary, advisory committees which may include persons other than Board members to deal with any issue under study.

(14) Appoint and maintain a subcommittee of the Board to work jointly with the subcommittee of the North Carolina Medical Board to develop rules and regulations to govern the performance of medical acts by registered nurses and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-8.2. The fees and rules developed by this subcommittee shall govern the performance of medical acts

by registered nurses and shall become effective when they have been adopted by both Boards.

(15) Recommend and collect such fees for licensure, license renewal, examinations and reexaminations as it deems necessary for fulfilling the purposes of this Article.

(16) Adopt a seal containing the name of the Board for use on all certificates, licenses, and official reports issued by it.

(17) Enter into interstate compacts to facilitate the practice and regulation of nursing.

(18) Establish programs for monitoring the treatment, recovery, and safe practice of nurses with substance use disorders, mental health disorders, or physical conditions impacting the ability to deliver safe care.

(18a) Enter into agreements for aiding in the remediation of nurses who experience practice deficiencies.

(19) Request that the Department of Public Safety conduct criminal history record checks of applicants for licensure pursuant to G.S. 143B-940.

(20) Adopt rules requiring an applicant to submit to the Board evidence of the applicant's continuing competence in the practice of nursing at the time of license renewal or reinstatement.

(21) Proceed in accordance with G.S. 90-171.37A, notwithstanding G.S. 150B-40(b), when conducting a contested case hearing in accordance with Article 3A of Chapter 150B of the General Statutes.

(22) Designate one or more of its employees to serve papers or subpoenas issued by the Board. Service under this subdivision is permitted in addition to any other methods of service permitted by law.

(23) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(24) Order or subpoena the production of any patient records, documents, or other materials concerning any matter to be heard before or inquired into by the Board, notwithstanding any other provision of law providing for the application of any health care provider-patient privilege regarding records, documents, or other materials. All records, documents, or other materials compiled by the Board are subject to G.S. 90-171.37C. Upon written request and after a hearing, the Board shall revoke a subpoena if the Board finds the evidence does not relate to a matter in issue, or if the subpoena does not describe the required evidence with sufficient particularity, or if the subpoena is invalid for any other legal reason. (1981, c. 360, s. 1; c. 665, s. 2; c. 852, s. 4; 1995, c. 94, s. 28; 1997-491, s. 1; 1999-291, s. 1; 2001-98, s. 3; 2001-371, s. 3; 2003-146, s. 3; 2005-186, s. 1; 2007-148, s. 1; 2009-133, s. 1; 2014-100, s. 17.1(jj); 2019-180, s. 5.)

§ 90-171.24. Executive director.

The executive director shall perform the duties prescribed by the Board and serve as secretary/treasurer to the Board. (1981, c. 360, s. 1; 1993, c. 198, s. 1; 2009-133, s. 2.)

§ 90-171.25. Custody and use of funds.

The executive director shall deposit in financial institutions designated by the Board as official depositories all fees payable to the Board. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Article. (1981, c. 360, s. 1; 1993, c. 198, s. 2; c. 257, s. 4; 1995, c. 509, s. 41.)

§ 90-171.26. The Board may accept contributions, etc.

The Board may accept grants, contributions, devises, and gifts which shall be kept in a separate fund and shall be used by it to enhance the practice of nursing. (1981, c. 360, s. 1; 2011-284, s. 63.)

§ 90-171.27. Expenses payable from fees collected by Board.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article, or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article.

(b) **(See editor's note for initial fee)** The schedule of fees shall not exceed the following rates:

Application for examination leading to certificate and license as registered nurse $75.00

Application for certificate and license as registered nurse by endorsement 150.00

Application for each re-examination leading to certificate and license as registered nurse 75.00

Renewal of license to practice as registered nurse (two-year period) 100.00

Reinstatement of lapsed license to practice as a registered nurse and renewal fee 180.00

Application for examination leading to certificate and license as licensed practical nurse by examination 75.00

Application for certificate and license as licensed practical nurse by endorsement 150.00

Application for each re-examination leading to certificate and license as licensed practical nurse 75.00

Renewal of license to practice as a licensed practical nurse (two-year period) 100.00

Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee 180.00

(See editor's note for initial fee) Application fee for retired registered nurse status or retired licensed practical nurse status 50.00

Reinstatement of retired registered nurse to practice as a registered nurse or a retired licensed practical nurse to practice as a licensed practical nurse (two-year period) 100.00

Reasonable charge for duplication services and materials.

A fee for an item listed in this schedule shall not increase from one year to the next by more than twenty percent (20%).

(c) No refund of fees will be made.

(d) The Board may assess costs of disciplinary action against a nurse found in violation of the North Carolina Nursing Practice Act. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, ss. 1, 4; 1955, c. 1266, ss. 2, 3; 1961, c. 431, s. 2; 1965, c. 578, s. 1; 1971, c. 534; 1981, c. 360, s. 1; c. 661; 1987, c. 651, s. 1; 1997-384, s. 1; 2003-29, s. 2.)

§ 90-171.28. Nurses registered under previous law.

On June 30, 1981, any nurse who holds a license to practice nursing as a registered nurse or licensed practical nurse, issued by a competent authority pursuant to laws providing for the licensure of nurses in North Carolina, shall be deemed to be licensed under the provisions of this Article, but such person shall otherwise comply with the provisions of this Article including those provisions governing licensure renewal. (1953, c. 1199, s. 1; 1965, c. 578, s. 1; 1981, c. 360, s. 1.)

§ 90-171.29. Qualifications of applicants for examination.

In order to be eligible for licensure by examination, the applicant shall make a written application to the Board on forms furnished by the Board and shall submit to the Board an application fee and written evidence, verified by oath, sufficient to satisfy the Board that the applicant has graduated from a course of study approved by the Board and is mentally and physically competent to practice nursing. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, ss. 1, 4; 1955, c. 1266, s. 2; 1961, c. 431, s. 2; 1965, c. 578, s. 1; 1973, c. 93, s. 4; 1981, c. 360, s. 1.)

§ 90-171.30. Licensure by examination.

At least twice each year the Board shall give an examination, at the time and place it determines, to applicants for licensure to practice as a registered nurse or licensed practical nurse. The Board shall adopt rules, not inconsistent with this Article, governing qualifications of applicants, the conduct of applicants during the examination, and the conduct of the examination. The applicants shall be required to pass the examination required by the Board. The Board shall adopt rules which identify the criteria which must be met by an applicant in order to be issued a license. When the Board determines that an applicant has met those criteria, passed the required examination, submitted the required fee, and has demonstrated to the Board's satisfaction that he or she is mentally and physically competent to practice nursing, the Board shall issue a license to the applicant. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1965, c. 578, s. 1; 1981, c. 360, s. 1; 1991, c. 643, s. 2; 1993, c. 198, s. 3.)

§ 90-171.31. Reexamination.

Any applicant who fails to pass the first licensure examination may take subsequent examinations in accordance with the rules of the Board. (1981, c. 360, s. 1; 1993, c. 198, s. 4.)

§ 90-171.32. Qualifications for license as a registered nurse or a licensed practical nurse without examination.

The Board may, without examination, issue a license to an applicant who is duly licensed as a registered nurse or licensed practical nurse under the laws of another state, territory of the United States, the District of Columbia, or foreign country when that jurisdiction's requirements for licensure as a registered nurse or a licensed practical nurse, as the case may be, are substantially

equivalent to or exceed those of the State of North Carolina at the time the applicant was initially licensed, and when, in the Board's opinion, the applicant is competent to practice nursing in this State. The Board may require such applicant to prove competence and qualifications to practice as a registered nurse or licensed practical nurse in North Carolina. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1961, c. 431, s. 2; 1965, c. 578, s. 1; 1981, c. 360, s. 1.)

§ 90-171.33. Temporary license.

(a), (b) Repealed by Session Laws 2019-180, s. 6, effective October 1, 2019, and applicable to licenses granted or renewed on or after that date and actions taken by the Board of Nursing on or after that date.

(c) The Board may issue a nonrenewable temporary license to persons applying for licensure under G.S. 90-171.32 for a period not to exceed the lesser of six months or until the Board determines whether the applicant is qualified to practice nursing in North Carolina. Temporary licensees may perform patient-care services within limits defined by the Board. In defining these limits, the Board shall consider the ability of the temporary licensee to safely and properly carry out patient-care services. Temporary licensees shall be held to the standard of care of a fully licensed nurse. (1981, c. 360, s. 1; 1991, c. 643, s. 3; 1993, c. 198, s. 5; 2019-180, s. 6.)

§ 90-171.34. Licensure renewal.

Every unencumbered license, except temporary license, issued under this Article shall be renewed for two years. On or before the date the current license expires, every person who desires to continue to practice nursing shall apply for licensure renewal to the Board on forms furnished by the Board and shall also file the required fee. Failure to renew the license before the expiration date shall result in automatic forfeiture of the right to practice nursing in North Carolina until such time that the license has been reinstated. (1981, c. 360, s. 1; 1993, c. 198, s. 6; 2009-133, s. 3.)

§ 90-171.35. Reinstatement.

A licensee who has allowed license to lapse by failure to renew as herein provided may apply for reinstatement on a form provided by the Board. The Board shall require the applicant to return the completed application with the required fee and to furnish a statement of the reason for failure to apply for renewal prior to the deadline. If the license has lapsed for at least five years, the Board shall require the applicant to complete satisfactorily a refresher course approved by the Board, or provide proof of active licensure within the past five years in another jurisdiction. The Board may require any applicant for reinstatement to satisfy the Board that the license should be reinstated. If, in the opinion of the Board, the applicant has so satisfied the Board, it shall issue a renewal of license to practice nursing, or it shall issue a license to practice nursing for a limited time. (1981, c. 360, s. 1; 1993, c. 198, s. 7.)

§ 90-171.36. Inactive list.

(a) When a licensee submits a request for inactive status, the Board shall issue to the licensee a statement of inactive status and shall place the licensee's name on the inactive list. While on the inactive list, the person shall not be subjected to renewal requirements and shall not practice nursing in North Carolina.

(b) When such person desires to be removed from the inactive list and returned to the active list within five years of being placed on inactive status, an application shall be submitted to the Board on a form furnished by the Board and the fee shall be paid for license renewal. The Board shall require evidence of competency to resume the practice of nursing before returning the applicant to active status. If the person has been on the inactive list for more than five years, the applicant must satisfactorily complete a refresher course approved by the Board or provide proof of active licensure within the past five years in another jurisdiction. (1981, c. 360, s. 1; 1993, c. 198, s. 8.)

§ 90-171.36A. Retired nurse status; reinstatement.

(a) After a registered nurse or a licensed practical nurse has retired, upon payment of the one-time fee required by G.S. 90-171.27(b), the Board may issue a special license to a registered nurse or licensed practical nurse in recognition of the nurse's retired status.

(b) If a retired registered nurse or licensed practical nurse wishes to return to the practice of nursing, the retired nurse shall apply for reinstatement on a form provided by the Board and satisfy any requirements the Board deems necessary to reinstate the license. (2003-29, s. 1.)

§ 90-171.37. Disciplinary authority.

(a) The Board may initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board shall have the power and authority to take the following actions: (i) place on probation, with or without conditions; (ii) impose limitations and conditions; (iii) accept voluntary surrender of a license; (iv) publicly reprimand; (v) issue public letters of concern; (vi) require satisfactory completion of treatment programs or remedial or educational training; (vii) deny or refuse to issue a license, deny or refuse to issue a license renewal, issue a fine, suspend a license, and revoke a license or privilege to practice nursing in this State for any person the Board finds to have done any of the following:

(1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing.
(2) Has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public.
(3) Is unable to practice nursing with reasonable skill and safety to patients by reason of illness, excessive use of alcohol, drugs, chemicals, or any other type of material, or by reason of any physical or mental abnormality.
(4) Engages in conduct that endangers the public health.
(5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established.
(6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services.

(6a) Engages in unprofessional conduct that is nonconforming to the standards of acceptable and prevailing nursing practice or the ethics of the nursing profession, even if a patient is not injured.

(6b) Commits acts of dishonesty, injustice, or immorality in the course of the licensee's practice or otherwise, including acts outside of this State.

(6c) Has had a license or privilege to practice nursing denied, revoked, suspended, restricted, or acted against by any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice nursing that is voluntarily relinquished by a nurse, by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the nurse's license, is an action against a license to practice nursing. The Board is empowered and authorized to take action based on the factual findings of the licensing authority that took action.

(6d) Fails to respond to the Board's inquiries in a reasonable manner or time regarding any matter affecting the license to practice nursing.

(7) Has violated any provision of this Article or any provision of the rules adopted by the Board under this Article.

(8) Repealed by Session Laws 2019-180, s. 7, effective October 1, 2019, and applicable to licenses granted or renewed on or after that date and actions taken by the Board of Nursing on or after that date.

(b) The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the North Carolina Medical Board to enforce rules and regulations governing the performance of medical acts by a registered nurse.

(c) The Board may reinstate a revoked license, revoke censure or probation, or remove other licensure restrictions when it finds that the reasons for revocation, censure or probation, or other licensure restrictions no longer exist and that the licensee or applicant for a license can reasonably be expected to safely and properly practice nursing.

(d) The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered license. The Board's jurisdiction over the licensee extends for all matters, known or unknown to the Board, at the time of the expiration, inactivation, or surrender of the license.

(e) The Board, members of the Board, and staff shall not be held liable in any civil or criminal proceeding for exercising the powers and duties authorized by law provided the person was acting in good faith. (1981, c. 360, s. 1; c. 852, s. 3; 1987, c. 827, s. 1; 1991, c. 643, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 22; 1995, c. 94, s. 29; 2001-98, s. 4; 2009-133, s. 4; 2019-180, s. 7.)

§ 90-171.37A. Use of hearing committee and depositions.

(a) The Board, in its discretion, may designate in writing three or more of its members to conduct hearings as a hearing committee to receive evidence. A majority of the hearing committee shall be licensed nurses.

(b) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court. At the discretion of the Board, witness testimony may be received by telephone or videoconferencing at a hearing.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. A majority of the qualified members present and voting of the full Board shall issue a final decision. (2007-148, s. 2; 2019-180, s. 8.)

§ 90-171.37B. Appeal from Board's disciplinary action of licensee.

(a) A licensee may appeal a public disciplinary action made by the Board under G.S. 90-171.37(a). A licensee may appeal any public disciplinary action made by the Board to the superior court located in the county where the licensee resides or where the Board is located by filing written notice of appeal within 30 days after receipt of the Board's decision. A licensee must state all exceptions to the Board's decision in the licensee's written notice of appeal and properly identify the general court of justice where the licensee intends the appeal to be heard.

(b) Within 30 days of receiving a licensee's written notice of appeal, the Board shall prepare, certify, and file the record, charges, notice of hearing, transcript of testimony, documents, and written evidence produced at the hearing, the Board's decision, and a licensee's notice of appeal with the clerk of superior court in the county where the licensee appealed the Board's decision. (2019-180, s. 9.)

§ 90-171.37C. Confidentiality of Board investigative information; Board to keep public records; cooperation with law enforcement; self-reporting requirements; patient protection.

(a) All records, papers, investigative information, and other documents containing information that the Board, its members, or its employees possess, gather, or receive as a result of investigations, inquiries, assessments, or interviews conducted in connection with a licensing complaint, appeal, assessment, potential impairment matter, or disciplinary matter shall not be considered public records under Chapter 132 of the General Statutes, and are privileged, confidential, not subject to discovery, subpoena, or any means of legal compulsion for release to anyone other than the Board, its employees, or consultants involved in the application for license, impairment assessment, or discipline of a licensee, except as provided in subsection (b) of this section. For the purposes of this section, "investigative information" means investigative files and reports, information relating to the identity and report of a physician or other professional performing an expert review for the Board, and any of the Board's deposition transcripts related to a hearing not admitted into evidence.

(b) The Board shall provide the licensee or applicant for a license access to all information in its possession that the Board intends to offer into evidence at the licensee's or applicant's hearing, unless good cause is shown for delay. This information shall be subject to any privilege or restriction set forth by rule, statute, or legal precedent and must be requested in writing from the licensee or applicant who is the subject of the complaint or investigation. The Board shall not be required to produce (i) information subject to attorney-client privilege or (ii) investigative information that the Board will not offer into evidence, and is related to advice, opinions, or recommendations of the Board's staff, consultants, or agents.

(c) Any licensee's notice of statement of charges, notice of hearing, and all information contained in those documents shall be public records under Chapter 132 of the General Statutes.

(d) If the Board, its employees, or its agents possess investigative information indicating a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or district attorney of the district in which the offense was committed. The Board shall cooperate with and assist any law enforcement agency or district attorney conducting a criminal investigation or prosecution of a licensee by providing relevant information. This information shall be confidential under G.S. 132-1.4 and shall remain confidential after disclosure to a law enforcement agency or district attorney.

(e) All licensees shall self-report to the Board any of the following within 30 days of their arrest or indictment:

(1) Any felony arrest or indictment.

(2) Any arrest for driving while impaired or driving under the influence.

(3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(f) The Board, its members, or its staff may release confidential information concerning the denial, annulment, suspension, or revocation of a license to any other health care licensing board in this State, other state, or country, or authorized Department of Health and Human Services personnel who are charged with the enforcement or investigative responsibilities of licensure.

If the Board releases this confidential information, the Board shall notify and provide a summary of the information to the licensee within 60 days after the information is transmitted. The licensee may make a written request that the Board provide the licensee a copy of all information transmitted within 30 days of receiving notice of the initial transmittance. The Board shall not provide the information if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities.

(g) Notwithstanding the provisions of this section, the Board shall withhold the identity of a patient, including information relating to dates and places of treatment, or any other information that would tend to identify the patient, in any proceeding, record of a

hearing, and in the notice of charges against any licensee, unless the patient or the patient's representative expressly consents to the public disclosure. (2019-180, s. 9.)

§ 90-171.37D. Service of notices.

(a) Any notice required by this Article may be served either personally by an employee of the Board or by an officer authorized by law to serve process, or by registered or certified mail, return requested, directed to the licensee or applicant at his or her last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer or employee of the Board delivers the notice to the person addressed or delivers the notice at the licensee's or applicant's last known address as shown by records of the Board with a person of suitable age and discretion then residing therein. Where notice is served in a manner authorized by Rule 4(j) of the North Carolina Rules of Civil Procedure, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the licensee's or applicant's last known address as shown by the records of the Board, regardless of whether the notice was actually received or whether the notice was unclaimed or undeliverable for any reason.

(b) Reserved. (2019-180, s. 9.)

§ 90-171.38. Standards for nursing programs.

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards established by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing.

(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct examinations for the purpose of collecting evidence from the victims of first-degree forcible rape as defined in G.S. 14-27.21, second-degree forcible rape as defined in G.S. 14-27.22, statutory rape of a child by an adult as defined in G.S. 14-27.23, first-degree statutory rape as defined in G.S. 14-27.24, statutory rape of a person who is 15 years of age or younger as defined in G.S. 14-27.25, first-degree forcible sexual offense as defined in G.S. 14-27.26, second-degree forcible sexual offense as defined in G.S. 14-27.27, statutory sexual offense with a child by an adult as defined in G.S. 14-27.28, first-degree statutory sexual offense as defined in G.S. 14-27.29, statutory sexual offense with a person who is 15 years of age or younger as defined in G.S. 14-27.30, attempted first-degree or second-degree forcible rape, attempted first-degree statutory rape, attempted first-degree or second-degree forcible sexual offense, or attempted first-degree statutory sexual offense. The Board, pursuant to G.S. 90-171.23(b)(14), shall establish, revise, or

repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. (1981, c. 360, s. 1; 1987, c. 827, s. 1; 1991, c. 643, s. 5; 1997-375, s. 1; 2003-146, s. 4; 2009-133, s. 5; 2015-181, s. 37.)

§ 90-171.39. Approval.

The Board shall designate persons to survey proposed nursing programs. The persons designated by the Board shall submit a written report of the survey to the Board. If in the opinion of the Board the standards for approved nursing education are met, the program shall be given approval. (1981, c. 360, s. 1; 2019-180, s. 10.)

§ 90-171.40. Ongoing approval.

The Board shall review all nursing programs in the State at least every 10 years or more often as considered necessary. If the Board determines that any approved nursing program does not meet or maintain the standards required by the Board, the Board shall give written notice specifying the deficiencies to the institution responsible for the program. The Board shall evaluate and take appropriate action, including withdrawing approval, for a program that fails to correct deficiencies within a reasonable time. The Board shall publish a list of nursing programs in this State showing their approval status. (1981, c. 360, s. 1; 2003-146, s. 5; 2019-180, s. 11.)

§ 90-171.41. Baccalaureate in nursing candidate credits.

Every graduate of a diploma or associate degree school of nursing in this State who has passed the registered nurse examination shall, upon admission to any State-supported institution of higher learning offering baccalaureate education in nursing, be granted credit for previous experience in the diploma or associate degree school of nursing on an individual basis by the utilization of the most effective method of evaluation to the end that the applicant shall receive optimum credit and that upon graduation the applicant will have earned the baccalaureate degree in nursing. (1969, c. 547, s. 1; 1981, c. 360, s. 1.)

§ 90-171.42. Continuing education programs.

(a) Upon request, the Board shall grant approval to continuing education programs upon a finding that the program offers an educational experience designed to enhance the practice of nursing.

(b) If the program offers to teach nurses to perform advance skills, the Board may grant approval for the program and the performance of the advanced skills by those successfully completing the program when it finds that the nature of the procedures taught in the program and the program facilities and faculty are such that a nurse successfully completing the program can reasonably be expected to carry out those procedures safely and competently. (1981, c. 360, s. 1; 1991, c. 643, s. 6.)

§ 90-171.43. License required; rules.

(a) No person shall practice or offer to practice as a registered nurse or licensed practical nurse, or use the word "nurse" as a title for herself or himself, or use an

abbreviation to indicate that the person is a registered nurse or licensed practical nurse, unless the person is currently licensed as a registered nurse or licensed practical nurse as provided by this Article. If the word "nurse" is part of a longer title, such as "nurse's aide", a person who is entitled to use that title shall use the entire title and may not abbreviate the title to "nurse". This Article shall not, however, be construed to prohibit or limit the following:

(1) The performance by any person of any act for which that person holds a license issued pursuant to North Carolina law;
(2) The clinical practice by students enrolled in approved nursing programs, continuing education programs, or refresher courses under the supervision of qualified faculty;
(3) The performance of nursing performed by persons who hold a temporary license issued pursuant to G.S. 90-171.33;
(4) The delegation to any person, including a member of the patient's family, by a physician licensed to practice medicine in North Carolina, a licensed dentist or registered nurse of those patient-care services which are routine, repetitive, limited in scope that do not require the professional judgment of a registered nurse or licensed practical nurse; [or]
(5) Assistance by any person in the case of emergency.

Any person permitted to practice nursing without a license as provided in subdivision [(a)](2) or [(a)](3) of this section shall be held to the same standard of care as any licensed nurse.

(b) The Board shall have the authority to promulgate rules to enforce the provisions of this section. (1981, c. 360, s. 1; 1993, c. 198, s. 9; 1999-320, s. 2; 2019-180, s. 12.)

§ 90-171.43A. Mandatory employer verification of licensure status.

(a) Before hiring a registered nurse or a licensed practical nurse in North Carolina, a health care facility shall verify that the applicant has a current, valid license to practice nursing pursuant to G.S. 90-171.43.

(b) For purposes of this section, "health care facility" means:

(1) Facilities described in G.S. 131E-256(b).
(2) Public health departments, physicians' offices, ambulatory care facilities, and rural health clinics. (2003-146, s. 6.)

§ 90-171.44. Prohibited acts.

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

(1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet therein.
(2) Practice nursing under cover of any fraudulently obtained license.
(3) Practice nursing without a license. This subdivision shall not be construed to prohibit any licensed registered nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations or performing procedures to collect evidence from the victims of offenses described in that subsection.

(4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the Board.

(5) Employ unlicensed persons to practice nursing. (1981, c. 360, s. 1; 1991, c. 643, s. 7; 1993, c. 198, s. 10; 1997-375, s. 2.)

§ 90-171.45. Violation of Article.

The violation of any provision of this Article, except G.S. 90-171.47, shall be a Class 1 misdemeanor. (1981, c. 360, s. 1; 1993, c. 539, s. 632; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-171.46. Injunctive authority.

The Board may apply to the superior court for an injunction to prevent violations of this Article or of any rules enacted pursuant thereto. The court is empowered to grant such injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of such violation. (1981, c. 360, s. 1.)

§ 90-171.47. Reports: immunity from suit.

Any person who has reasonable cause to suspect misconduct or incapacity of a licensee or who has reasonable cause to suspect that any person is in violation of this Article, including those actions specified in G.S. 90-171.37, G.S. 90-171.43, and G.S. 90-171.44, shall report the relevant facts to the Board. Upon receipt of such charge or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false. (1981, c. 360, s. 1; 1991, c. 643, s. 8; 1993, c. 198, s. 11; 2019-180, s. 14.)

§ 90-171.48. Criminal history record checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 or G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32. The term "applicant" shall also include a person applying for reinstatement of licensure pursuant to G.S. 90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.

(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article

18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 or G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32 is checked. The Board may request a criminal history record check for applicants applying for reinstatement of licensure pursuant to G.S.90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.

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

(c) If an applicant's criminal history record check reveals one or more convictions listed under subsection [subdivision] (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

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

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-171.37 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant

information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2001-371, s. 2; 2009-133, s. 6; 2012-12, s. 2(ii); 2014-100, s. 17.1(o); 2015-181, s. 47; 2019-180, s. 15.)

§ 90-171.49. Disasters and emergencies.

If the Governor declares a state of emergency or a county or municipality enacts ordinances under G.S. 153A-121, 160A-174, 166A-19.31, or Article 22 of Chapter 130A of the General Statutes, the Board may waive the requirements of this Article to allow emergency health services to the public. (2019-180, s. 13.)

Article 9B.

Information and Financial Assistance for Nursing Students and Inactive Nurses.

§ 90-171.50. Existing scholarship and loan information to be consolidated and published.

The State Education Assistance Authority of the Board of Governors of The University of North Carolina shall consolidate information on existing scholarships and loan programs available for nursing education. The information shall be published in a brochure and made available to high schools, colleges, Area Health Education Centers, and other facilities. (1987 (Reg. Sess., 1988), c. 1049, s. 1(a).)

§ 90-171.51. Emergency Financial Assistance Fund.

There is established an Emergency Financial Assistance Fund for students in State educational nursing and licensed practical nursing programs, to be administered by each campus. Emergency need is defined as acute financial need caused by a particular event which immediately and severely impacts a particular student's ability to continue his or her educational program in nursing on that student's current schedule. Allowable expenses, for emergency assistance, shall include funds for child care, transportation, housing, and medical care; and shall not be considered as an ongoing source of income for those expenses. Emergency assistance shall be limited to four hundred dollars ($400.00) per academic year for any individual. The local Board of Trustees at each campus shall review quarterly the expenditures under this Fund, and the Department of Community Colleges and the Board of Governors of The University of North Carolina shall assess the Fund's impact on completion rates in these programs, and report their assessment to the General Assembly. (1987 (Reg. Sess., 1988), c. 1049, s. 2(a).)

§ 90-171.52. Nursing licensing exam follow-up assistance.

The Board of Governors of The University of North Carolina shall direct the constituent institutions and the State Board of Community Colleges shall direct the Community Colleges to provide follow-up assistance for their students who fail the nursing licensing exam for the first

time. This follow-up assistance shall include consultation with the Board of Nursing on areas needing improvement and shall include providing additional appropriate preparation assistance before the next exam date. (1987 (Reg. Sess., 1988), c. 1049, s. 3.)

§ 90-171.53. Area Health Education Centers publicity programs.

The Area Health Education Centers of The University of North Carolina and the Board of Nursing shall cooperate in developing publicity on:

(1) New salary levels and job opportunities in nursing;
(2) The availability of refresher courses; and
(3) License renewal requirements for registered nurses whose licenses are not currently active.

This information shall be provided to nurses without a current license in an effort to attract them back into nursing practice. (1987 (Reg. Sess., 1988), c. 1049, s. 5.)

§ 90-171.54. Reserved for future codification purposes.

Article 9C.

Nurses Aides Registry Act.

§ 90-171.55. Nurses Aides Registry.

(a) The Board of Nursing, established pursuant to G.S. 90-171.21, shall establish a Nurses Aides Registry for persons functioning as nurses aides regardless of title. The Board shall consider those Level I nurses aides employed in State licensed or Medicare/Medicaid certified nursing facilities who meet applicable State and federal registry requirements as adopted by the North Carolina Medical Care Commission as having fulfilled the training and registry requirements of the Board. The Board may not charge an annual fee to a nurse aide I registry applicant. The Board may charge an annual fee of twelve dollars ($12.00) for each nurse aide II registry applicant. The Board shall adopt rules to ensure that whenever possible, the fee is collected through the employer or prospective employer of the registry applicant. Fees collected may be used by the Board in administering the registry. The Board's authority granted by this Article shall not conflict with the authority of the Medical Care Commission.

(b) (1) Each nurses aide training program, except for those operated by (i) institutions under the Board of Governors of The University of North Carolina, (ii) institutions of the North Carolina Community College System, (iii) public high schools, and (iv) hospital authorities acting pursuant to G.S. 131E-23(31), shall provide a guaranty bond unless the program has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board of Nursing may revoke the approval of a program that fails to maintain a bond or an alternative to a bond pursuant to this subsection or G.S. 115D-95.

(2) When application is made for approval or renewal of approval, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the program will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding

company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the program to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a program's approval, bankruptcy, foreclosure, or the program ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a program shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the program. The bond amount shall also be at least ten thousand dollars ($10,000).

Each application for a license shall include a letter signed by an authorized representative of the program showing in detail the calculations made and the method of computing the amount of the bond pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(3) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Board and approval of one of the guaranty bond alternatives set forth in this subdivision. With the approval of the Board, an applicant may file with the clerk of the superior court of the county in which the program will be located, in lieu of a bond:

a. An assignment of a savings account in an amount equal to the bond required (i) that is in a form acceptable to the Board; (ii) that is executed by the applicant; (iii) that is executed by a federally insured depository institution or a trust institution authorized to do business in this State; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subdivision (2) of this subsection.

b. A certificate of deposit (i) that is executed by a federally insured depository institution or a trust institution authorized to do business in this State (ii) that is either payable to the State of North Carolina, unrestrictively endorsed to the Board; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Board; or in the case of a nonnegotiable certificate of deposit, is assigned to the Board in a form satisfactory to the Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subdivision (2) of this subsection.

(1989, c. 323, s. 1; 1989 (Reg. Sess., 1990), c. 824, s. 5; 1999-254, s. 1; 2017-25, s. 1(h).)

§ 90-171.56. Medication aide requirements.

The Board of Nursing shall do the following:

(1) Establish standards for faculty and applicant requirements for medication aide training.

(2) Provide ongoing review and evaluation, and recommend changes, for faculty and medication aide training requirements to support safe medication administration and improve client, resident, and patient outcomes. (2005-276, s. 10.40C(b); 2007-148, s. 3.)

§ 90-171.57. Reserved for future codification purposes.

§ 90-171.58. Reserved for future codification purposes.

§ 90-171.59. Reserved for future codification purposes.

Article 9D.

Nursing Scholars Program.

§ 90-171.60: Repealed by Session Laws 2011-74, s. 3(a), effective July 1, 2012.

§ 90-171.61: Repealed by Session Laws 2011-74, s. 3(a), effective July 1, 2012.

§ 90-171.62: Repealed by Session Laws 2011-74, s. 3(a), effective July 1, 2012.

§§ 90-171.63 through 90-171.64. Reserved for future codification purposes.

Article 9E.

Need-Based Nursing Scholarships.

§ 90-171.65: Repealed by Session Laws 2011-74, s. 4(a), effective July 1, 2012.

§§ 90-171.66 through 90-171.69. Reserved for future codification purposes.

Article 9F.

North Carolina Center for Nursing.

§ 90-171.70. North Carolina Center for Nursing; establishment; goals.

There is established the North Carolina Center for Nursing to address issues of supply and demand for nursing, including issues of recruitment, retention, and utilization of nurse manpower resources. The General Assembly finds that the Center will repay the State's investment by providing an ongoing strategy for the allocation of the State's resources directed towards nursing. The primary goals for the Center shall be:

(1) To develop a strategic statewide plan for nursing manpower in North Carolina by:
   a. Establishing and maintaining a database on nursing supply and demand in North Carolina, to include (i) current supply and demand, and (ii) future projections; and
   b. Selecting priorities from the plan to be addressed.

(2) To convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:
   a. Review and comment on data analysis prepared for the Center;
   b. Recommend systemic changes, including strategies for implementation of recommended changes; and
   c. To evaluate and report the results of these efforts to the General Assembly and others.

(3) To enhance and promote recognition, reward, and renewal activities for nurses in North Carolina by:
   a. Promoting continuation of Institutes for Nursing Excellence programs as piloted by the Area Health Education Centers in 1989-90 or similar options;
   b. Proposing and creating additional reward, recognition, and renewal activities for nurses; and
   c. Promoting media and positive image-building efforts for nursing. (1991, c. 550, s. 3.)

§ 90-171.71: Repealed by Session Laws 2014-120, s. 1(h), effective September 18, 2014.

§ 90-171.72. North Carolina Center for Nursing; State support.

The General Assembly finds that it is imperative that the State protect its investment and progress made in its nursing efforts to date. The General Assembly further finds that the North Carolina Center for Nursing is the appropriate means to do so. The Center shall have State budget support for its operations so that it may have adequate resources for the tasks the General Assembly has set out in this Article. (1991, c. 550, s. 3.)

§§ 90-171.73 through 90-171.79. Reserved for future codification purposes.

Article 9G.

Nurse Licensure Compact.

§ 90-171.80. (For repeal, see editor's note) Entering into Compact.

The Nurse Licensure Compact is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this Article. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.81. (For repeal, see editor's note) Findings and declaration of purpose.

(a) The General Assembly of North Carolina makes the following findings:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to states' nurse licensure laws.

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

(4) New practice modalities and technology make compliance with individual states' nurse licensure laws difficult and complex.

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety.

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction.

(5) Through the mutual recognition of party state licenses, grant all party states the authority to hold nurses accountable for meeting all state practice laws in the states in which their patients are located at the time care is rendered. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.82. (For repeal, see editor's note) Definitions.

The following definitions apply in this Article:

(1) Adverse action. – A home or remote state action.

(2) Alternative program. – A voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(3) Compact. – This Article.

(4) Coordinated licensure information system. – An integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(5) Current significant investigative information. –

a. Investigative information that indicates a licensee has committed more than a minor infraction.

b. Investigative information that indicates a licensee represents an immediate threat to public health and safety.

(6) Home state. – The party state that is the nurse's primary state of residence.

(7) Home state action. – Any administrative, civil, equitable, or criminal action permitted by the home state's laws that is imposed on a nurse by the home state's licensing board or another authority. The term includes the revocation, suspension, or probation of a nurse's license or any other action that affects a nurse's authorization to practice.

(8) Licensee. – A person licensed by the North Carolina Board of Nursing or the nurse licensing board of a party state.

(9) Licensing board. – A party state's regulatory agency that is responsible for licensing nurses.

(10) Multistate licensure privilege. – Current official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in that state.

(11) Nurse. – A registered nurse or licensed practical or vocational nurse as those terms are defined by each party state's practice laws.

(12) Party state. – Any state that has adopted this Compact.

(13) Remote state. – A party state, other than the home state, where the patient is located at the time nursing care is provided. In the case of the practice of nursing not involving a patient, the term means the party state where the recipient of nursing practice is located.

(14) Remote state action. – Any administrative, civil, equitable, or criminal action permitted by the laws of a remote state that are imposed on a nurse by the remote state's nurse licensing board or other authority, including actions against a nurse's multistate licensure privilege to practice in the remote state. The term also includes cease and desist and other injunctive or equitable orders issued by remote states or their nurse licensing boards.

(15) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(16) State practice laws. – The laws and regulations of individual party states that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for disciplining nurses. The term does not include the initial qualifications for licensure or the requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.83. (For repeal, see editor's note) General provisions and jurisdiction.

(a) A license to practice registered nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in each party state. A license to practice practical or vocational nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with each state's due process laws, revoke, suspend, or limit the multistate licensure privilege of any licensee to practice in their state and may take any other actions under their applicable state laws that are necessary to protect the health and safety of their citizens. If a party state takes an action authorized in this subsection, it shall promptly notify the administrator of the coordinated licensure information system. The administrator shall promptly notify the home state of any actions taken by remote states.

(c) Every licensee practicing in a party state shall comply with the state practice laws of the state in which the patient is located at the time care is rendered. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing in a party state shall subject a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state.

(d) The Compact does not affect additional requirements imposed by states for advanced-practice registered nursing. A multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if a license to practice registered nursing is required by state law as a precondition for qualifying for advanced-practice registered nurse authorization.

(e) Persons not residing in a party state may continue to apply for nurse licensure in party states as provided for under the laws of each party state. The license granted to such persons shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.84. (For repeal, see editor's note) Application for licensure in a party state.

(a) Upon receiving an application for a license, the licensing board in a party state shall ascertain through the coordinated licensure information system whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multistate licensure privilege, and whether any other adverse action by any state has been taken against the applicant's license.

(b) A licensee in a party state shall hold licensure in only one party state at a time. The license shall be issued by the home state.

(c) A licensee who intends to change his or her primary state of residence may apply for licensure in the new home state in advance of the change. However, a new license shall not be issued by a party state until after the licensee provides evidence of a change in his or her primary state of residence that is satisfactory to the new home state's licensing board.

(d) When a licensee changes his or her primary state of residence by moving between two party states and obtaining a license from the new home state, the license from the former home state is no longer valid.

(e) When a licensee changes his or her primary state of residence by moving from a nonparty state to a party state and obtaining a license from the new home state, the license issued by the nonparty state shall not be affected and shall remain in full force if the laws of the nonparty state so provide.

(f) When a licensee changes his or her primary state of residence by moving from a party state to a nonparty state, the license issued by the former home state converts to an individual state license that is valid only in the former home state. The license does not grant the multistate licensure privilege to practice in other party states. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.85. (For repeal, see editor's note) Adverse actions.

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for the actions, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state may complete any pending investigation of a licensee who changes his or her primary state of residence during the course of the investigation. It may also take appropriate action against a licensee and shall promptly report the conclusion of the investigation to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any action taken against a licensee.

(c) A remote state may take adverse action that affects the multistate licensure privilege to practice within that party state. However, only the home state may take adverse action that affects a license that was issued by the home state.

(d) For purposes of taking adverse action, the licensing board of the home state shall give to conduct reported by a remote state the same priority and effect that it would if the conduct had occurred within the home state. The board shall apply its own state laws to determine the appropriate action that should be taken against the licensee.

(e) The home state may take adverse action based upon the factual findings of the remote state if each state follows its own procedures for imposing the adverse action.

(f) This Compact does not prohibit a party state from allowing a licensee to participate in an alternative program instead of taking adverse action against the licensee. If required by the party state's laws, the licensee's participation in an alternative program shall be confidential information. Party states shall require licensees who enter alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.86. (For repeal, see editor's note) Current significant investigative information.

(a) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)a., the licensing board shall, after giving the licensee notice and an opportunity to respond if required by state law, conduct a hearing and decide what adverse action, if any, should be taken against the licensee.

(b) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)b., the licensing board may take adverse action against the licensee without first providing the licensee notice or an opportunity to respond to the information. A hearing shall be promptly commenced and determined. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.87. (For repeal, see editor's note) Additional authority of party state nursing licensing boards.

Notwithstanding any other powers, party state nurse licensing boards may do any of the following:

(1) If otherwise permitted by state law, recover from licensees the costs of investigating and disposing of cases that result in adverse action.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the other party state by any court of competent jurisdiction according to the practice and procedure of that court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the laws of the party state where the witnesses or evidence are located.

(3) Issue cease and desist orders to limit or revoke a licensee's authority to practice in the board's state.

(4) Adopt uniform rules and regulations that are developed by the Compact administrators as provided in G.S. 90-171.89(c). (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.88. (For repeal, see editor's note) Coordinated licensure information system.

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each licensee, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report to the coordinated licensure information system any adverse action taken against licensees, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, and any denials of applications for licensure and the reasons for the denials.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing party state.

(e) Any personally identifiable information obtained by a party state licensing board from the coordinated licensure information system shall not be shared with nonparty states

or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall be expunged from the coordinated licensure information system.

(g) The Compact administrators, acting jointly and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.89. (For repeal, see editor's note) Compact administration and interchange of information.

(a) The executive director of the nurse licensing board of each party state or the executive director's designee shall be the administrator of this Compact for that state.

(b) To facilitate the administration of this Compact, the Compact administrator of each party state shall furnish to the Compact administrators of all other party states information and documents concerning each licensee, including a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation.

(c) Compact administrators shall develop uniform rules and regulations to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states as authorized in G.S. 90-171.87(4). (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.90. (For repeal, see editor's note) Immunity.

A party state or the officers, employees, or agents of a party state's nurse licensing board who act in accordance with this Compact shall not be liable for any good faith act or omission committed while they were engaged in the performance of their duties under this Compact. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.91. (For repeal, see editor's note) Effective date, withdrawal, and amendment.

(a) This Compact shall become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the Compact, but the withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the Compact administrators of all other party states.

(b) No withdrawal shall affect the validity or applicability of any report of adverse action taken by the licensing board of a state that remains a party to the Compact if the adverse action occurred prior to the withdrawal.

(c) This Compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.92. (For repeal, see editor's note) Dispute resolution.

If there is a dispute that cannot be resolved by the party states involved, the following procedure shall be used:

(1) The party states shall submit the issues in dispute to an arbitration panel that shall consist of an individual appointed by the Compact administrator in the home state, an individual appointed by the Compact administrator in the remote states involved, and an individual appointed by the Compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.93. (For repeal, see editor's note) Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes as stated in G.S. 90-171.81(b). The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters. (1999-245, s. 1; 2017-140, s. 1.)

§ 90-171.94. (For repeal, see editor's note) Applicability of compact.

This Article is applicable only to nurses whose home states are determined by the North Carolina Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of North Carolina. (1999-456, s. 25; 2017-140, s. 1.)

§ 90-171.95. (For effective date, see editor's note) Findings and declaration of purpose.

(a) The party states make the following findings:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.
(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states.
(6) Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(b) The general purposes of this Compact are as follows:
(1) Facilitate the states' responsibility to protect the public's health and safety.
(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.
(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.
(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction.
(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.
(6) Decrease redundancies in the consideration and issuance of nurse licenses.
(7) Provide opportunities for interstate practice by nurses who meet uniform licensure requirements. (2017-140, s. 2.)

§ 90-171.95A. (For effective date, see editor's note) Definitions.

As used in this Compact:

(a) Adverse Action. – Any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.
(b) Alternative Program. – A nondisciplinary monitoring program approved by a licensing board.
(c) Coordinated Licensure Information System. – An integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.
(d) Current Significant Investigative Information. – Both of the following:
(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.
(2) Investigative information that indicates the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
(e) Encumbrance. – A revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

(f) Home State. – The party state which is the nurse's primary state of residence.

(g) Licensing Board. – A party state's regulatory body responsible for issuing nurse licenses.

(h) Multistate License. – A license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(i) Multistate Licensure Privilege. – A legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

(j) Nurse. – RN or LPN/VN, as those terms are defined by each party state's practice laws.

(k) Party State. – Any state that has adopted this Compact.

(*l*) Remote State. – A party state, other than the home state.

(m) Single-State License. – A nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

(n) State. – A state, territory, or possession of the United States and the District of Columbia.

(o) State Practice Laws. – A party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state. (2017-140, s. 2.)

§ 90-171.95B. (For effective date, see editor's note) General provisions and jurisdiction.

(a) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

(b) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(c) Each party state shall require all of the following for an applicant to obtain or retain a multistate license in the home state:

(1) Meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws.

(2) Either of the following:

a. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program.

b. Has graduated from a foreign RN or LPN/VN pre-licensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved pre-licensure education program.

(3) Has, if a graduate of a foreign pre-licensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening.

(4) Has successfully passed an NCLEX-RN/R or NCLEX-PN/R Examination or recognized predecessor, as applicable.

(5) Is eligible for or holds an active, unencumbered license.

(6) Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(7) Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.

(8) Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.

(9) Is not currently enrolled in an alternative program.

(10) Is subject to self-disclosure requirements regarding current participation in an alternative program.

(11) Has a valid United States Social Security number.

(d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(e) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

(f) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

(g) Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

(1) A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable requirements in subsection (c) of this section to obtain a multistate license from a new home state.

(2) A nurse who fails to satisfy the multistate licensure requirements in subsection (c) of this section due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission"). (2017-140, s. 2.)

§ 90-171.95C. (For effective date, see editor's note) Applications for licensure in a party state.

(a) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

(b) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(c) If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission. The following apply to nurses changing primary state of residence by moving between two party states:

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(d) If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state. (2017-140, s. 2.)

§ 90-171.95D. (For effective date, see editor's note) Additional authorities invested in party state licensing boards.

(a) In addition to the other powers conferred by state law, a licensing board may do all of the following:

(1) Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

a. Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

b. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(2) Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

(3) Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(4) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(5) Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

(6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(7) Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

(b) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(c) Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing

board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program. (2017-140, s. 2.)

§ 90-171.95E. (For effective date, see editor's note) Coordinated licensure information system and exchange of information.

(a) All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

(c) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(d) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(e) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(f) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(g) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(h) The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum, all of the following:

(1) Identifying information.
(2) Licensure data.
(3) Information related to alternative program participation.
(4) Other information that may facilitate the administration of this Compact, as determined by Commission rules.

(i) The Compact administrator of a party state shall provide all investigative documents and information requested by another party state. (2017-140, s. 2.)

§ 90-171.95F. (For effective date, see editor's note) Establishment of the Interstate Commission of Nurse Licensure Compact Administrators.

(a) Creation. – The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(1) The Commission is an instrumentality of the party states.

(2) Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, Voting and Meetings. –

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in G.S. 90-171.95G.

(5) The Commission may convene in a closed, nonpublic meeting if the Commission must discuss any of the following:

a. Noncompliance of a party state with its obligations under this Compact.

b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures.

c. Current, threatened, or reasonably anticipated litigation.

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate.

e. Accusing any person of a crime or formally censuring any person.

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

h. Disclosure of investigatory records compiled for law enforcement purposes.

i. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact.

j. Matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(c) Bylaws. – The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including the following:

(1) Establishing the fiscal year of the Commission.

(2) Providing reasonable standards and procedures for both of the following:

a. Establishment and meetings of other committees.

b. Governing any general or specific delegation of any authority or function of the Commission.

(3) Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed.

(4) Establishing the titles, duties, authority, and reasonable procedures for the election of the officers of the Commission.

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission.

(6) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations.

(d) The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the Web site of the Commission.

(e) The Commission shall maintain its financial records in accordance with the bylaws.

(f) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(g) The Commission shall have all of the following powers:

(1) To adopt uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states.

(2) To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected.

(3) To purchase and maintain insurance and bonds.

(4) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations.

(5) To cooperate with other organizations that administer state compacts related to the regulation of nursing, including, but not limited to, sharing administrative or staff expenses, office space, or other resources.

(6) To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(7) To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest.

(8) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, whether real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety.

(9) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed.

(10) To establish a budget and make expenditures.

(11) To borrow money.

(12) To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons.

(13) To provide and receive information from, and to cooperate with, law enforcement agencies.

(14) To adopt and use an official seal.

(15) To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

(h) Financing of the Commission. –

(1) The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

(3) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

(4) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(i) Qualified Immunity, Defense, and Indemnification. –

(1) The administrators, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

(2) The Commission shall defend any administrator, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

(3) The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person. (2017-140, s. 2.)

§ 90-171.95G. (For effective date, see editor's note) Rule making.

(a) The Commission shall exercise its rule-making powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

(b) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(c) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rule making in both of the following locations:

(1) On the Web site of the Commission.

(2) On the Web site of each licensing board or the publication in which each state would otherwise publish proposed rules.

(d) The notice of proposed rule making shall include all of the following:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.

(2) The text of the proposed rule or amendment and the reason for the proposed rule.

(3) A request for comments on the proposed rule from any interested person.

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(e) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(f) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) The Commission shall publish the place, time, and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(h) If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(k) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing;

provided that the usual rule-making procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to do one or more of the following:

(1) Meet an imminent threat to public health, safety, or welfare.
(2) Prevent a loss of Commission or party state funds.
(3) Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

(*l*) The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the Web site of the Commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission. (2017-140, s. 2.)

§ 90-171.95H. (For effective date, see editor's note) Oversight, dispute resolution, and enforcement.

(a) Oversight. –

(1) Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.
(2) The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination. –

(1) If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall do both of the following:
    a. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission.
    b. Provide remedial training and specific technical assistance regarding the default.
(2) If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

(4) A state whose membership in this Compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute Resolution. –

(1) Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and nonparty states.

(2) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the Commission cannot resolve disputes among party states arising under this Compact:

a. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

b. The decision of a majority of the arbitrators shall be final and binding.

(d) Enforcement. –

(1) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

(2) By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law. (2017-140, s. 2.)

§ 90-171.95I. (For effective date, see editor's note) Effective date, withdrawal, and amendment.

(a) This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than 26 states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact superseded by this Compact ("Prior Compact"), shall be deemed to have withdrawn from said Prior Compact within six months after the effective date of this Compact.

(b) Each party state to this Compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

(c) Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

(d) A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

(e) Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

(f) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(g) Representatives of nonparty states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states. (2017-140, s. 2.)

§ 90-171.95J. (For effective date, see editor's note) Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and to all severable matters. (2017-140, s. 2.)

§ 90-171.96. Reserved for future codification purposes.

§ 90-171.97. Reserved for future codification purposes.

§ 90-171.98. Reserved for future codification purposes.

§ 90-171.99. Reserved for future codification purposes.

Article 9H.

Graduate Nurse Scholarship Program for Faculty Production.

§ 90-171.100: Repealed by Session Laws 2011-74, s. 2(a), effective July 1, 2012.

§ 90-171.101: Repealed by Session Laws 2011-74, s. 2(a), effective July 1, 2012.

Article 10.

Midwives.

§ 90-172. Repealed by Session Laws 1983, c. 897, s. 2, effective October 1, 1983.

§§ 90-173 through 90-178. Repealed by Session Laws 1957, c. 1357, s. 7.

Article 10A.

Practice of Midwifery.

§ 90-178.1. Title.

This Article shall be known and may be cited as the Midwifery Practice Act. (1983, c. 897, s. 1.)

§ 90-178.2. Definitions.

As used in this Article:

(1) "Interconceptional care" includes but is not limited to:
  a. Family planning;
  b. Screening for cancer of the breast and reproductive tract; and
  c. Screening for and management of minor infections of the reproductive organs;

(2) "Intrapartum care" includes but is not limited to:
  a. Attending women in uncomplicated labor;
  b. Assisting with spontaneous delivery of infants in vertex presentation from 37 to 42 weeks gestation;
  c. Performing amniotomy;
  d. Administering local anesthesia;
  e. Performing episiotomy and repair; and
  f. Repairing lacerations associated with childbirth.

(3) "Midwifery" means the act of providing prenatal, intrapartum, postpartum, newborn and interconceptional care. The term does not include the practice of medicine by a physician licensed to practice medicine when engaged in the

practice of medicine as defined by law, the performance of medical acts by a physician assistant or nurse practitioner when performed in accordance with the rules of the North Carolina Medical Board, the practice of nursing by a registered nurse engaged in the practice of nursing as defined by law, or the rendering of childbirth assistance in an emergency situation.

(4) "Newborn care" includes but is not limited to:
   a. Routine assistance to the newborn to establish respiration and maintain thermal stability;
   b. Routine physical assessment including APGAR scoring;
   c. Vitamin K administration; and
   d. Eye prophylaxis for opthalmia neonatorum.

(5) "Postpartum care" includes but is not limited to:
   a. Management of the normal third stage of labor;
   b. Administration of pitocin and methergine after delivery of the infant when indicated; and
   c. Six weeks postpartum evaluation exam and initiation of family planning.

(6) "Prenatal care" includes but is not limited to:
   a. Historical and physical assessment;
   b. Obtaining and assessing the results of routine laboratory tests; and
   c. Supervising the use of prenatal vitamins, folic acid, iron, and nonprescription medicines. (1983, c. 897, s. 1; 1995, c. 94, s. 30.)

§ 90-178.3. Regulation of midwifery.

(a) No person shall practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to this Article.

(b) A person approved pursuant to this Article may practice midwifery in a hospital or non-hospital setting and shall practice under the supervision of a physician licensed to practice medicine who is actively engaged in the practice of obstetrics. A registered nurse approved pursuant to this Article is authorized to write prescriptions for drugs in accordance with the same conditions applicable to a nurse practitioner under G.S. 90-18.2(b).

(c) Graduate nurse midwife applicant status may be granted by the joint subcommittee in accordance with G.S. 90-178.4. (1983, c. 897, s. 1; 2000-140, s. 60.)

§ 90-178.4. Administration.

(a) The joint subcommittee of the North Carolina Medical Board and the Board of Nursing created pursuant to G.S. 90-18.2 shall administer the provisions of this Article and the rules adopted pursuant to this Article; Provided, however, that actions of the joint subcommittee pursuant to this Article shall not require approval by the North Carolina Medical Board and the Board of Nursing. For purposes of this Article, the joint subcommittee shall be enlarged by four additional members, including two certified midwives and two obstetricians who have had working experience with midwives.

(b) The joint subcommittee shall adopt rules pursuant to this Article to establish:
   (1) A fee which shall cover application and initial approval up to a maximum of one hundred dollars ($100.00);

(2) An annual renewal fee to be paid by January 1 of each year by persons approved pursuant to this Article up to a maximum of fifty dollars ($50.00);
(3) A reinstatement fee for a lapsed approval up to a maximum of five dollars ($5.00);
(4) The form and contents of the applications which shall include information related to the applicant's education and certification by the American College of Nurse-Midwives; and
(5) The procedure for establishing physician supervision as required by this Article.

(c) The joint subcommittee may solicit, employ, or contract for technical assistance and clerical assistance and may purchase or contract for the materials and services it needs.

(d) All fees collected on behalf of the joint subcommittee and all receipts of every kind and nature, as well as the compensation paid the members of the joint subcommittee and the necessary expenses incurred by them in the performance of the duties imposed upon them, shall be reported annually to the State Treasurer. All fees and other moneys received by the joint subcommittee pursuant to the provisions of the General Statutes shall be kept in a separate fund by the joint subcommittee, to be held and expended only for such purposes as are proper and necessary to the discharge of the duties of the joint subcommittee and to enforce the provisions of this Article. No expense incurred by the joint subcommittee shall be charged against the State.

(e) Members of the joint subcommittee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the joint subcommittee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. (1983, c. 897, s. 1; 1995, c. 94, s. 31.)

§ 90-178.5. Qualifications for approval.

In order to be approved by the joint subcommittee pursuant to this Article, a person shall:
(1) Complete an application on a form furnished by the joint subcommittee;
(2) Submit evidence of certification by the American College of Nurse-Midwives;
(3) Submit evidence of arrangements for physician supervision; and
(4) Pay the fee for application and approval. (1983, c. 897, s. 1.)

§ 90-178.6. Denial, revocation or suspension of approval.

(a) In accordance with the provisions of Chapter 150B, the joint subcommittee may deny, revoke or suspend approval when a person has:
(1) Failed to satisfy the qualifications for approval;
(2) Failed to pay the annual renewal fee by January 1 of the current year;
(3) Given false information or withheld material information in applying for approval;
(4) Demonstrated incompetence in the practice of midwifery;
(5) Violated any of the provisions of this Article;
(6) A mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice midwifery;
(7) Engaged in conduct that endangers the public health;
(8) Engaged in conduct that deceives, defrauds, or harms the public in the course of professional activities or services; or

(9) Been convicted of or pleaded guilty or nolo contendere to any felony under the laws of the United States or of any state of the United States indicating professional unfitness.

(b) Revocation or suspension of a license to practice nursing pursuant to G.S. 90-171.37 shall automatically result in comparable action against the person's approval to practice midwifery under this Article. (1983, c. 897, s. 1; 1987, c. 827, s. 1.)

§ 90-178.7. Enforcement.

(a) The joint subcommittee may apply to the Superior Court of Wake County to restrain any violation of this Article.

(b) Any person who violates G.S. 90-178.3(a) shall be guilty of a Class 3 misdemeanor. (1983, c. 897, s. 1; 1993, c. 539, s. 633; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 11.

Veterinarians.

§ 90-179. Purpose of Article.

In order to promote the public health, safety, and welfare by safeguarding the people of this State against unqualified or incompetent practitioners of veterinary medicine, it is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this Article. (1973, c. 1106, s. 1.)

§ 90-180. Title.

This Article shall be known as the North Carolina Veterinary Practice Act. (1973, c. 1106, s. 1.)

§ 90-181. Definitions.

When used in this Article these words and phrases shall be defined as follows:

(1) "Accredited school of veterinary medicine" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation by the American Veterinary Medical Association.

(2) "Animal" means any animal, mammal other than man and includes birds, fish, and reptiles, wild or domestic, living or dead.

(2a) "Animal dentistry" means the treatment, extraction, cleaning, adjustment, or "floating" (filing or smoothing) of an animal's teeth, and treatment of an animal's gums.

(3) "Board" means the North Carolina Veterinary Medical Board.

(3a) "Cruelty to animals" means to willfully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill any animal, or cause or procure any of these acts to be done to an animal; provided, that the words "torture," "torment," or "cruelty" include every act, omission, or neglect causing or permitting unjustifiable physical pain, suffering, or death.

(3b) "Impairment" means an individual's inability to practice veterinary medicine; the inability to assist in the delivery of veterinary services as a registered veterinary technician, or the inability to perform acts, tasks, and functions with reasonable skill and safety; and in a manner not harmful to the public or to animals, by reason of physical or mental illness or condition, or use of alcohol, drugs, chemicals, or any other type of substance or material.

(4) "Limited veterinary license" or "limited license" means a license issued by the Board under authority of this Article that specifically, by its terms, restricts the scope or areas of practice of veterinary medicine by the holder of the limited license; provided, that no limited license shall confer or denote an area of specialty of the holder of this limited veterinary license; and provided further, that unless otherwise provided by Board rule, the licensing requirements shall be identical to those specified for a veterinary license.

(5) "Person" means any individual, firm, entity, partnership, association, joint venture, cooperative or corporation, or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(6) "Practice of veterinary medicine" means:

a. To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique on any animal.

b. To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in sub-subdivision a. of this subdivision.

c. To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in sub-subdivision a. of this subdivision.

(7) "Veterinarian" shall mean a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine and who is licensed by the Board to practice veterinary medicine.

(7a) "Veterinarian-client-patient relationship" means that:

a. The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instruction of the veterinarian.

b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept.

c. The practicing veterinarian is readily available or provides for follow-up in case of adverse reactions or failure of the regimen of therapy.

(7b) "Veterinary license" or "license" means a license to practice veterinary medicine issued by the Board.

(8) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.

(9) "Veterinary student intern" means a person who is enrolled in an accredited veterinary college, has satisfactorily completed the third year of veterinary college education, and is registered with the Board as a veterinary student intern.

(10) "Veterinary student preceptee" means a person who is pursuing a doctorate degree in an accredited school of veterinary medicine that has a preceptor or extern program, has completed the academic requirements of that program, and is registered with the Board as a veterinary student preceptee.

(11) "Veterinary technician" means either of the following persons:

a. A person who has successfully completed a post-high school course in the care and treatment of animals that conforms to the standards required for accreditation by the American Veterinary Medical Association and who is registered with the Board as a veterinary technician.

b. A person who holds a degree in veterinary medicine from a college of veterinary medicine recognized by the Board for licensure of veterinarians and who is registered with the Board as a veterinary technician. (1961, c. 353, s. 2; 1973, c. 1106, s. 1; 1993, c. 500, s. 1; 2019-170, ss. 1(a), 3.)

§ 90-181.1. (Contingent expiration date – see Editor's note) Practice facility names and levels of service.

(a) In order to accurately inform the public of the levels of service offered, a veterinary practice facility shall use in its name one of the descriptive terms defined in subsection (b) of this section. The name of a veterinary practice facility shall, at all times, accurately reflect the level of service being offered to the public. If a veterinary facility or practice offers on-call emergency service, that service must be as that term is defined in subsection (b) of this section.

(b) The following definitions are applicable to this section:

(1) "Animal health center" or "animal medical center" means a veterinary practice facility in which consultative, clinical, and hospital services are rendered and in which a large staff of basic and applied veterinary scientists perform significant research and conduct advanced professional educational programs.

(2) "Emergency facility" means a veterinary medical facility whose primary function is the receiving, treatment, and monitoring of emergency patients during its specified hours of operation. At this veterinary practice facility a veterinarian is in attendance at all hours of operation and sufficient staff is available to provide timely and appropriate emergency care. An emergency facility may be an independent veterinary medical after-hours facility, an independent veterinary medical 24-hour facility, or part of a full-service hospital or large teaching institution.

(3) "Mobile facility" means a veterinary practice conducted from a vehicle with special medical or surgical facilities or from a vehicle suitable only for making house or farm calls; provided, the veterinary medical practice shall have a permanent base of operation with a published address and telephone facilities for making appointments or responding to emergency situations.

(4) "Office" means a veterinary practice facility where a limited or consultative practice is conducted and which provides no facilities for the housing of patients.

(5) "On-call emergency service" means a veterinary medical service at a facility, including a mobile facility, where veterinarians and staff are not on the premises during all hours of operation or where veterinarians leave after a patient is treated. A veterinarian shall be available to be reached by telephone for after-hours emergencies.

(6) "Veterinary clinic" or "animal clinic" means a veterinary practice facility in which the practice conducted is essentially an out-patient practice.

(7) "Veterinary hospital" or "animal hospital" means a veterinary practice facility in which the practice conducted includes the confinement as well as the treatment of patients.

(c) If a veterinary practice facility uses as its name the name of the veterinarian or veterinarians owning or operating the facility, the name of the veterinary practice facility shall also include a descriptive term from those listed in subsection (b) of this section to disclose the level of service being offered.

(d) Those facilities existing and approved by the Board as of December 31, 1993, may continue to use their approved name or designation until there is a partial or total change of ownership of the facility, at which time the name of the veterinary practice facility shall be changed, as necessary, to comply with this section. (1993, c. 500, s. 2.)

§ 90-181.1. (Contingent effective date – see Editor's note) Facility names and levels of service.

(a) In order to accurately inform the public of the levels of service offered, a veterinary facility shall use in its name one of the descriptive terms defined in subsection (b) of this section. The name of a veterinary facility shall, at all times, accurately reflect the level of service being offered to the public. If a veterinary facility or practice offers on-call emergency service, that service must be as that term is defined in subsection (b) of this section.

(b) The following definitions are applicable to this section:

(1) "Animal health center" or "animal medical center" means a veterinary facility in which consultative, clinical, and hospital services are rendered and in which a large staff of basic and applied veterinary scientists perform significant research and conduct advanced professional educational programs.

(2) "Emergency facility" means a veterinary medical facility whose primary function is the receiving, treatment, and monitoring of emergency patients during its specified hours of operation. At this veterinary facility a veterinarian is in attendance at all hours of operation and sufficient staff is available to provide timely and appropriate emergency care. An emergency facility may be

an independent veterinary medical after-hours facility, an independent veterinary medical 24-hour facility, or part of a full-service hospital or large teaching institution.

(3) "Mobile facility" means a veterinary practice conducted from a vehicle with special medical or surgical facilities or from a vehicle suitable only for making house or farm calls; provided, the veterinary medical practice shall have a permanent base of operation with a published address and telephone facilities for making appointments or responding to emergency situations.

(4) "Office" means a veterinary facility where a limited or consultative practice is conducted and which provides no facilities for the housing of patients.

(5) "On-call emergency service" means a veterinary medical service at a facility, including a mobile facility, where veterinarians and staff are not on the premises during all hours of operation or where veterinarians leave after a patient is treated. A veterinarian shall be available to be reached by telephone for after-hours emergencies.

(6) "Veterinary clinic" or "animal clinic" means a veterinary facility in which the practice conducted is essentially an out-patient practice.

(7) "Veterinary hospital" or "animal hospital" means a veterinary facility in which the practice conducted includes the confinement as well as the treatment of patients.

(c) If a veterinary facility uses as its name the name of the veterinarian or veterinarians owning or operating the facility, the name of the veterinary facility shall also include a descriptive term from those listed in subsection (b) of this section to disclose the level of service being offered.

(d) Those facilities existing and approved by the Board as of December 31, 1993, may continue to use their approved name or designation until there is a partial or total change of ownership of the facility, at which time the name of the veterinary facility shall be changed, as necessary, to comply with this section. (1993, c. 500, s. 2; 2019-170, s. 5(a).)

§ 90-182. North Carolina Veterinary Medical Board; appointment, membership, organization.

(a) In order to properly regulate the practice of veterinary medicine and surgery, there is established a Board to be known as the North Carolina Veterinary Medical Board which shall consist of eight members.

Five members shall be appointed by the Governor. Four of these members shall have been legal residents of and licensed to practice veterinary medicine in this State for not less than five years preceding their appointment. The other member shall not be licensed or registered under the Article and shall represent the interest of the public at large. Each member appointed by the Governor shall reside in a different congressional district.

The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint to the Board one member who shall have been a resident of and licensed to practice veterinary medicine in this State for not less than five years preceding the appointment. The General Assembly, upon the recommendation of the Speaker of the

House of Representatives, shall appoint to the Board one member who shall have been a legal resident of and registered as a veterinary technician in this State for not less than five years preceding the appointment.

In addition to the seven members appointed as provided above, the Commissioner of Agriculture shall biennially appoint to the Board the State Veterinarian or another veterinarian from a staff of a North Carolina department or institution. This member shall have been a legal resident of and licensed to practice veterinary medicine in North Carolina for not less than five years preceding his appointment.

Every member shall, within 30 days after notice of appointment, appear before any person authorized to administer the oath of office and take an oath to faithfully discharge the duties of the office.

(b) No person who has been appointed to the Board shall continue his membership on the Board if during the term of his appointment he shall:

(1) Transfer his legal residence to another state; or

(2) Own or be employed by any wholesale or jobbing house dealing in supplies, equipment, or instruments used or useful in the practice of veterinary medicine; or

(3) Have his license to practice veterinary medicine revoked for any of the causes listed in G.S. 90-187.8.

(c) All members serving on the board on June 30, 1981, shall complete their respective terms. The Governor shall appoint the public member not later than July 1, 1981. No member appointed to the Board by the Governor, Lieutenant Governor, Speaker of the House of Representatives, or General Assembly on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is appointed and qualifies. The term of the veterinary technician appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall begin on June 30th of the year in which he or she is appointed.

(d) The appointing authority may remove his appointee for the reasons specified in subsection (b) or for any good cause shown and may appoint members to fill unexpired terms. (1903, c. 503, s. 2; Rev., s. 5432; C.S., s. 6755; 1961, c. 353, s. 3; 1973, c. 1106, s. 1; c. 1331, s. 3; 1981, c. 767, s. 1; 1993, c. 500, ss. 3, 4; 2001-281, ss. 1, 2; 2001-487, s. 104; 2012-120, s. 3.1.)

§ 90-183. Meeting of Board.

The Board shall meet at least four times per year at the time and place fixed by the Board. Other meetings may be called by the president of the Board by giving notice as may be required by rule. A majority of the Board shall constitute a quorum. Meetings shall be open and public except that the Board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualification of an applicant for license or the disposition of a proceeding to discipline a veterinarian.

At its last meeting of the fiscal year the Board shall organize by electing, for the following fiscal year, a president, a vice-president, a secretary-treasurer, and such other officers as may be prescribed by rule. Officers of the Board shall serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve

as chairman of Board meetings. (1903, c. 503, ss. 3, 4, 6, 7; Rev., s. 5433; C.S., s. 6756; 1973, c. 1106, s. 1; 1993, c. 500, s. 5.)

§ 90-184. Compensation of the Board.

In addition to such reimbursement for travel and other expenses as is normally allowed to State employees, each member of the Board, for each day or substantial portion thereof that the member is engaged in the work of the Board may receive a per diem allowance, as determined by the Board in accordance with G.S. 93B-5. None of the expenses of the Board or of the members shall be paid by the State. (1903, c. 503, s. 9; Rev., s. 5434; C.S., s. 6757; 1961, c. 353, s. 4; 1973, c. 1106, s. 1; 1981, c. 767, s. 2; 1991 (Reg. Sess., 1992), c. 1011, s. 4; 1993, c. 500, s. 6.)

§ 90-185. General powers of the Board.

The Board may:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the State.

(2) Issue, renew, deny, suspend, or revoke licenses and limited veterinary licenses, and issue, deny, or revoke temporary permits to practice veterinary medicine in the State or otherwise discipline veterinarians consistent with the provisions of Chapter 150B of the General Statutes and of this Article and the rules adopted under this Article.

(3) Conduct investigations for the purpose of discovering violations of this Article or grounds for disciplining veterinarians.

(4) Employ full-time or part-time personnel – professional, clerical, or special – necessary to effectuate the provisions of this Article, purchase or rent necessary office space, equipment, and supplies, and purchase liability or other insurance to cover the activities of the Board, its operations, or its employees.

(5) Appoint from its own membership one or more members to act as representatives of the Board at any meeting within or without the State where such representation is deemed desirable.

(6) Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provisions of this Article, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the Board effectively to supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective. (1973, c. 1106, s. 1; c. 1331, s. 3; 1981, c. 767, s. 3; 1987, c. 827, s. 1; 1993, c. 500, s. 7.)

§ 90-186. Special powers of the Board.

In addition to the powers set forth in G.S. 90-185 above, the Board may:

(1) Fix minimum standards for continuing veterinary medical education for veterinarians and technicians, which shall be a condition precedent to the renewal of a veterinary license, limited license, veterinary faculty certificate, zoo veterinary certificate, or veterinary technician registration, respectively, under this Article;

(2) Inspect any hospitals, clinics, mobile units or other facilities used by any practicing veterinarian, either by a member of the Board or its authorized representatives, for the purpose of reporting the results of the inspection to the Board on a form prescribed by the Board and seeking disciplinary action for violations of health, sanitary, and medical waste disposal rules of the Board affecting the practice of veterinary medicine, or violations of rules of any county, state, or federal department or agency having jurisdiction in these areas of health, sanitation, and medical waste disposal that relate to or affect the practice of veterinary medicine;

(3) **(Contingent expiration date – See editor's note)** Upon complaint or information received by the Board, prohibit through summary emergency order of the Board, prior to a hearing, the operation of any veterinary practice facility that the Board determines is endangering, or may endanger, the public health or safety or the welfare and safety of animals, and suspend the license of the veterinarian operating the veterinary practice facility, provided that upon the issuance of any summary emergency order, the Board shall initiate, within 10 days, a notice of hearing under the administrative rules issued pursuant to this Article and Chapter 150B of the General Statutes for an administrative hearing on the alleged violation;

(3) **(Contingent effective date – See editor's note)** Upon complaint or information received by the Board, prohibit through summary emergency order of the Board, prior to a hearing, the operation of any veterinary facility that the Board determines is endangering, or may endanger, the public health or safety or the welfare and safety of animals, and suspend the license of the veterinarian operating the veterinary facility, provided that upon the issuance of any summary emergency order, the Board shall initiate, within 10 days, a notice of hearing under the administrative rules issued pursuant to this Article and Chapter 150B of the General Statutes for an administrative hearing on the alleged violation;

(4) Provide special registration for "veterinary technicians," "veterinary student interns" and "veterinary student preceptees" and adopt rules concerning the training, registration and service limits of such assistants while employed by and acting under the supervision and responsibility of veterinarians. The Board has exclusive jurisdiction in determining eligibility and qualification requirements for these assistants. Renewals of registrations for veterinary technicians shall be required at least every 24 months, provided that the certificate of registration for the veterinary technician is otherwise eligible for renewal;

(5) Provide, pursuant to administrative rules, requirements for the inactive status of licenses and limited veterinary licenses;

(6) Set and require fees pursuant to administrative rule. The Board may increase the following fees, provided (i) no fee shall be increased more than fifteen percent (15%) within a calendar year and (ii) the cumulative total increases of any fee shall not exceed one hundred percent (100%) of the fee amounts set in this subdivision:

a. Issuance or renewal of a certificate of registration for a professional corporation, in the amount of one hundred fifty dollars ($150.00).

b. Administering a North Carolina license examination for applicants for licensure, certification, and registration, in the amount of two hundred fifty dollars ($250.00).

c. Administering competency examinations for applicants seeking licensure or registration, in amounts directly related to costs to the Board. Fees associated with administering national competency examinations shall be set in rules adopted by the Board.

d. **(Contingent expiration date – See editor's note)** Inspection of a veterinary practice facility in the amount of one hundred twenty-five dollars ($125.00).

d. **(Contingent effective date – See editor's note)** Inspection of a veterinary facility in the amount of one hundred twenty-five dollars ($125.00).

e. Issuance or renewal of a license or a limited license, in the amount of one hundred fifty dollars ($150.00).

f. Issuance or renewal of a veterinary faculty certificate, in the amount of one hundred fifty dollars ($150.00).

g. Issuance or renewal of a zoo veterinary certificate, in the amount of one hundred fifty dollars ($150.00).

h. Reinstatement of a revoked license, a limited license, a veterinary faculty certificate, a zoo veterinary certificate, a veterinary technician registration, or a professional corporation registration, in the amount of one hundred dollars ($100.00).

i. Issuance or renewal of a veterinary technician registration, in the amount of fifty dollars ($50.00).

j. Issuance of a veterinary student intern registration, in the amount of twenty-five dollars ($25.00).

k. Issuance of a veterinary student preceptee registration, in the amount of twenty-five dollars ($25.00).

l. Late fee for renewal of a license, a limited license, a veterinary technician registration, a veterinary faculty certificate, a zoo veterinary certificate, or a professional corporation registration, in the amount of fifty dollars ($50.00).

m. Issuance of a temporary permit to practice veterinary medicine, in the amount of one hundred fifty dollars ($150.00).

n. Repealed by Session Laws 2014-63, s. 1, effective October 1, 2014.

The fees set under this subdivision for the renewal of a license, a limited license, a registration, or a certificate apply to each year of the renewal period.

(7) Pursuant to administrative rule, to assess and recover against persons holding licenses, limited licenses, temporary permits, or any certificates issued by the Board, costs reasonably incurred by the Board in the investigation, prosecution, hearing, or other administrative action of the Board in final decisions or orders where those persons are found to have violated the Veterinary Practice Act or

administrative rules of the Board issued pursuant to the Act; provided, that all costs shall be the property of the Board.

(8) Pursuant to administrative rule, the Board may establish all provisions and requirements for a veterinary facility permit, the issuance of which shall be required for any facility where veterinary medicine is practiced, except for animal shelters registered with the Department of Agriculture and Consumer Services.

(9) Pursuant to administrative rule, the Board may establish all provisions and requirements for a supervising veterinarian for each veterinary facility maintaining a valid veterinary facility permit.

(10) Pursuant to administrative rule, the Board may establish all provisions and requirements for the regulation of the practice of veterinary medicine through methods or modes of veterinary telehealth and its subcategories, including telemedicine, teleconsulting, and telemonitoring. The Board may also establish all provisions and requirements as to when and where veterinary telehealth or any of its subcategories may occur, who may provide veterinary care via telehealth or any of its subcategories, and the requirements for the veterinarian-client-patient relationship as it pertains to the methods or modes of veterinary telehealth and its subcategories. (1973, c. 1106, s. 1; 1981, c. 767, s. 4; 1987, c. 827, s. 1; 1993, c. 500, s. 8; 2014-63, s. 1; 2019-170, ss. 4(a), 5(b).)

§ 90-187. Application for license; qualifications.

(a) Any person desiring a license to practice veterinary medicine in this State shall make written application to the Board.

(b) The application shall show that the applicant is a graduate of an accredited veterinary school, a person of good moral character, and such other information and proof as the Board may require by rule. The Board may receive applications from senior students at accredited veterinary schools but an application is not complete until the applicant furnishes proof of graduation and such other information required by this Article and Board rules. The application shall be accompanied by a fee in the amount established and published by the Board.

(c) An application from a graduate of a program not accredited by the American Veterinary Medical Association may not be considered by the Board until the applicant furnishes satisfactory proof of graduation from a college of veterinary medicine and of successful completion of a certification program developed and administered by (i) the Educational Commission for Foreign Veterinary Graduates of the American Veterinary Medical Association or (ii) the Program for the Assessment of Veterinary Education Equivalence (PAVE) of the American Association of Veterinary State Boards. The certification programs shall include examinations with respect to clinical proficiency and comprehension of and ability to communicate in the English language.

(d) If the Board determines that the applicant possesses the proper qualifications, it may admit the applicant to the next examination, or if the applicant is eligible for a license without examination under G.S. 90-187.3; the Board may grant the applicant a license.

(1903, c. 503, ss. 3, 5, 8; Rev., s. 5435; C.S., s. 6758; 1951, c. 749; 1961, c. 353, s. 5; 1973, c. 1106, s. 1; 1981, c. 767, ss. 5, 6; 1993, c. 500, s. 9; 2013-356, s. 1.)

§ 90-187.1. Examinations.

The Board shall hold at least one examination during each year and may hold such additional examinations as may appear necessary. The executive director shall give public notice of the time and place for each examination at least 90 days in advance of the date set for the examination. A person desiring to take an examination shall make application at least 60 days before the date of the examination. The Board shall determine the passing score for the successful completion of an examination.

After each examination the executive director shall notify each examinee of the result of the examination. The Board shall issue licenses to the persons successfully completing the requirements for licensure required by this Article and by Board rule. (1903, c. 503, ss. 3, 5, 8; Rev., s. 5435; C.S., s. 6758; 1951, c. 749; 1961, c. 353, s. 5; 1973, c. 1106, s. 1; 1993, c. 500, s. 10.)

§ 90-187.2. Status of persons previously licensed.

Any person holding a valid license to practice veterinary medicine in this State on July 1, 1974, shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he complies with the provisions of this Article, and Board rules adopted pursuant thereto. (1973, c. 1106, s. 1.)

§ 90-187.3. Applicants licensed in other states.

(a) The Board may issue a license without written examination, other than the written North Carolina license examination, to applicants already licensed in another state provided the applicant presents evidence satisfactory to the Board that:

(1) The applicant is currently an active, competent practitioner in good standing.

(2) The applicant has practiced at least three of the five years immediately preceding filing the application.

(3) The applicant currently holds an active license in another state.

(4) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4a) Any disciplinary actions taken against the applicant or his or her license by the other state in which he or she is licensed will not affect the applicant's competency to practice veterinary medicine as provided in this Article or any rules adopted by the Board.

(5) The licensure requirements in the other state are substantially equivalent to those required by this State.

(6) The applicant has achieved a passing score on the written North Carolina license examination.

(a1) Expired.

(b) The Board may issue a license without a written examination, other than the written North Carolina license examination, to an applicant who meets the requirements of G.S. 90-187(c).

(c) The Board may at its discretion orally or practically examine any person qualifying for licensure under this section, by administering a nationally recognized clinical competency test as well as the North Carolina license examination.

(d) The Board may issue a limited license to practice veterinary medicine to an applicant who is not otherwise eligible for a license to practice veterinary medicine under this Article, without examination, if the applicant meets the criteria established in subdivisions (1) through (6) of subsection (a) of this section. (1959, c. 744; 1973, c. 1106, s. 1; 1981, c. 767, s. 7; 1993, c. 500, s. 11; 1999-203, ss. 1, 2.)

§ 90-187.3A: Expired pursuant to Session Laws 2018-113, s. 15.1(c), effective October 1, 2018.

§ 90-187.4. Temporary permit.

(a) The Board may issue, without examination, a temporary permit to practice veterinary medicine in this State:

(1) To a qualified applicant for license pending examination, provided that such temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued.

(2) To a nonresident veterinarian validly licensed in another state, territory, or district of the United States or a foreign country, provided that such temporary permit shall be issued for a period of no more than 60 days.

(3) Temporary permits, as provided in (1) and (2) above, may contain any restrictions as to time, place, or supervision, that the Board deems appropriate. The State Veterinarian shall be notified as to the issuance of all temporary permits.

(b) A temporary permit may be summarily revoked by majority vote of the Board without a hearing. (1903, c. 503, ss. 3, 5, 8; Rev., s. 5435; C.S., s. 6758; 1951, c. 749; 1961, c. 353, s. 5; 1973, c. 1106, s. 1; 1993, c. 500, s. 12.)

§ 90-187.5. License renewal.

All licenses and limited licenses shall expire annually or biennially, as determined by the Board, on December 31 but may be renewed by application to the Board and payment of the renewal fee established and published by the Board. The executive director shall issue a new certificate of registration to all persons registering under this Article. Failure to apply for renewal within 60 days after expiration shall result in automatic revocation of the license or limited license and any person who shall practice veterinary medicine after such revocation shall be practicing in violation of this Article. Provided, that any person may renew an expired license or limited license at any time within two years following its expiration upon application and compliance with Board requirements and the payment of all applicable fees in amounts allowed by this Article or administrative rule of the Board; and further provided, that the applicant is otherwise eligible under this Article or administrative rules of the Board to have the license renewed. (1961, c. 353, s. 6; 1973, c. 1106, s. 1; 1993, c. 500, s. 13.)

§ 90-187.6. Veterinary technicians and veterinary employees.

(a) "Veterinary technicians," "veterinary student interns," and "veterinary student preceptees," before performing any services otherwise prohibited to persons not licensed or registered under this Article, shall be approved by and registered with the Board. The Board shall be responsible for all matters pertaining to the qualifications, registration, discipline, and revocation of registration of these persons, under this Article and rules issued by the Board.

(b) The services of a technician, intern, preceptee, or other veterinary employee shall be limited to services under the direction and supervision of a veterinarian. This employee shall receive no fee or compensation of any kind for services other than any salary or compensation paid to the employee by the veterinarian or veterinary facility by which the employee is employed. The employee may participate in the operation of a branch office, clinic, or allied establishment only to the extent allowable under and as defined by this Article or by rules issued by the Board.

(c) An employee under the supervision of a veterinarian may perform such duties as are required in the physical care of animals and in carrying out medical orders as prescribed by the veterinarian, requiring an understanding of animal science but not requiring the professional services as set forth in G.S. 90-181(6)a. In addition, a veterinary technician may assist veterinarians in diagnosis, laboratory analysis, anesthesia, and surgical procedures. Neither the employee nor the veterinary technician may perform any act producing an irreversible change in the animal. An employee, other than a veterinary technician, intern, or preceptee, may, under the direct supervision of a veterinarian, perform duties including collection of specimen; testing for intestinal parasites; collecting blood; testing for heartworms and conducting other laboratory tests; taking radiographs; and cleaning and polishing teeth, provided that the employee has had sufficient on-the-job training by a veterinarian to perform these specified duties in a competent manner. It shall be the responsibility of the veterinarian supervising the employee to ascertain that the employee performs these specified duties assigned to the employee in a competent manner. These specified duties shall be performed under the direct supervision of the veterinarian in charge of administering care to the patient.

(d) Veterinary student interns, in addition to all of the services permitted to veterinary technicians, may, under the direct personal supervision of a veterinarian, perform surgery and administer therapeutic or prophylactic drugs.

(e) Veterinary student preceptees, in addition to all of the services permitted to veterinary technicians and veterinary student interns, may, upon the direction of the employing veterinarian, make ambulatory calls and hospital and clinic diagnoses, prescriptions and treatments.

(f) Any person registered as a veterinary technician, veterinary student intern, or veterinary student preceptee, who shall practice veterinary medicine except as provided herein, shall be guilty of a Class 1 misdemeanor, and shall also be subject to revocation of registration. Any nonregistered veterinary employee employed under subsection (c) who practices veterinary medicine except as provided under that subsection shall be guilty of a Class 1 misdemeanor.

(g) Any veterinarian directing or permitting a veterinary technician, intern, preceptee or other employee to perform a task or procedure not specifically allowed under this Article and the rules of the Board shall be guilty of a Class 1 misdemeanor. (1973, c. 1106, s. 1; 1981, c. 767, ss. 8-11; 1993, c. 500, s. 14; c. 539, ss. 634, 635; 1995, c. 509, s. 42.)

§ 90-187.7. Abandonment of animals; notice to owner; relief from liability for disposal; "abandoned" defined.

(a) Any animal placed in the custody of a licensed veterinarian for treatment, boarding or other care, which shall be unclaimed by its owner or his agent for a period of more than 10 days after written notice by registered or certified mail, return receipt requested, to the owner or his agent at his last known address, shall be deemed to be abandoned and may be turned over to the nearest humane society, or dog pound or disposed of as such custodian may deem proper.

(b) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian, as provided in subsection (a) of this section, shall relieve the licensed

veterinarian and any custodian to whom such animal may be given of any further liability for disposal.

(c) For the purpose of this Article the term "abandoned" shall mean to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner, or his agent. Such abandonment shall constitute the relinquishment of all rights and claims by the owner to such animal. (1973, c. 1106, s. 1.)

§ 90-187.8. Discipline of licensees.

(a) Upon complaint or information, and within the Board's discretion, the Board may revoke or suspend a license issued under this Article, may otherwise discipline a person licensed under this Article, or may deny a license required by this Article in accordance with the provisions of this Article, Board rules, and Chapter 150B of the General Statutes. As used in this section, the word "license" includes a license, a limited license, a veterinary faculty certificate, a zoo veterinary certificate, and a registration of a veterinary technician, a veterinary student intern, and a veterinary student preceptee.

(b) The Board may impose and collect from a licensee a civil monetary penalty of up to five thousand dollars ($5,000) for each violation of this Article or a rule adopted under this Article. The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

The amount of the civil penalty, up to the maximum, shall be determined upon a finding of one or more of the following factors:

(1) The degree and extent of harm to the public health or to the health of the animal under the licensee's care.
(2) The duration and gravity of the violation.
(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception either to the client or to the Board, or both.
(5) The prior disciplinary record with the Board of the licensee.
(6) Whether and the extent to which the licensee profited by the violation.

(c) Grounds for disciplinary action shall include but not be limited to the following:

(1) The employment of fraud, misrepresentation, or deception in obtaining a license.
(2) An adjudication of insanity or incompetency.
(3) The impairment of an individual holding a license or registration issued by the Board, when the impairment interferes with that individual's ability to practice within the scope of the license or registration with reasonable skill and safety, and in a manner not harmful to the public or to animals under the individual's care.
(4) The use of advertising or solicitation which is false, misleading, or deceptive.
(5) Conviction of a felony or other public offense involving moral turpitude.
(6) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.
(7) Having professional association with or knowingly employing any person practicing veterinary medicine unlawfully.

(8) Fraud or dishonesty in the application or reporting of any test for disease in animals.

(9) Failure to keep veterinary premises and equipment in a clean and sanitary condition, violating an administrative rule of the Board concerning the minimum sanitary requirements of veterinary hospitals, veterinary clinics, or other practice facilities, or violating other State or federal statutes, rules, or regulations concerning the disposal of medical waste.

(10) Failure to report, as required by the laws and regulations of the State, or making false report of, any contagious or infectious disease.

(11) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates.

(12) Conviction of a criminal offense involving cruelty to animals or the act of cruelty to animals.

(13) Revocation of a license to practice veterinary medicine by another state, territory or district of the United States only if the grounds for revocation in the other jurisdiction would also result in revocation of the practitioner's license in this State.

(14) Unprofessional conduct as defined in regulations adopted by the Board.

(15) Conviction of a federal or state criminal offense involving the illegal use, prescription, sale, or handling of controlled substances, other drugs, or medicines.

(16) The illegal use, dispensing, prescription, sale, or handling of controlled substances or other drugs and medicines.

(17) Failure to comply with regulations of the United States Food and Drug Administration regarding biologics, controlled substances, drugs, or medicines.

(18) Selling, dispensing, prescribing, or allowing the sale, dispensing, or prescription of biologics, controlled substances, drugs, or medicines without a veterinarian-client-patient relationship with respect to the sale, dispensing, or prescription.

(19) Acts or behavior constituting fraud, dishonesty, or misrepresentation in dealing with the Board or in the veterinarian-client-patient relationship. (1903, c. 503, s. 10; Rev., s. 5436; C.S., s. 6759; 1953, c. 1041, s. 16; 1961, c. 353, s. 7; 1973, c. 1106, s. 1; c. 1331, s. 3; 1981, c. 767, ss. 12, 13; 1987, c. 827, s. 1; 1993, c. 500, s. 15; 1998-215, s. 136; 2019-170, s. 1(b).)

§ 90-187.9. Reinstatement.

(a) A person licensed or registered as a veterinary technician under this Article who has had his or her license or registration revoked for failure to apply for renewal may be reinstated at any time within three years following revocation upon filing an application for reinstatement and paying all accrued renewal fees and the reinstatement fee. As a condition of reinstatement, the applicant shall submit proof to the Board that the applicant has earned the continuing education credits required under this Article and rules adopted by the Board for each year the license or registration was revoked.

(b) A person whose license has been revoked for more than three years for failure to apply for license renewal may qualify for licensure upon filing an application with the Board and meeting the requirements of G.S. 90-187 or G.S. 90-187.3.

(c) A person whose registration has been revoked for more than three years for failure to apply for registration renewal may qualify for registration upon filing an application with the Board and meeting the requirements of G.S. 90-186(4) and any applicable rules adopted by the Board.

(d) Subject to conditions as may be imposed by the Board, any person whose license or registration is revoked for reasons other than failure to apply for renewal may, in the Board's discretion, be relicensed or reregistered at any time by majority vote of the Board upon submitting written application to the Board showing cause for justifying relicensure or reregistration. (1961, c. 353, s. 8; 1973, c. 1106, s. 1; 2014-63, s. 2.)

§ 90-187.10. (Contingent expiration date – see Editor's note) Necessity for license; certain practices exempted.

No person shall engage in the practice of veterinary medicine or own all or part interest in a veterinary medical practice in this State or attempt to do so without having first applied for and obtained a license for such purpose from the North Carolina Veterinary Medical Board, or without having first obtained from the Board a certificate of renewal of license for the calendar year in which the person proposes to practice and until the person shall have been first licensed and registered for such practice in the manner provided in this Article and the rules and regulations of the Board.

Nothing in this Article shall be construed to prohibit:

(1) Any person from administering to food animals or to animals maintained for the production of food or fiber; administering first aid, not including surgical or invasive procedures, to companion animals in emergency situations; or administering routine disease prevention pharmaceuticals to companion animals; provided that the animals are owned by the person or the person's employer, except when the ownership is asserted for the purpose of circumventing the provisions of this Article;

(2) Any person who is a regular student or instructor in a legally chartered college from the performance of those duties and actions assigned as the person's responsibility in teaching or research;

(3) Any veterinarian not licensed by the Board who is a member of the Armed Forces of the United States or who is an employee of the United States Department of Agriculture, the United States Public Health Service or other federal agency, or the State of North Carolina, or political subdivision thereof, from performing official duties while so commissioned or employed;

(4) Any person from such practices as permitted under the provisions of G.S. 90-185, House Bill 659, Chapter 17, Public Laws 1937, or House Bill 358, Chapter 5, Private Laws 1941;

(5) Any person from dehorning or castrating male food animals;

(6) Any person from providing for or assisting in the practice of artificial insemination;

(7) Any physician licensed to practice medicine in this State, or the physician's assistant, while engaged in medical research;

(8) Any certified rabies vaccinator appointed, certified and acting within the provisions of G.S. 130A-186;

(9) Any veterinarian licensed to practice in another state from examining livestock or acting as a consultant in North Carolina, provided the consulting veterinarian is directly supervised by a veterinarian licensed by the Board who must, at or prior to the first instance of consulting, notify the Board, in writing, that he or she is supervising the consulting veterinarian, give the Board the name, address, and licensure status of the consulting veterinarian, and also verify to the Board that the supervising veterinarian assumes responsibility for the professional acts of the consulting veterinarian; and provided further, that the consultation by the veterinarian in North Carolina does not exceed 10 days or parts thereof per year, and further that all infectious or contagious diseases diagnosed are reported to the State Veterinarian within 48 hours; or

(10) Any person employed by the North Carolina Department of Agriculture and Consumer Services as a livestock inspector or by the U.S. Department of Agriculture as an animal health technician from performing regular duties assigned to him or her during the course and scope of that person's employment.

(11) Any farrier or person actively engaged in the activity or profession of shoeing hooved animals as long as his or her actions are limited to the art of shoeing hooved animals or trimming, clipping, or maintaining hooves. (1903, c. 503, s. 12; Rev., s. 5438; C.S., s. 6761; 1961, c. 353, s. 9; 1973, c. 1106, s. 1; 1983, c. 891, s. 11; 1993, c. 500, s. 16; 1995, c. 509, s. 43; 1997-261, s. 11; 2011-183, s. 62; 2017-10, s. 3.6; 2017-146, s. 1; 2019-170, s. 2(a).)

§ 90-187.10. (Contingent effective date – see Editor's note) Necessity for license; certain practices exempted.

No individual shall engage in the practice of veterinary medicine without having a veterinary license from the Board. No person, as defined in G.S. 90-181(5), may own a veterinary facility without having a veterinary facility permit from the Board.

Nothing in this Article shall be construed to prohibit:

(1) Any person from administering to food animals or to animals maintained for the production of food or fiber; administering first aid, not including surgical or invasive procedures, to companion animals in emergency situations; or administering routine disease prevention pharmaceuticals to companion animals; provided that the animals are owned by the person or the person's employer, except when the ownership is asserted for the purpose of circumventing the provisions of this Article;

(2) Any person who is a regular student or instructor in a legally chartered college from the performance of those duties and actions assigned as the person's responsibility in teaching or research;

(3) Any veterinarian not licensed by the Board who is a member of the Armed Forces of the United States or who is an employee of the United States Department of Agriculture, the United States Public Health Service or other federal agency, or the State of North Carolina, or political subdivision thereof, from performing official duties while so commissioned or employed;

(4) Any person from such practices as permitted under the provisions of G.S. 90-185, House Bill 659, Chapter 17, Public Laws 1937, or House Bill 358, Chapter 5, Private Laws 1941;

(5) Any person from dehorning or castrating male food animals;

(6) Any person from providing for or assisting in the practice of artificial insemination;

(7) Any physician licensed to practice medicine in this State, or the physician's assistant, while engaged in medical research;

(8) Any certified rabies vaccinator appointed, certified and acting within the provisions of G.S. 130A-186;

(9) Any veterinarian licensed to practice in another state from examining livestock or acting as a consultant in North Carolina, provided the consulting veterinarian is directly supervised by a veterinarian licensed by the Board who must, at or prior to the first instance of consulting, notify the Board, in writing, that he or she is supervising the consulting veterinarian, give the Board the name, address, and licensure status of the consulting veterinarian, and also verify to the Board that the supervising veterinarian assumes responsibility for the professional acts of the consulting veterinarian; and provided further, that the consultation by the veterinarian in North Carolina does not exceed 10 days or parts thereof per year, and further that all infectious or contagious diseases diagnosed are reported to the State Veterinarian within 48 hours; or

(10) Any person employed by the North Carolina Department of Agriculture and Consumer Services as a livestock inspector or by the U.S. Department of Agriculture as an animal health technician from performing regular duties assigned to him or her during the course and scope of that person's employment.

(11) Any farrier or person actively engaged in the activity or profession of shoeing hooved animals as long as his or her actions are limited to the art of shoeing hooved animals or trimming, clipping, or maintaining hooves. (1903, c. 503, s. 12; Rev., s. 5438; C.S., s. 6761; 1961, c. 353, s. 9; 1973, c. 1106, s. 1; 1983, c. 891, s. 11; 1993, c. 500, s. 16; 1995, c. 509, s. 43; 1997-261, s. 11; 2011-183, s. 62; 2017-10, s. 3.6; 2017-146, s. 1; 2019-170, ss. 2(a), 6(a).)

§ 90-187.11. (Contingent repeal date – see Editor's note) Partnership, corporate, or sole proprietorship practice.

A veterinary medical practice may be conducted as a sole proprietorship, by a partnership, or by a duly registered professional corporation.

Whenever the practice of veterinary medicine is carried on by a partnership, all partners must be licensed.

It shall be unlawful for any corporation to practice or offer to practice veterinary medicine as defined in this Article, except as provided for in Chapter 55B of the General Statutes of North Carolina. (1961, c. 353, s. 8; 1973, c. 1106, s. 1; 1993, c. 500, s. 17; 2019-170, s. 6(b).)

§ 90-187.12. (Contingent expiration date – see Editor's note) Unauthorized practice; penalty.

If any person shall

(1) Practice or attempt to practice veterinary medicine in this State without first having obtained a license or temporary permit from the Board; or

(2) Practice veterinary medicine without the renewal of his license, as provided in G.S. 90-187.5; or

(3) Practice or attempt to practice veterinary medicine while his license is revoked, or suspended, or when a certificate of license has been refused; or

(4) Violate any of the provisions of this Article,

said person shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense. (1913, c. 129, s. 2; C.S., s. 6762; 1961, c. 353, s. 10; c. 756; 1973, c. 1106, s. 1; 1993, c. 539, s. 636; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-187.12. (Contingent effective date – see Editor's note) Unauthorized practice; penalty.

An individual shall be guilty of a Class 1 misdemeanor if the individual engages in any of the following activities:

(1) Practices or attempts to practice veterinary medicine in this State without first having obtained a license or temporary permit from the Board.

(2) Practices veterinary medicine without renewing the individual's license, as provided in G.S. 90-187.5.

(3) Practices or attempts to practice veterinary medicine while the individual's license is revoked, or suspended, or when a certificate of license has been refused.

(4) Violates any of the provisions of this Article. (1913, c. 129, s. 2; C.S., s. 6762; 1961, c. 353, s. 10; c. 756; 1973, c. 1106, s. 1; 1993, c. 539, s. 636; 1994, Ex. Sess., c. 24, s. 14(c); 2019, c. 170, s. 6(c).)

§ 90-187.13. Injunctions.

The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business or in which the alleged acts occurred. (1981, c. 767, s. 14; 1987 (Reg. Sess., 1988), c. 1037, s. 102.)

§ 90-187.14. Veterinary faculty certificates and zoo veterinary certificates.

(a) The Board may, upon application, issue veterinary faculty certificates in lieu of a license that otherwise would be required by this Article.

(b) The Board may, upon application, issue zoo veterinary certificates in lieu of a license that otherwise would be required by this Article, to veterinarians employed by the North Carolina State Zoo.

(c) The Board shall determine by administrative rule the application procedure, fees, criteria for the issuance, continuing education, renewal, suspension or revocation, and the scope of practice under the veterinary faculty certificate or the zoo veterinary certificate. There shall be

an annual renewal of each certificate and all persons holding these certificates shall be subject to the jurisdiction of the Board in all respects under this Article. (1993, c. 500, s. 18.)

§ 90-187.15. Board agreement for programs for impaired veterinary personnel.

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired veterinary personnel peer review programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes to apply to the operation of impaired veterinary personnel programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of nonpublic information and of the process; and (ix) other necessary measures.

(d) Upon investigation and review of a veterinarian licensed by the Board or a veterinary technician registered with the Board, or upon receipt of a complaint or other information, an impaired veterinary personnel organization that enters into an agreement with the Board shall report to the Board detailed information about any veterinarian licensed or veterinary technician registered by the Board if:

(1) The veterinarian or veterinary technician constitutes an imminent danger to the public, to patients, or to himself or herself.

(2) The veterinarian or veterinary technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential information or other nonpublic information acquired, created, or used in good faith by an impaired veterinary personnel organization or the Board regarding a participant pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document by the Board pursuant to Chapter

132 of the General Statutes. No person participating in good faith in an impaired veterinary personnel program developed under this section shall be required in a civil case to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

(f) Impaired veterinary personnel activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State-directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws. (2003-139, s. 1.)

§ 90-187.16. Practice of veterinary medicine allowed at registered animal shelters.

Notwithstanding any rule adopted by the Board prescribing minimum facility and practice standards for any location where veterinary medicine is practiced, a licensed veterinarian may practice veterinary medicine, including surgery and invasive procedures, at an animal shelter registered with the Department of Agriculture and Consumer Services, consistent with any rules adopted by the Department of Agriculture and Consumer Services concerning animal shelters. (2019-170, s. 2(b).)

§§ 90-188 through 90-202.1. Recodified as §§ 90-202.2 to 90-202.14.

Article 12A.

Podiatrists.

§ 90-202.2. "Podiatry" defined.

(a) Podiatry as defined by this Article is the surgical, medical, or mechanical treatment of all ailments of the human foot and ankle, and their related soft tissue structures to the level of the myotendinous junction. Excluded from the definition of podiatry is the amputation of the entire foot, the administration of an anesthetic other than local, and the surgical correction of clubfoot of an infant two years of age or less.

(b) Except for procedures for bone spurs and simple soft tissue procedures, any surgery on the ankle or on the soft tissue structures related to the ankle, any amputations, and any surgical correction of clubfoot shall be performed by a podiatrist only in a hospital licensed under Article 5 of Chapter 131E of the General Statutes or in a multispecialty ambulatory surgical facility that is not a licensed office setting, and that is licensed under Part D of Article 6 of Chapter 131E of the General Statutes. Before performing any of the surgeries referred to in this subsection in a multispecialty ambulatory surgical facility, the podiatrist shall have applied for and been granted privileges to perform this surgery in the multispecialty ambulatory surgical facility. The granting of these privileges shall be based upon the same criteria for granting hospital privileges under G.S. 131E-85.

(c) The North Carolina Board of Podiatry Examiners shall maintain a list of podiatrists qualified to perform the surgeries listed in subsection (b) of this section, along with specific information on the surgical training successfully completed by each licensee. (1919, c. 78, s. 2; C.S., s. 6763; 1945, c. 126; 1963, c. 1195, s. 2; 1971, c. 1211; 1975, c. 672, s. 1; 1995, c. 248, s. 1.)

§ 90-202.3. Unlawful to practice unless registered.

No person shall practice podiatry unless he shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice podiatry without being duly licensed and registered, as provided in this Article, he shall not be allowed to maintain any action to collect any fee for such services. Any person who engages in the practice of podiatry unless licensed and registered as hereinabove defined, or who attempts to do so, or who professes to do so, shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a separate offense. (1919, c. 78, s. 1; C.S., s. 6764; 1963, c. 1195, s. 2; 1967, c. 1217, s. 2; 1975, c. 672, s. 1; 1993, c. 539, s. 637; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-202.4. Board of Podiatry Examiners; terms of office; powers; duties.

(a) There shall be established a Board of Podiatry Examiners for the State of North Carolina. This Board shall consist of four members appointed by the Governor. Three of the members shall be licensed podiatrists who have practiced podiatry in North Carolina for not less than seven years immediately preceding their election and who are elected and nominated to the Governor as hereinafter provided. The other member shall be a person chosen by the Governor to represent the public at large. The public member shall not be a health care provider nor may he or she be the spouse of a health care provider. For purposes of Board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is chosen and qualified.

(c) Podiatrist members chosen as provided for in subsection (d) shall be selected upon the expiration of the respective terms of the members of the present Board of Podiatry Examiners. Membership on the Board resulting from appointment before July 1, 1981, shall not be considered in determining the permissible length of service under subsection (b). The Governor shall appoint the public member not later than July 1, 1981.

(d) The Governor shall appoint podiatrist members of the Board from a list provided by the Board of Podiatry Examiners. For each vacancy, the Board shall submit at least two names to the Governor. All nominations of podiatrist members of the Board shall be conducted by the Board of Podiatry Examiners, which is hereby constituted a Board of Podiatry Elections. Every podiatrist with a current North Carolina license residing in this State shall be eligible to vote in all elections. The list of licensed podiatrists shall constitute the registration list for elections. The Board of Podiatry Elections is authorized to make rules relative to the conduct of these elections, provided such rules are not in conflict with the provisions of this section and provided that notice shall be given to all licensed podiatrists residing in North Carolina. All such rules shall be adopted subject to the procedures of Chapter 150B of the General Statutes of North Carolina. From any decision of the Board of Podiatry Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner provided by Chapter 150B of the General Statutes.

(e) Any initial or regular member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the initial or regular podiatrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least two names submitted by the podiatrist members of the Board. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term.

(f) The Board is authorized to elect its own presiding and other officers.

(g) The Board, in carrying out its responsibilities, shall have authority to employ personnel, full-time or part-time, as shall be determined to be necessary in the work of the Board. The Board shall have authority to pay compensation to the member of the Board holding the position of secretary-treasurer on a basis to be determined by the Board; Provided that in the event the positions of secretary and treasurer are not combined but are held by different members of the Board, the Board shall have authority to pay compensation to the member holding the position of secretary and to the member holding the position of treasurer, if the Board so chooses, on a basis to be determined by the Board. The Board is required to keep proper and complete records with respect to all of its activities, financial and otherwise, and shall on or before January 30 of each year submit a written report to the Governor and to such other officials and/or agencies as other sections of the General Statutes may require, said report covering the activities of the Board during the previous calendar year, which report shall include a verified financial statement. The Board is authorized to adopt rules and regulations governing its proceedings and the practice of podiatry in this State, not inconsistent with the provisions of this Article. The Board shall maintain at all times an up-to-date list of the names and addresses of each licensed podiatrist in North Carolina, which list shall be available for inspection and which shall be included in the annual report referred to above. (1919, c. 78, s. 3; C.S., s. 6765; 1963, c. 1195, s. 2; 1967, c. 1217, s. 3; 1975, c. 672, s. 1; 1981, c. 659, s. 1; 1983, c. 217, ss. 1-4; 1987, c. 827, s. 1.)

§ 90-202.5. Applicants to be examined; examination fee; requirements; temporary licenses.

(a) Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee not to exceed three hundred fifty dollars ($350.00), together with proof that the applicant is of good moral character, and has obtained a preliminary education equivalent to four years of instruction in a high school and three years of instruction in a college or university approved by the American Association of Colleges and Universities. Before taking the examination, the applicant must be a graduate of a college of podiatric medicine accredited by the National Council on Education of the American Podiatry Association.

Effective January 1, 1992, every applicant, as a prerequisite for licensure under this Article, shall complete one year of clinical residency or other equivalent postgraduate clinical program approved by the North Carolina Board of Podiatry Examiners and, before taking the North Carolina podiatry licensure examination, shall present evidence to the Board that he has passed the National Board Examination.

Any person licensed to practice podiatry on or before January 1, 1992, who is actively involved in a postgraduate clinical program approved by the Board shall be permitted to practice podiatry in the approved program pending its completion.

(b) Effective January 1, 1992, the Board may issue a temporary license to practice podiatry to any applicant for licensure, for a period and under conditions established by the Board, while the person resides in North Carolina and is participating in a clinical residency or other equivalent postgraduate clinical program approved by the Board. A temporary license is valid only while the

licensee is actively participating in the program and may not be extended beyond the determined length of training set by the Board. (1919, c. 78, s. 9; C.S., s. 6766; 1963, c. 1195, ss. 1, 2; 1967, c. 1217, s. 4; 1975, c. 672, s. 1; 1981, c. 659, s. 2; 1983, c. 217, s. 5; 1989, c. 214; 1991, c. 457, s. 1.)

§ 90-202.6. Examinations; subjects; certificates.

(a) The Board of Podiatry Examiners shall hold at least one examination annually for the purpose of examining applicants under this Article. The examination shall be at such time and place as the Board may see fit. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide, preserve and keep a complete record of all its transactions. Examinations for registration under this Article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral or clinical, as the Board may determine, and may include the following subjects: anatomy, physiology, bacteriology, chemistry, dermatology, podiatry, surgery, materia medica, pharmacology and pathology. No applicant shall be granted a license certificate by the Board unless he obtains a general average of 75 or over, and not less than fifty percent (50%) in any one subject. After such examination the Board shall without unnecessary delay, act on same and issue license certificates to the successful candidates signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to each licensed podiatrist in the State of North Carolina.

(b) The Board may waive the administration of a written examination prepared by it for all initial applicants who have successfully completed the National Board of Podiatry Examination. The Board may administer to such applicants and require them to complete successfully an examination to test clinical competency in the practice of podiatry.

(c) Any applicant who fails to pass his examination shall within one year be entitled to reexamination upon the payment of an amount not to exceed three hundred fifty dollars ($350.00), but not more than two reexaminations shall be allowed any one applicant prior to filing a new application. Should he fail to pass his third examination, he shall file a new application before he can again be examined. (1919, c. 78, s. 4; C.S., s. 6767; 1963, c. 1195, s. 2; 1967, c. 1217, s. 5; 1975, c. 672, s. 1; 1981, c. 659, ss. 3, 4; 1983, c. 217, s. 6; 1991, c. 457, s. 2.)

§ 90-202.7. Applicants licensed in other states.

If an applicant for licensure is already licensed in another state to practice podiatry, the Board shall issue a license to practice podiatry to the applicant upon evidence that:

(1) The applicant is currently an active, competent practitioner in good standing; and
(2) The applicant has practiced at least five years immediately preceding his or her application with at least three of those five years being in a state that grants similar reciprocity to North Carolina podiatrists; and
(3) The applicant currently holds a valid license in another state; and
(4) No disciplinary proceeding or unresolved complaint is pending anywhere at the time a license is to be issued by this State; and
(5) The licensure requirements in the other state are equivalent to or higher than those required by this State, and the licensure requirements of that other state grant similar reciprocity to podiatrists licensed in North Carolina.

Any license issued upon the application of any podiatrist from any other state shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina

State Board of Podiatry Examiners upon examination of applicants, and the rights and privileges to practice the profession of podiatry under any license so issued shall be subject to the same duties, obligations, restrictions and conditions as imposed by this Article on podiatrists originally examined by the North Carolina State Board of Podiatry Examiners. (1919, c. 78, s. 6; C.S., s. 6768; 1967, c. 1217, s. 6; 1975, c. 672, s. 1; 1981, c. 659, s. 5; 1983, c. 217, s. 7; 1991, c. 457, s. 3.)

§ 90-202.8. Revocation of certificate; grounds for; suspension of certificate.

(a) The North Carolina State Board of Podiatry Examiners, in accordance with Chapter 150B (Administrative Procedure Act) of the General Statutes, shall have the power and authority to: (i) refuse to issue a license to practice podiatry; (ii) refuse to issue a certificate of renewal of a license to practice podiatry; (iii) revoke or suspend a license to practice podiatry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper;

in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;

(2) Is a chronic or persistent user of alcohol intoxicants or habit-forming drugs or narcotics to the extent that the same impairs his ability to practice podiatry;

(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;

(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;

(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any state or federal narcotic or barbiturate law;

(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;

(7) Is mentally, emotionally, or physically unfit to practice podiatry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice podiatry unless or until such person shall have been subsequently lawfully declared to be mentally competent;

(8) Has advertised services in a false, deceptive, or misleading manner;

(9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of podiatry or in attempting to fraudulently obtain a license to practice podiatry;

(10) Has engaged in such immoral conduct as to discredit the podiatry profession;

(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;

(12) Has been negligent in the practice of podiatry;

(13) Is not professionally competent in the practice of podiatry;

(14) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;
(15) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
(16) Has committed any fraudulent or misleading acts in the practice of podiatry;
(17), (18) Repealed by Session Laws 1981, c. 659, s. 7.
(19) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of podiatry;
(20) Has persistently maintained, in the practice of podiatry, unsanitary offices, practices, or techniques;
(21) Is a menace to the public health by reason of having a serious communicable disease;
(22) Has distributed or caused to be distributed any intoxicant, drug, or narcotic for any other than a lawful purpose; or
(23) Has engaged in any unprofessional conduct as the same may be, from time to time, defined by the rules and regulations of the Board.

(a1) The Board shall establish a grievance committee to receive complaints concerning a practitioner's business or professional practices. The committee shall consider all complaints and determine whether there is probable cause. After its review, the committee may dismiss any complaint when it appears that probable cause of a violation cannot be established. Complaints which are not dismissed shall be referred to the Board.

(b) If any person engages in or attempts to engage in the practice of podiatry while his license is suspended, his license to practice podiatry in the State of North Carolina may be permanently revoked.

(c) Action of the Board shall be subject to judicial review as provided by Chapter 150B (Administrative Procedure Act). (1919, c. 78, ss. 12, 13; C.S., s. 6772; 1953, c. 1041, ss. 17, 18; 1963, c. 1195, s. 2; 1967, c. 691, s. 45; 1973, c. 1331, s. 3; 1975, c. 672, ss. 1, 2; 1981, c. 659, ss. 6-8; 1987, c. 827, s. 1; 1991, c. 636, s. 6; 1997-456, s. 27.)

§ 90-202.9. Fees for certificates and examinations; compensation of Board.

To provide a fund in order to carry out the provisions of this Article the Board shall charge not more than one hundred dollars ($100.00) for each license issued and one hundred dollars ($100.00) for each examination. From such funds the Board shall pay its members at the rate set out in G.S. 93B-5: Provided, that at no time shall the expenses exceed the cash balance on hand. (1919, c. 78, s. 14; C.S., s. 6773; 1967, c. 1217, s. 9; 1975, c. 672, s. 1.)

§ 90-202.10. Annual fee; cancellation or renewal of license.

On or before the first day of July of each year every podiatrist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of Podiatry Examiners not to exceed two hundred dollars ($200.00) and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this section shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of 30 days after the first day of July of each year, and such delinquent podiatrist shall pay a penalty for reinstatement of twenty-five dollars ($25.00) for each succeeding month of delinquency until a

six-month period of delinquency exists. After a six-month period of delinquency exists or after January 1 following the July 1 deadline, the said podiatrist must appear before the North Carolina Board of Podiatry Examiners and take a new examination before being allowed to practice podiatry in the State of North Carolina. (1931, c. 191; 1963, c. 1195, s. 2; 1967, c. 1217, s. 10; 1975, c. 672, s. 1; 1977, c. 621; 1991, c. 457, s. 4.)

§ 90-202.11. Continuing education courses required.

Beginning May 1, 1976, all registered podiatrists then or thereafter licensed in the State of North Carolina shall be required to take annual courses of study in subjects relating to the practice of the profession of podiatry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The length of study shall be prescribed by the Board but shall not exceed 25 hours in any calendar year. Attendance must be at a course or courses approved by the Board. Attendance at any course or courses of study are to be certified to the Board upon a form provided by the Board and shall be submitted by each registered podiatrist at the time he makes application to the Board for the renewal of his license and payment of his renewal fee. The Board is authorized to treat funds set aside for the purpose of continuing education as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. This requirement may be waived by the Board in cases of certified illness or undue hardship as provided in the rules and regulations of the Board. (1975, c. 672, s. 1.)

§ 90-202.12. Free choice by patient guaranteed.

No agency of the State, county or municipality, nor any commission or clinic, nor any board administering relief, social security, health insurance or health service under the laws of the State of North Carolina shall deny to the recipients or beneficiaries of their aid or services the freedom to choose the provider of care or service which are within the scope of practice of a duly licensed podiatrist or duly licensed physician as defined in this Chapter. (1967, c. 690, s. 3; 1975, c. 672, s. 1.)

§ 90-202.13. Injunctions.

The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business or in which the alleged acts occurred. (1975, c. 672, s. 1; 1981, c. 659, s. 9; 1987 (Reg. Sess., 1988), c. 1037, s. 103.)

§ 90-202.14. Not applicable to physicians.

Nothing in this Article shall apply to a physician licensed to practice medicine or to a person acting under the supervision or at his direction in the course of such practice. (1975, c. 672, s. 1.)

Article 13.

Embalmers and Funeral Directors.

§§ 90-203 through 90-210.17: Recodified as §§ 90-210.18 to 90-210.25.

Article 13B.

Funeral and Burial Trust Funds.

§ 90-210.30 through 90-210.39: Repealed by 1991 (Regular Session, 1992), c. 901, s. 1.

Article 13A.

Practice of Funeral Service.

§ 90-210.18: Repealed by Session Laws 2004-192, s. 1, effective January 1, 2005.

§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.

(2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.

(3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.

(4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

(5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on December 31 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a

licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved. (2004-192, s. 2; 2007-531, s. 1.)

§ 90-210.19. Board members' oath of office.

The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which said oath shall be administered by a person qualified to administer such oath and shall be filed in the office of the Secretary of State. (1901, c. 338, ss. 3, 4; Rev., s. 4385; C.S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 1; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.20. Definitions.

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio, television station, or electronic medium.

(b) "Board" means the North Carolina Board of Funeral Service.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed any caskets or other funeral merchandise; in which or on the premises of which there is not located any preparation room; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(c2) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming.

(g) "Funeral director" means any person engaged in the practice of funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the practice of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the practice of funeral service.

(j) "Funeral service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as a resident trainee with the Board. (1957, c. 1240, s. 2; 1975, c. 571; 1979, c. 461, s. 6; 1987, c. 430, s. 2; c. 879, s. 6.2; 1997-399, s. 1; 2001-294, s. 2; 2003-420, ss. 1, 3; 2007-531, s. 2.)

§ 90-210.21. Repealed by Session Laws 1987, c. 430, s. 3.

§ 90-210.22. Required meetings of the Board.

The Board shall hold at least four meetings in each year. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C.S., s. 6780; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571; 1991 (Reg. Sess., 1992), c. 901, s. 4; 2003-420, s. 4.)

§ 90-210.23. Powers and duties of the Board.

(a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by such member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business

for which the person is a licensee or resident trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its records shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee, embalming facility, and funeral service establishment shall provide the Board with a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

(d1) The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

In any show cause hearing before the Board held under the authority of Chapter 150B of the General Statutes where the Board imposes discipline against a licensee, the Board may recover the costs, other than attorneys' fees, of holding the hearing against all respondents jointly, not to exceed two thousand five hundred dollars ($2,500).

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments and embalming facilities, their operation, and the licenses under which they are operated, and to enforce as provided by law the rules, regulations, and requirements of the Division of Health Services and of the city, town, or county in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred. (1901, c. 338, ss. 5, 6, 7, 8, 11; Rev., ss. 4386, 4387, 4389; C.S., ss. 6779, 6780, 6783; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461, ss. 8, 9; 1987, c. 827, s. 1; 1991, c. 528, s. 3; 1993, c. 164, s. 1; 1997-399, ss. 2, 3; 2003-420, s. 5(a), (b); 2007-531, s. 3.)

§ 90-210.24. Inspector.

(a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the North Carolina Board of Funeral Service." No person is eligible for appointment as inspector unless at the time of the appointment the person is licensed under this Article as a funeral service licensee.

(b) To determine compliance with the provisions of this Article and regulations promulgated under this Article, inspectors may

(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being conducted or a body is being embalmed, to inspect the records, office, establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;

(2) Enter any hospital, nursing home, or other institution from which a dead human body has been removed by any person licensed under this Article or their designated representative to inspect records pertaining to the removal and its authorization; and

(3) May inspect criminal and probation records of licensees and applicants for licenses under this Article to obtain evidence of their character.

Inspectors may serve papers and subpoenas issued by the Board or any office or member thereof under authority of this Article, and shall perform other duties prescribed or ordered by the Board.

(c) Upon request by the Board, the Attorney General of North Carolina shall provide the inspectors with appropriate identification cards, signed by the Attorney General or his designated agent.

(d) The Board may prescribe an inspection form to be used by the inspectors in performing their duties. (1975, c. 571; 1979, c. 461, s. 10; 1993, c. 164, s. 2; 1997-399, s. 4; 2003-420, ss. 1, 6.)

§ 90-210.25. Licensing.

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board that the applicant:

a. Is at least 18 years of age.

b. Is of good moral character.

c. Possesses a degree in mortuary science or has graduated from a Funeral Director Program, or the equivalent, from a program approved by the

Board or accredited by the American Board of Funeral Service Education.

d. Within the last three years, has completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Within the last three years, has obtained passing scores on all of the following examinations:

1. Entry-level examination in funeral directing.
2. Repealed by Session Laws 1997-399, s. 5.
3. Examination of the laws of North Carolina, the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), pursuant to its most recent version, and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
4. Examination of pathology.

f. Has paid all applicable fees.

(2) To be licensed for the practice of embalming under this Article, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board that the applicant:

a. Is at least 18 years of age.

b. Is of good moral character.

c. Possesses an associate degree in mortuary science, or the equivalent, from a mortuary science program approved by the Board and accredited by the American Board of Funeral Service Education.

d. Within the last three years, has completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Within the past three years, has passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by Session Laws 1997-399, s. 6.
3. Examination of the laws of North Carolina, the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), pursuant to its most recent version, and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.

f. Has paid all applicable fees.

(3) To be licensed for the practice of funeral service under this Article, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board that the applicant:

a. Is at least 18 years of age.

b. Is of good moral character.

c. Possesses an associate degree in mortuary science, or the equivalent, from a mortuary science program approved by the Board and accredited by the American Board of Funeral Service Education.

d. Within the last three years, has completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Within the last three years, has passed an oral or written funeral service examination on the following subjects:

1. Entry-level examination in funeral directing.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by Session Laws 1997-399, s. 7.
4. Examination of the laws of North Carolina, the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), pursuant to its most recent version, and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.

A funeral service examination taken and passed on or before October 1, 2018, for the purposes of attaining licensure under this section shall be considered valid for a five-year period following the date on which the applicant passed the examination.

f. Has paid all applicable fees.

(3a) To be licensed provisionally for the practice of funeral directing under this Article, an applicant bears the burden of substantiating to the satisfaction of the Board that the applicant:

a. Has completed a Board-approved application for a provisional license and paid an application fee of five hundred dollars ($500.00).

b. Is at least 18 years of age.

c. Is of good moral character.

d. Possesses an undergraduate degree in any field, an Associate of Applied Science degree in any field, or a diploma in funeral directing from a Board-approved curriculum at an accredited college of mortuary science.

e. Has a certified resident traineeship, is eligible for certification as a resident trainee, or has at least five years of professional experience under the supervision of a licensed funeral director.

A provisional license issued pursuant to this subsection shall expire on December 31 of each year and shall not be renewed more than two times. The annual renewal fee for a provisional license issued pursuant to this subsection is two hundred fifty dollars ($250.00). A provisional licensee shall complete a minimum of five hours of continuing education each year, which may include up to two hours of online instruction.

If, within three years of first obtaining a provisional license, the provisional licensee substantiates to the satisfaction of the Board that the provisional

licensee has obtained passing scores on an examination of the laws of North Carolina, the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), pursuant to its most recent version, and rules of the Board and other agencies dealing with the care, transportation, and disposition of dead human bodies, and a Board-approved entry-level examination in funeral directing, the Board may issue the provisional licensee a funeral director license subject to the same annual renewal requirements as for licensees in funeral directing.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under the supervision of either a licensed embalmer or a funeral service licensee who is in good standing with the Board and who has practiced funeral service or embalming full time for a minimum of five years. A person training to become a funeral director may serve under the supervision of either a licensed funeral director or a funeral service licensee who is in good standing with the Board and who has practiced funeral service or funeral directing full time for a minimum of five years. A person training to become a funeral service licensee shall serve under the supervision of a funeral service licensee who is in good standing with the Board and who has practiced funeral service full time for a minimum of five years. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. Within 30 days of a resident trainee leaving the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than two times. The Board shall mail to each registered trainee at the trainee's last known residential address or e-mail address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A late fee, in addition to the renewal fee, shall be charged for a late renewal, except that the renewal of the registration of any resident trainee who is engaged in active service in the Armed Forces of the United States shall not be

charged a late fee. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than five years preceding the examination for a license. However, any resident trainee to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be allowed an extension of time to retain credit equal to the number of days of active deployment.

e. All registered resident trainees shall electronically report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The Board may set and collect a late fee not to exceed fifty dollars ($50.00) for each work report filed after the date the report is due. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under the supervision of the licensed individual, registered as the trainee's supervisor, substantially assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under the supervision of the licensed individual, registered as the trainee's supervisor, substantially assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under the supervision of the licensed individual, registered as the trainee's supervisor, substantially assisted in directing at least 25 funerals and, under the supervision of the licensed individual, registered as the trainee's supervisor, substantially assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend, revoke, or refuse to issue or renew a certificate of resident traineeship for violation of any provision of this Article or place a trainee on probation for any violation of this Article or rules adopted by the Board. The Board may determine the length of any suspension, revocation, refusal to issue or renew, or probation and impose conditions on probation and reinstatement as the Board deems appropriate.

h. Each registered supervisor for a resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed and registered as a resident trainee supervisor under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. Any resident trainee or registered supervisor of a resident trainee shall meet with the Board upon request.

m. A 12-month resident traineeship that is completed on or before October 1, 2018, shall be recognized as a qualifying traineeship for licensure under this section for the five-year period following the completion date of the traineeship.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own. After an applicant fails to obtain a passing score on an examination two consecutive times, the applicant must wait at least 60 days to retake the examination.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which the applicant's North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during the applicant's service in the Armed

Forces of the United States provided the applicant applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses approved by the Board in subjects relating to the practice of the profession for which they are licensed, to the end that the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, of which the Board may require licensees to take up to two hours specified by the Board. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee does not have to satisfy the continuing education requirement for the calendar year in which the license was first obtained.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least eight hours of continuing education courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The holder of an inactive license may not engage in any activity requiring an active license. The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if any of the following apply:

(1) The licensee is employed by a college of mortuary science.

(2) The licensee does all of the following:

a. Maintains all of the licensee's business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment.

b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services.

c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

d. Obtains and maintains a professional liability insurance policy with liability limits of at least one million dollars ($1,000,000). Certificates of professional liability insurance shall be (i) submitted to the Board within 30 days of the initial registration of the licensee by the Board and (ii) submitted to the Board upon request. The licensee shall notify the Board in writing within 30 days of any change in the insurer or any cancellation or suspension of policy.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other jurisdictions, when it is shown that the applicant has satisfied all of the following:

a. The applicant holds an active, valid license in good standing as a funeral director, embalmer, or funeral service licensee issued by a jurisdiction that will reciprocate a North Carolina license to practice as a funeral director, embalmer, or funeral service licensee. The license, at the time it was issued by the other jurisdiction, must have had equal or greater education, training, and examination requirements.

b. The applicant has demonstrated knowledge of the laws and rules governing the profession in North Carolina through achieving a passing score on the laws and rules exam administered on behalf of the Board.

c. The applicant has submitted proof of the applicant's good moral character.

d. The applicant has practiced in the profession for at least three years in a jurisdiction that will reciprocate a North Carolina license to practice as a funeral director, embalmer, or funeral service licensee.

Nothing in this subdivision shall preclude any individual from obtaining a license by meeting the requirements of subdivision (1), (2), or (3) of subsection (a) of this section.

(2) Repealed by Session Laws 2018-78, s. 1, effective October 1, 2018.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause

registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

a. Licensees under this Article and their employees.

b. Employees of common carriers.

c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.

d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:

a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers while acting within the scope of their employment.

b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.

c. State and county medical examiners and their investigators.

d. Any individual transporting cremated remains.

e. Any individual transporting or removing a dead human body of their immediate family or next of kin.

f. Any individual who has exhibited special care and concern for the decedent.

(7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:

a. Be at least 18 years of age.

b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.

c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.

d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.

e. Be of good moral character.

f. Obtain and maintain a professional liability insurance policy with liability limits of at least five hundred thousand dollars ($500,000). Certificates of professional liability insurance shall be (i) submitted to the Board within 30 days of the initial registration of the transporter by the Board and (ii) submitted to the Board annually as a condition for renewal of each transport permit. The transporter shall notify the Board in writing within 30 days of any change in the insurer or any cancellation or suspension of the policy. Individuals covered by an employer's professional liability insurance policy shall provide evidence satisfactory to the Board that the policy covers that individual and meets the criteria provided in this sub-subdivision.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of kin or other authorizing agent.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(14) The Board may suspend, revoke, or refuse to issue or renew the permit, place the permittee on a term of probation, or impose a civil penalty not to exceed five thousand dollars ($5,000) in conjunction with a term of probation or in lieu of other disciplinary action when it finds that any person permitted to transport dead human bodies has engaged in any of the following acts:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

c. Fraud or misrepresentation in obtaining or renewing a permit.

d. False or misleading advertising as the holder of a permit.

e. Solicitation of dead human bodies by the permittee or the permittee's agents, assistants, or employees. However, this sub-subdivision shall not be construed to prohibit general advertising.

f. Gross immorality, including being under the influence of alcohol or drugs while handling or transporting dead human bodies.

g. Failing to treat a dead human body with respect at all times.

h. Violating or cooperating with others to violate any of the provisions of this Article, any rules and regulations of the Board, or any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transport of dead human bodies.

i. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody of the body.

j. Indecent exposure or exhibition of a dead human body while in a permittee's custody or control.

k. Practicing funeral directing, funeral service, or embalming without a license.

The Board shall have the authority to determine the length and conditions of any period of revocation, suspension, refusal to issue or renew, or probation.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment. The manager shall be charged with overseeing the daily operation of the funeral establishment. If the manager leaves the employment of the funeral establishment and is the only licensee employed who is eligible to serve as manager, the funeral establishment may operate without a manager for a period not to exceed 30 days so long as: (i) the funeral establishment retains one or more licensees to perform all services requiring a license under this Article; (ii) the licensees are not practicing under the exception authorized by G.S. 90-210.25(a2) and would otherwise be eligible to serve as manager; and (iii) the funeral establishment registers the name of the licensees with the Board.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, in addition to the regular renewal fee, shall be charged.

(4) The Board may place on probation, refuse to issue or renew, suspend, or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral

establishment, violates any of those provisions, rules or regulations. In any case in which the Board is entitled to place a funeral establishment permittee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation. In any case in which the Board is entitled to suspend, revoke, or refuse to renew a permit, the Board may accept from the funeral establishment permittee an offer to pay a penalty of not more than five thousand dollars ($5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both. Any penalty under this subdivision may be in addition to any penalty assessed against one or more licensed individuals employed by the funeral establishment. The Board shall have the authority to determine the length and conditions of any period of revocation, suspension, refusal to issue or renew, or probation.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment. A change to the legal structure owning a funeral establishment shall constitute a change of ownership only when there is a change of a majority of the funeral establishment's owners, partners, managers, members, operators, or officers. For the purposes of this subdivision, a funeral establishment means one or more structures on a contiguous piece of property.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B of the General Statutes:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

a1. Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service or operation of a licensee's business.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business except as authorized by Article 13D of this Chapter.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

i. Failing to treat a dead human body with respect at all times.

j. Violating or cooperating with others to violate any of the provisions of this Article or Articles 13D, 13E, or 13F of this Chapter, any rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death or violating or cooperating with others to violate any provision of Article 4 or 16 of Chapter 130A of the General Statutes or any rules or regulations promulgated under those Articles as amended from time to time.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

o. Failure to refund any insurance proceeds received as consideration in excess of the funeral contract purchase price within 30 days of receipt; provided, however, that this provision shall not be construed to include interest or growth on funds paid toward funeral goods and services to be provided pursuant to an inflation-proof preneed contract.

p. Failure to provide, within a reasonable time, either the goods and services contracted for or a refund for the price of goods and services paid for but not fulfilled.

q. Violation of G.S. 58-58-97.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars ($5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose

a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation. The Board may also require satisfactory completion of remedial or educational training as a prerequisite to license reinstatement or for completing the term of probation. The Board shall have the authority to determine the length and conditions of any period of suspension, revocation, probation, or refusal to issue or renew a license.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. If fees charged by a finance company for expediting payment of life insurance proceeds to the establishment will be passed on to the person or persons responsible for payment of the

funeral expenses, information regarding the fees, including the total dollar amount of the fee, shall be disclosed in writing. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)." The Board may prescribe other disclosures that a licensee shall give to consumers upon finding that the disclosure is necessary to protect public health, safety, and welfare.

(e1) The taking or recovery of human tissue at a funeral establishment by any person is prohibited. The prohibition does not apply to any of the following:

(1) A licensee under this Article that performs embalming or otherwise prepares a dead human body in the ordinary course of business.

(2) The Chief Medical Examiner or anyone acting under the Chief Medical Examiner's authority.

(3) An autopsy technician who takes or recovers tissue from a dead human body if all of the following apply:

a. The taking or recovery is the subject of an academic research program.

b. The academic research program has appropriate Institutional Review Board supervision.

c. The academic research program has obtained informed consent of the donor or the person legally authorized to provide consent.

No funeral establishment or person licensed under this Article shall permit the taking or recovery of human tissue from a dead human body in its custody or control for human transplantation purposes or for research purposes, except that a funeral establishment or person licensed under this Article may permit an autopsy technician to take or recover tissue at a funeral establishment pursuant to subdivision (3) of this subsection. No funeral establishment or any of its licensees, agents, or employees shall accept, solicit, or offer to accept any payment, gratuity, commission, or compensation of any kind for referring potential tissue donors to a tissue bank or tissue broker or to an eye bank or eye broker. For purposes of this subsection, the term "tissue" does not include an eye.

(f) Unlawful Practices. – The following shall constitute unlawful practices:

(1) Any person who practices or holds himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article shall be guilty of a Class 2 misdemeanor.

(2) Any person who knowingly or willfully abuses or mutilates a dead human body in a person's custody shall be guilty of a Class 2 misdemeanor. It shall not be a violation of this subdivision for a person licensed to practice embalming or funeral service under this Article to embalm a dead human body consistent with techniques of embalming generally recognized by embalming or funeral service licensees under this Article or for a person licensed to practice funeral directing or funeral service to exhibit a dead human body consistent with lawful instructions from the person authorized to dispose of the dead human body.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being

violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1901, c. 338, ss. 9, 10, 14; Rev., ss. 3644, 4388; 1917, c. 36; 1919, c. 88; C.S., ss. 6781, 6782; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, ss. 2, 21/2; 1965, cc. 719, 720; 1967, c. 691, s. 48; c. 1154, s. 2; 1969, c. 584, ss. 3, 3a, 4; 1975, c. 571; 1979, c. 461, ss. 11-21; 1981, c. 619, ss. 1-4; 1983, c. 69, s. 5; 1985, c. 242; 1987, c. 430, ss. 4-11; c. 827, s. 1; c. 879, s. 6.2; 1991, c. 528, ss. 4, 5; 1993, c. 539, s. 638; 1994, Ex. Sess., c. 24, s. 14(c); 1997-399, ss. 5-13; 2001-294, s. 3; 2002-147, s. 9; 2003-420, ss. 1, 7; 2007-297, s. 1; 2007-531, s. 4; 2011-183, s. 63; 2014-100, s. 17.1(o); 2018-78, s. 1; 2019-207, s. 1(a).)

§ 90-210.25A: Recodified as G.S. 65-77 by Session Laws 2003-420, s. 8(b), effective October 1, 2003.

§ 90-210.25B. Persons who shall not be licensed under this Article.

(a) The board shall not issue or renew any licensure, permit, or registration to any person or entity who has been convicted of a sexual offense against a minor.

(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.30 (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section.

(c) If a person or entity holding a license, permit, or registration in another jurisdiction has the license revoked, suspended, or placed on probation because of a felony conviction other than those enumerated above, the board shall impose a sanction equal to or greater than to the sanction imposed by the other jurisdiction.

(d) If a person or entity holding a license, permit, or registration in another jurisdiction has the license revoked, suspended, or placed on probation because of conduct related to fitness to practice as described in G.S. 90-210.25(e), the board shall impose a sanction equal to or greater than the sanction imposed by the other jurisdiction. (2012-194, s. 71; 2015-62, s. 1(c); 2015-181, ss. 45, 47.)

§ 90-210.25C. Notification forms for deceased voters.

(a) At the time funeral arrangements are made, a funeral director or funeral service licensee is encouraged to make available to near relatives of the deceased a form upon which the near relative may report the status of the deceased voter to the board of elections of the county in which the deceased was a registered voter.

(b) A funeral director or funeral service licensee may obtain forms for reporting the status of deceased voters from the county board of elections. (2013-381, s. 39.2.)

§ 90-210.26. Good moral character.

Evidence of good moral character may be shown by the affidavits of three persons who have been acquainted with the applicant for three years immediately preceding the submission of the affidavit. (1979, c. 461, s. 22.)

§ 90-210.27. Repealed by Session Laws 1987, c. 430, s. 12.

§ 90-210.27A. Funeral establishments.

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating table.
(2) Contain facilities for adequate drainage.
(3) Contain a sanitary waste receptacle.
(4) Contain an instrument sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
(7) Have a placard or sign on the door indicating that the preparation room is private.
(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(a1) If the preparation room of a funeral establishment is damaged or destroyed by fire, weather, or other natural disaster, the Board may suspend the requirements of subsection (a) of this section, in part or whole, for a period not to exceed 180 days, provided that the funeral establishment remains in compliance with the requirements of G.S. 90-210.25(d1) and all other laws, rules, regulations, and requirements of the Division of Health Services and of the municipality or county where the funeral establishment is located. To receive a suspension of more than 90 days, the applicant must show good cause for additional time.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment. A provisional license to practice funeral directing pursuant to G.S. 90-210.25(a)(3a) shall be subject to the same supervision requirements as a resident trainee pursuant to G.S. 90-210.25(a)(4); provided, however, that a provisional funeral director's license shall not qualify as a funeral director's license for the purposes of this subsection, subsections (a2) and (d) of G.S. 90-210.25, or Article 13D of this Chapter.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment shall own, operate, or maintain a chapel without first having registered the name, location, and ownership thereof with the Board; own or maintain more than two chapels, or own or maintain a chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a chapel for making arrangements for funeral services, selling funeral merchandise to the public by photograph, video, or computer based presentation, or making financial arrangements for the rendering of the service or sale of supplies, provided that the uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board.

(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment, the use of names of deceased individuals, unless the establishment is licensed using the name at the time the new application is made, the use of names of individuals not associated with the establishment, and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name

of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board.

(k) Human remains shall be stored in a funeral establishment, a licensed crematory, or an embalming facility at all times when the remains are not in transit or at a gravesite, church, or other facility or residence for the purpose of a visitation or funeral service.

(*l*) Unembalmed human remains retained in the custody of a funeral establishment for more than 24 hours shall be kept in a refrigeration unit. (1987, c. 430, s. 13; c. 879, s. 6.2; 1997-399, s. 14; 2001-294, s. 4; 2003-420, s. 9(a), (b); 2007-531, s. 5; 2018-78, s. 2; 2019-207, s. 1(a1).)

§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit
- Application.....$400.00
- Annual renewal 250.00
- Late renewal.....150.00

Establishment and embalming facility reinspection fee 150.00

Courtesy card
- Application.....100.00
- Annual renewal 75.00

Out-of-state licensee
- Application.....250.00

Embalmer, funeral director, funeral service

Application-North
- Carolina-Resident 200.00
- -Non-Resident 250.00

Annual Renewal-embalmer or
- funeral director.....75.00
- Total fee, embalmer and funeral director when both are held by the same person 100.00
- -funeral service.....100.00
- Inactive Status.....50.00
- Reinstatement fee.....50.00

Resident trainee permit
- Application.....50.00
- Voluntary change in supervisor 50.00
- Annual renewal 35.00
- Late renewal.....25.00
- Duplicate license certificate.....25.00

Chapel registration
- Application.....150.00
- Annual renewal 100.00
- Late renewal.....75.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Funeral Service to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents. (1979, c. 461, s. 22; 1981, c. 619, s. 5; 1985, c. 447, ss. 1, 2; 1987, c. 710; 1989 (Reg. Sess., 1990), c. 968; 1997-399, s. 15; 2001-294, s. 5; 2007-531, s. 6; 2018-78, s. 3.)

§ 90-210.29. Students.

(a) Students who are enrolled in duly accredited mortuary science colleges in North Carolina may engage in the practices defined in this Article if the practices are part of their academic training and if the practices are under the supervision of a licensed instructor of mortuary science or a licensee designated by the mortuary science college upon registration with the Board.

(b) Repealed by Session Laws 2001-294, s. 6. (1979, c. 461, s. 22; 2001-294, s. 6.)

§ 90-210.29A. Identification of bodies before burial or cremation.

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the temporary container or urn containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment. (1995, c. 312, s. 1; 2003-420, s. 10.)

§ 90-210.29B. Exemptions from public records.

(a) The examination scores of applicants for licensure shall not be subject to the provisions of Chapter 132 of the General Statutes. The Board shall release to any person requesting examination scores whether or not the applicant has obtained a passing score within a reasonable amount of time.

(b) Records, papers, and other documents containing information collected or compiled by or on behalf of the Board as a result of a complaint, investigation, audit, disciplinary matter, or interview in connection with a licensee, permittee, or registrant, or any application for a license, permit, or registration, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice of hearing or decision rendered in connection with a hearing shall be a public record subject to inspection. (2007-484, s. 43.9; 2007-531, s. 7; 2018-78, s. 4.)

Article 13C.

Cremations.

§§ 90-210.40 through 90-210.54: Recodified as Article 13F of Chapter 90, G.S. 90-210.120 through 90-210.134.

§§ 90-210.55 through 90-210.59. Reserved for future codification purposes.

Article 13D.

Preneed Funeral Funds.

§ 90-210.60. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Board" means the North Carolina Board of Funeral Service as created pursuant to Article 13A of Chapter 90 of the General Statutes;

(2) "Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State;

(3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;

(3a) "Legal representative" means the person authorized by G.S. 130A-420 who would be otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary.

(4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;

(5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;

(6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;

(7) "Preneed funeral funds" means all payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property,

merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;

(8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;

(9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license." (1969, c. 187, s. 1; 1983, c. 657, s. 1; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 553, s. 27; 1997-399, s. 23; 2001-294, ss. 7, 8; 2003-420, s. 1; 2007-531, s. 7.1; 2010-96, s. 38; 2010-102, s. 6; 2010-191, s. 3.)

§ 90-210.61. Deposit or application of preneed funeral funds.

(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

(1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a common trust fund for all preneed funeral contracts. The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Article, all interest, dividends, increases, or accretions earned by the funds shall remain with the principal. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties.

(2) Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained. If there is no substitution pursuant to G.S. 90-210.63(a), the preneed

licensee shall give credit for the amount retained upon the death of the preneed funeral contract beneficiary and performance of the preneed funeral contract.

(3) If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.

(b) Except as provided by this Article or by the preneed funeral contract, all payments made by the purchaser of a preneed funeral contract or prearrangement insurance policy shall remain trust funds within a financial institution or as paid insurance premiums with an insurance company, as the case may be, until the death of the preneed funeral contract beneficiary and until full performance of the preneed funeral contract.

(c) Each preneed licensee may establish and maintain with a financial institution of its choice, a preneed funeral fund clearing account. Preneed funeral funds received by a preneed licensee may be deposited and held in such an account until disbursed by the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1) or (a)(3) of this section. This account shall be used solely for the receipt and disbursement of preneed funeral funds.

(d) Funds deposited in trust under a revocable standard preneed funeral contract may, with the written permission of the preneed funeral contract purchaser, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. Except as provided in this subsection, no funds deposited in trust in a financial institution pursuant to this Article shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit or purchasing a prearrangement insurance policy may a preneed licensee, or its agents or employees, deposit in its own account or the account of any other person any monies coming into its hands for the purpose of purchasing services, merchandise, or prearrangement insurance policies under the provisions of this Article. (1969, c. 187, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1336, s. 1; 1983, c. 657, ss. 2, 4; 1985, c. 12, ss. 1-3; 1987, c. 430, ss. 15, 16; c. 879, s. 6.2; 1989, c. 485, s. 16; c. 738, s. 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.62. Types of preneed funeral contracts; forms.

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without protection against potential future price increases. An inflation-proof contract establishes an agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in

excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) The Board may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not prescribed by the Board shall be deemed a violation of this Article. (1991 (Reg. Sess., 1992), c. 901, s. 2; 2007-531, s. 8.)

§ 90-210.63. Substitution of licensee.

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

(1) If the substitution is made after the death of the preneed funeral contract beneficiary, a funeral establishment providing any funeral services or merchandise need not be a preneed licensee under this Article to receive payment for such services or merchandise. The original contracting preneed licensee shall be entitled to payment for any services or merchandise provided pursuant to G.S. 90-210.65(d). If the substitution is made before the death of the preneed funeral contract beneficiary, the substitution must be to a preneed licensee. If the preneed funeral contract is funded by a trust deposit or deposits, the financial institution shall immediately pay the funds held to the original contracting preneed licensee.

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.

(3) If the preneed funeral contract is funded by a prearrangement insurance policy, the insurance company shall not pay any of the funds until the death of the preneed funeral contract beneficiary, and the insurance company shall pay the funds in accordance with the terms of the policy.

(b) The person giving notice of the substitution of a preneed licensee and the successor preneed licensee shall enter into a new preneed funeral contract for the funds transferred, and this Article shall apply, including the duty of the successor preneed licensee to deposit all of the funds in a financial institution if the death of the preneed funeral contract beneficiary has not occurred. Nothing in this subsection shall be construed to permit the use of the transferred funds to purchase a prearrangement insurance policy,

nor to permit an irrevocable preneed funeral contract to be made revocable or to result in the payment of any of the transferred funds to the preneed funeral contract purchaser or to the preneed funeral contract beneficiary or his estate, except as provided by G.S. 90-210.64(b).

(c) Any licensee holding a permit under Articles 13A or 13F of this Chapter that accepts the transfer of a preneed funeral contract after the death of the preneed contract beneficiary shall file the certificate of performance with the Board and mail a copy to the contracting preneed licensee. If the preneed funeral contract is performed by a funeral establishment in another state, the original contracting preneed licensee shall make reasonable efforts to obtain the information needed to accurately complete the certificate of performance and shall file the certificate no later than the time allowed under G.S. 90-210.64. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 242, s. 1; 1997-399, s. 24; 2003-420, s. 11; 2019-207, s. 1(b).)

§ 90-210.63A. Amendment of preneed funeral contracts.

(a) Unless otherwise provided by this Article, preneed funeral contracts may be modified by mutual consent of the contracting preneed funeral establishment and the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative.

(b) When the preneed contract purchaser and preneed contract beneficiary are the same, the preneed contract purchaser may designate one or more individuals to change the arrangements or performing funeral establishment, or may designate that the arrangements or performing funeral establishment may not be changed without an order from the clerk of superior court in the county where probate proceedings are instituted upon a finding that the change is in the best interest of the estate.

(c) If the preneed purchaser, or after his or her death, the preneed contract beneficiary or his or her legal representative, and the contracting preneed funeral establishment agree to modify any goods or services selected under an inflation-proof contract, the preneed licensee shall not be required to guarantee the price of the modified goods and services at the time of death and all other funeral goods and service selected shall remain guaranteed. If the modifications increase the purchase price, the provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been executed on the original date. If the modifications decrease the purchase price, the preneed licensee shall refund all monies according to the provisions of G.S. 90-210.64(d). (2007-531, s. 9.)

§ 90-210.63B. Cancellation of insurance preneed contracts by preneed licensee.

A preneed licensee may cancel an insurance-funded preneed funeral contract by sending written notice by first-class mail, postage prepaid, to the last known address of the preneed funeral contract purchaser or, after the purchaser's death, the preneed contract beneficiary, or the beneficiary's legal representative if all the following conditions apply:

(1) The preneed funeral contract beneficiary has not used the preneed funeral contract to qualify for benefits from the Department of Health and Human Services.

(2) One or more insurance policies used as consideration for the preneed contract have lapsed or been revoked or cancelled by the preneed contract purchaser.

(3) The value of all insurance policies does not exceed five hundred dollars ($500.00). (2018-78, s. 7.)

§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall file a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one thousand dollars ($1,000) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one thousand dollars ($1,000) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

(1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.

(2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.

(3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 25; 2001-294, s. 9; 2003-420, s. 12; 2007-531, s. 10; 2018-78, s. 8.)

§ 90-210.65. Refund of preneed funeral funds.

(a) Within 30 days of receipt of a written request from the purchaser of a revocable preneed funeral contract who has trust funds deposited with a financial institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the preneed funeral contract purchaser the entire amount held by the financial institution.

(b) Within 30 days of receipt of a written notice of cancellation of any prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the issuing insurance company shall pay such amounts to such person or persons as is provided under the terms of the prearrangement insurance policy.

(c) After making refund pursuant to this section and giving notice of the refund to the preneed licensee, the financial institution or insurance company shall be relieved from all further liability.

(d) Notwithstanding any other provision of this Article, if a preneed funeral contract is revoked or transferred following the death of the preneed funeral contract beneficiary, the purchaser of the preneed funeral contract may be charged according to the contracting preneed licensee's price lists for any services performed or merchandise provided prior to revocation or transfer.

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may only be revoked or any proceeds refunded by the order of a court of competent jurisdiction, except as follows:

(1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.

(2) Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract. (1969, c. 187, s. 3; 1981 (Reg. Sess., 1982), c. 1336, s. 2; 1983, c. 657, s. 3; 1985, c. 12, ss.

1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 2003-420, s. 13; 2007-531, s. 11.)

§ 90-210.66. Recovery fund.

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit at least two dollars ($2.00), but not more than ten dollars ($10.00), into the Fund. The Board may set the amount of the deposit into the Fund as it deems necessary to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

(1) To make reimbursements on approved applications;

(2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;

(3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and

(4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 26; 2018-78, s. 9.)

§ 90-210.67. Application for license.

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. Notwithstanding any other provision of law, any person who offers to sell or sells a casket, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of in the casket, shall first comply with the provisions of this Article. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act [Session Laws 1991 (Reg. Sess., 1992), c. 901, s. 2]. A preneed sales licensee may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, the preneed sales licensee may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event the preneed sales licensee engages in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than four hundred dollars ($400.00). The Board shall set the amounts of the application fees and renewal fees, by rule.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made

false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than two hundred fifty dollars ($250.00). On or after February 1, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

If, after January 1, 2008, a funeral establishment receiving a new preneed establishment license or if a preneed establishment license has lapsed or has been terminated for any reason, other than for failure to timely renew the license, the funeral establishment shall obtain a surety bond in an amount not less than fifty thousand dollars ($50,000) for a period of at least two years; provided, however, that the Board, in its discretion, may require the term of the surety bond to be for five years. However, upon demonstrating to the satisfaction of the Board that the funeral establishment is solvent, the Board may reduce the bond term to a period of no less than one year from the date the original license is issued. The funeral establishment may (i) purchase the bond from any company authorized by law to sell bonds in this State or (ii) deposit fifty thousand dollars ($50,000) with the clerk of superior court in the county where the preneed funeral establishment maintains its facility that is licensed or has submitted an application for licensure to the Board. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and each preneed sales licensee shall pay annually to the Board on or before that date a license renewal fee of not more than fifty dollars ($50.00). On or after February 1, a license may be renewed by paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee not to exceed twenty dollars ($20.00) for each sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred fifty dollars ($150.00) for the late filing of an annual report.

(e), (f). Repealed by Session Laws 2003-420, s. 14, effective October 1, 2003. (1969, c. 187, s. 5; 1981, c. 671, ss. 16, 17; 1983, c. 657, s. 4; 1985, c. 12, ss. 1, 2; 1991

(Reg. Sess., 1992), c. 901, s. 2; 1995 (Reg. Sess., 1996), c. 665, s. 1; 1997-399, s. 27; 2001-294, s. 10; 2003-420, s. 14; 2007-531, s. 12; 2018-78, s. 10.)

§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions used to fund preneed funeral contracts, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing insurance policies used to fund preneed funeral contracts. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and insurance policies used to fund preneed funeral contracts. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(a1) On or before March 31, each preneed licensee shall prepare and submit an annual report on its preneed funeral contract sales and submit the report to the Board in a manner and form prescribed by the Board.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 30 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral

establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue or assign insurance policies that are used to fund preneed funeral contracts shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or any insurance policies used to fund a preneed funeral contract.

Financial institutions that accept preneed funeral trust funds and insurance companies that issue or assign insurance policy proceeds or designate a preneed funeral establishment as a policy beneficiary or owner shall also forward an account balance to the contracting preneed funeral establishment at the end of each calendar year.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that neither the substitute preneed licensee or preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall be obligated to perform the agreement without executing a new preneed funeral contract. Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds to revoke an irrevocable preneed funeral contract.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee. (1969, c. 187, s. 6; 1983, c. 657, ss. 4, 5; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 164, s. 3; 1997-399, s. 28; 2007-531, ss. 13, 14; 2018-78, s. 11.)

§ 90-210.69. Rulemaking; enforcement of Article; judicial review; determination of penalty amount.

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board

for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.
(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.
(3) A crime involving fraud or moral turpitude by conviction thereof.
(4) Fraud or misrepresentation in obtaining or receiving a license in preneed funeral planning or in the operation of a licensee's business.
(5) False or misleading advertising.
(6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
(7) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with such probation. The Board may determine the length and conditions of any period of probation, revocation, suspension, or refusal to issue or renew a license.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

(1) The degree and extent of harm to the public health, safety, and welfare, or to property, or the potential for harm.
(2) The duration and gravity of the violation.
(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
(5) The violator's prior disciplinary record with the Board.
(6) Whether and the extent to which the violator profited by the violation. (1969, c. 187, s. 7; 1983, c. 657, s. 4; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, ss. 29, 30; 2001-294, s. 11; 2004-203, s. 7; 2007-531, s. 15; 2018-78, s. 12.)

§ 90-210.70. Penalties.

(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars ($100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars ($100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked.

(b) Any person who willfully violates any other provision of this Article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.

(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided.

(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly.

(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining

the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1969, c. 187, s. 8; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993 (Reg. Sess., 1994), c. 767, s. 28; 1997-399, ss. 31, 32; 1997-443, s. 19.25(o); 2003-420, s. 15.)

§ 90-210.71. Nonregulation of insurance sales.

The provisions of this Article do not regulate the issuance and sale of insurance policies, but apply only to the underlying preneed funeral contracts. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.72. Nonapplication to certain funeral contracts.

This Article does not apply to contracts for funeral services or merchandise sold as preneed burial insurance policies pursuant to Part 13 of Article 10 of Chapter 143B of the North Carolina General Statutes or to replacements or conversions of such policies pursuant to G.S. 143B-472.28. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.73. Not public record.

The following records or documents shall not be subject to the provisions of Chapter 132 of the General Statutes:

(1) The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board.

(2) All financial information used to demonstrate solvency in connection with a bond required under G.S. 90-210.67. (1997-399, s. 33; 2018-78, s. 13.)

§§ 90-210.74 through 90-210.79. Reserved for future codification purposes.

Article 13E.

Mutual Burial Associations.

§ 90-210.80. Duties of Board; meetings.

It shall be the duty of the North Carolina Board of Funeral Service to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules adopted pursuant to this Article; to prosecute violations of this Article or rules adopted pursuant thereto; and to protect the interest of members of mutual burial associations.

The North Carolina Board of Funeral Service, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Board is authorized and directed to adopt specific rules to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules shall,

if located in North Carolina, be a funeral establishment registered and permitted under the provisions of G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules adopted by the Board pursuant to this Article.

All rules heretofore adopted by the North Carolina Mutual Burial Association Commission or the North Carolina Board of Funeral Service in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the North Carolina Board of Funeral Service as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

Members of the Board shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Board shall be entitled to actual expenses when attending regular or special meetings of the Board held other than in Raleigh. All expenses of the Board shall be paid from funds coming to the Board pursuant to this Article or appropriated for this purpose. (1967, c. 1197, s. 2; 1971, c. 1151; 1973, c. 1147, s. 1; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, ss. 3, 5; 1999-425, s. 1; 2003-420, ss. 1, 17(b).)

§ 90-210.81. Requirements as to rules and bylaws.

All burial associations now operating within the State of North Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be _____, which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars ($100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars ($50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars ($200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars ($100.00)) or a quadruple benefit (for a total benefit of two hundred dollars ($200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars ($200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars ($200.00) or less shall continue to be administered by the Board of Funeral Service and shall be subject to all provisions of this Article.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars ($100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars ($100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar ($50.00) benefit who increases his benefit from fifty dollars ($50.00) to one hundred dollars ($100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall control the increase of benefits from fifty dollars ($50.00) to one hundred dollars ($100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars ($50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Board of Funeral Service may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at ____ (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the

board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Board of Funeral Service or its duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Board of Funeral Service or any auditor or representative employed by it. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Board of Funeral Service to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Board of Funeral Service, it is necessary to audit the books of any burial association more than once in any calendar year, the Board of Funeral Service shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the Board of Funeral Service an annual report of its financial condition on a form furnished to it by the Board of Funeral Service. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Board of Funeral Service shall levy and collect a penalty of twenty-five dollars ($25.00) for each day after February 15 that the report called for herein is not filed. The Board may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Board to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Board to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

Assessment Rate for Age Groups:

First to tenth birthday	
($50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday	
($100.00) benefit	ten cents (10¢)
Thirtieth to fiftieth birthday	
($100.00) benefit	twenty cents (20¢)
Fiftieth to sixty-fifth birthday	
($100.00) benefit	thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars ($50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars ($100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar ($100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar ($50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred-dollar ($100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.25 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in G.S. 90-210.96. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in G.S. 90-210.96, do not prove sufficient at any time to

yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the Board of Funeral Service who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. (a) All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars ($21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars ($21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars ($21.00) per member. If the reserve account shall at any time exceed twenty-one dollars ($21.00) per member, amounts in excess of twenty-one dollars ($21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent (66 2/3%) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina. (1941, c. 130, s. 4; 1943, c. 272, ss. 1, 2; 1945, c. 125, s. 1; 1947, c. 100, s. 1; 1949, c. 201, ss. 1, 2; 1953, c. 1201; 1955, c. 259, ss. 3, 4; 1967, c. 1197, s. 4; 1969, c. 1041, ss. 2, 3; 1973, c. 688; 1975, c.

837; 1977, c. 748, ss. 1, 2, 6; 1981, c. 989, s. 4; 1987, c. 864, ss. 12, 50; 1991, c. 62, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 39; 1993, c. 539, s. 1042; c. 553, ss. 48, 49; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, ss. 4-6; 1999-425, s. 2; 2003-420, ss. 1, 17(b).)

§ 90-210.82. Limitation of soliciting agents; licensing and qualifications; officers exempt from license; issuance of membership certificates.

Each burial association shall have for each funeral home sponsoring the said burial association not more than five agents or representatives soliciting members other than the secretary-treasurer and president, and before any agent or representative shall or may represent any burial association in North Carolina, he or she shall first apply to the Board of Funeral Service for a license, and the Board of Funeral Service shall have full power and authority to issue such license upon proof satisfactory to such Board that such person is capable of soliciting burial association memberships, is of good moral character and recommended by the association in behalf of which such membership solicitations are to be made. The Board of Funeral Service may reject the application of any person who does not meet the requirements as to capacity and moral fitness. The Board of Funeral Service may, upon proof satisfactory to it that said licensed agent has violated any section of this law, revoke said license. Upon the issuing of a license to solicit membership in any burial association, such person shall be required to pay in cash, at the time of issuing license to such applicant, to the Board of Funeral Service, the sum of five dollars ($5.00); moneys derived from this fee or charge, are to be and remain in the department or office of such Board of Funeral Service, for supervision of burial associations in this State, subject to withdrawal for expenses of supervision by authority of the Board of Funeral Service. It shall not be necessary that the president or secretary-treasurer of any burial association obtain a license for soliciting membership in the association of which such person is president or secretary-treasurer. Membership certificates shall not be issued by a solicitor in the field, but shall be reported to the office of the association and there issued and a record made of such issuance at the time such certificate is so issued. (1941, c. 130, s. 5; 1945, c. 125, s. 2; 1947, c. 100, s. 2; 1949, c. 201, s. 3; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, ss. 5, 6, 7; 2003-420, ss. 1, 17(b).)

§ 90-210.83. Assessments against associations.

In order to meet the expenses of the supervision of the burial associations, the Board of Funeral Service shall prepare an annual budget for the office of the Board of Funeral Service. Thereafter, the Board of Funeral Service shall assess each burial association one hundred dollars ($100.00) and shall prorate the remaining amount of this budget, over and above any other funds made available to it for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association. Each burial association shall remit to the Board of Funeral Service its pro rata part of the total assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in G.S. 90-210.81. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Board of Funeral Service is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Board of Funeral Service to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2; 1973, c. 1476, s. 1; 1975, c. 837; 1977, c. 748, s. 3; 1981, c. 989, s. 6; 1983, c. 717, s. 12; 1987, c. 864, ss. 12, 14; 1997-313, ss. 5, 6, 7; 2003-420, ss. 16, 17(b).)

§ 90-210.84. Unlawful to operate without written authority of Board.

It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the Board of Funeral Service, and any person, firm or corporation violating the provisions of this section shall be guilty of a Class 1 misdemeanor; provided, however, the Board of Funeral Service shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this Article, unless it shall be found and established to the satisfaction of the Board of Funeral Service that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of this Article. (1941, c. 130, s. 7; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1043; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.85. Revocation of license.

In the event it is proven to the satisfaction of the Board of Funeral Service that any burial association is being operated not in conformity with any provision of this Article, then it shall become the duty of the Board of Funeral Service upon hearing to revoke the license of said burial association and transfer said burial association, its membership and all its assets of every kind and description to another burial association that is found by the Board of Funeral Service to be in good sound financial condition; provided, that if said burial association gives notice of appeal as provided for in G.S. 90-210.94, then said burial association may continue to operate as before the revocation and until final adjudication. (1945, c. 125, s. 4; 1975, c. 837; 1987, c. 864, ss. 12, 15; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.86. Deposit or investment of funds of mutual burial associations.

Funds belonging to each mutual burial association over and above the amount determined by the Board of Funeral Service to be necessary for operating capital shall be invested in:

(1) Deposits in any federally insured depository institution or any trust institution authorized to do business in this State.

(2) Obligations of the United States of America.

(3) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of the obligations is fully guaranteed by the United States of America.

(4) Obligations of the State of North Carolina.

(5) Bonds and notes of any North Carolina local government or public authority, subject to restrictions as the Board of Funeral Service may impose.

(6) Shares of or deposits in any savings and loan association organized under the laws of this State and shares of or deposits in any federal savings and loan association having its principal office in this State, provided that the savings and loan association is insured by the United States of America or any agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.

(7) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, Fannie Mae, the Banks for Cooperatives, and the Federal Land Banks, maturing no later than 18 months after the date of purchase.

Violation of the provisions of this section shall, after hearing, be cause for revocation or suspension of license to operate a mutual burial association. (1957, c. 820, s. 1; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2001-487, s. 14(l); 2003-420, ss. 1, 17(b); 2017-25, s. 1(i).)

§ 90-210.87. Unclaimed funds of defunct burial association.

All unclaimed funds of any burial association that is no longer in operation shall be disposed of in accordance with Chapter 116B. (1969, c. 1083; 1975, c. 837; 1979, 2nd Sess., c. 1311, s. 7; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.88. Penalty for failure to operate in substantial compliance with bylaws.

If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or bylaws not in substantial compliance with the bylaws set forth in G.S. 90-210.81, the Board of Funeral Service may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 8; 1975, c. 837; 1987, c. 864, ss. 12, 16; 1993, c. 539, s. 1044; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.89. Penalty for wrongfully inducing person to change membership.

Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed bylaws, or who shall offer any rebate, gratuity or refund to cause a member of one association to change membership to another association, shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 9; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1045; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, s. 17(b).)

§ 90-210.90. Penalty for making false and fraudulent entries.

Any person or burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the Board of Funeral Service or its deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the Board of Funeral Service, shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 10; 1945, c. 125, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1046; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, ss. 5, 6; 2003-420, ss. 1, 17(b).)

§ 90-210.91. Accepting applications without collecting fee and first assessment.

Any burial association official, agent or representative, or any other person who shall accept any application for membership in any association without collecting the membership fee and first assessment due thereon from any such person making such an application for membership, shall be guilty of a Class 1 misdemeanor.

Any burial association official, agent or representative, or any other person who shall accept an application for an additional benefit from a member of a burial association without collecting the additional membership fee and the additional assessment due thereon from any such person making such an application for an additional benefit shall be guilty of a Class 1 misdemeanor.

(1941, c. 130, s. 11; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1047; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, s. 17(b).)

§ 90-210.92. Removal of secretary-treasurer for failure to maintain proper records.

Any burial association secretary-treasurer who fails to maintain records to the minimum standards required by the Board of Funeral Service shall be by such Board removed from office and another elected in his stead, such election to be immediate and by the board of directors of said burial association upon notice of such removal. (1941, c. 130, s. 12; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.93. Free services; failure to make proper assessments, etc., made a misdemeanor.

Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 13; 1967, c. 1197, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1048; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, ss. 1, 17(b).)

§ 90-210.94. Right of appeal upon revocation or suspension of license.

Upon the revocation or suspension of any license or authority by the Board of Funeral Service, under any of the provisions of this Article, the said association or individual whose license or authority has been revoked or suspended shall have the right of appeal from the action of the Board of Funeral Service in revoking or suspending such license or authority to the Superior Court of Wake County or to the superior court of the county in which the said association or the said individual is domiciled or, upon agreement of the parties to the appeal, to any other superior court of the State. The association or individual appealing from the order of the Board of Funeral Service shall give notice of appeal in writing to the Board of Funeral Service, with a copy of such notice to the clerk of the superior court to which the appeal is taken, within 10 days of the date of notice of the order revoking or suspending the said license or authority and shall pay such appeal fees to the clerk of superior court as are required by law. Within 30 days after receipt of the notice of appeal, the Board of Funeral Service shall file with the clerk of the superior court of the county in which the appeal is to be heard the decision of the Board of Funeral Service. Upon receipt of such decision, the clerk of superior court shall place the matter upon the civil issue docket of the superior court and the same shall be heard de novo. Pending such appeal, the burial association or individual whose license or authority has been suspended or revoked shall continue to operate or function as before the revocation or suspension and until final adjudication by the superior court. (1941, c. 130, s. 14; 1943, c. 272, s. 4; 1957, c. 820, s. 3; 1973, c. 108, s. 20; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.95. Bond of secretary or secretary-treasurer of burial associations.

The secretary or secretary-treasurer of each burial association shall, before entering upon the duties of his office, and for the faithful performance thereof, execute a bond payable to the Board of Funeral Service as trustee for the burial association in some bonding company licensed to do business in this State, to be approved by the Board of Funeral Service. Said bond shall be in an amount not less than one thousand dollars ($1,000), nor more than ten thousand dollars ($10,000), in the discretion of the Board, for those associations whose assets, as determined by the Board's

audit, are ten thousand dollars ($10,000) or less. For those associations whose assets, as determined by the Board's audit, are in excess of ten thousand dollars ($10,000), said bond shall be in an amount of ten thousand dollars ($10,000) plus twenty-five per centum (25%) of all assets over ten thousand dollars ($10,000); provided, however, that the bond required by this section shall not in any event exceed fifty thousand dollars ($50,000). If any association operates a branch or subsidiary and the officers of both associations are the same, for purposes of this section, it shall be treated as one association. Any burial association, with the consent of the Board of Funeral Service, may give a bond secured by a deed of trust on real estate situated in North Carolina, in lieu of procuring said bond from a bonding company. The bond thus given shall not be acceptable in excess of the ad valorem tax value for the current year of the real estate securing said bond. The deed of trust shall be recorded in the county or counties wherein the land lies and shall be deposited with the Board of Funeral Service, name the Board as trustee for the burial association and must constitute a first lien on the property secured by the deed of trust. Said deed of trust shall contain a description of the encumbered property by metes and bounds together with evidence by title insurance policy or by certificate of an attorney-at-law, certifying that said trustor is the owner of a marketable fee simple title to such lands. (1941, c. 130, s. 15; 1943, c. 272, s. 5; 1967, c. 985, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.96. Assessments.

Every burial association now or hereinafter organized shall make 12 assessments, or their equivalent, per year per member. The Board of Funeral Service shall order any association to make more than 12 assessments per year when, after notice and hearing, it shall appear to the Board of Funeral Service that the death loss of any association so requires in order to protect the interest of the members. (1943, c. 272, s. 6; 1969, c. 1041, s. 1; 1971, c. 650; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.97. Making false or fraudulent statement a misdemeanor.

Any officer or employee of any burial association authorized to do business under this Article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for the purpose of obtaining money or any benefit from any burial association transacting business under this Article, or who shall make any false financial statement to the Board of Funeral Service or to the membership of the burial association of which such person is an officer or employee shall be guilty of a Class 1 misdemeanor. (1943, c. 272, s. 6; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1049; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.98. Statewide organization of associations.

It shall be lawful for the several mutual burial associations of the State of North Carolina, in good standing, to organize and provide for a statewide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the State of North Carolina. Such organization shall be known as the North Carolina Burial Association, Incorporated, and shall be composed of members who are lawfully operating burial associations in this State and who pay their dues to such association. (1941, c. 130, s. 16; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.99. Article deemed exclusive authority for organization, etc., of mutual burial associations.

This Article shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the State of North Carolina, and such associations shall not be subject to any other laws respecting insurance companies of any class. (1941, c. 130, s. 17; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.100. Operation of association in violation of law prohibited.

No person, firm or corporation shall operate as a burial association in this State unless incorporated under the laws of the State of North Carolina and unless such association shall be operated in compliance with all the provisions of this Article, and unless such association shall be licensed and approved by the Board of Funeral Service. (1941, c. 130, s. 18; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.101. Member of Armed Forces failing to pay assessments; reinstatement.

If a member of a burial association who is in the Armed Forces of the United States fails to pay any assessment, the member shall be in bad standing, and unless and until restored, shall not be entitled to benefits. However, the member shall be reinstated in the burial association upon application made by the member at any time until 12 months after the member's discharge from the Armed Forces of the United States, notwithstanding the member's physical condition and without the payment of assessments which have become due during the member's service in the Armed Forces of the United States. Benefits will be in force immediately after such reinstatement. (1943, c. 732, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b); 2011-183, s. 64.)

§ 90-210.102. Hearing by Board of dispute over liability for funeral benefits; appeal.

In case of a disagreement between the representative of a deceased member of any burial association and such deceased member's burial association a hearing may be held by the Board of Funeral Service, on request of either party, to determine whether the association is liable for the benefits set forth in the policy issued to the said deceased member of said burial association. The Board of Funeral Service shall render a decision which shall have the same force and effect as judgments rendered by courts of competent jurisdiction in North Carolina. Either party may appeal from the decision of the Board of Funeral Service. Appeal shall be to the district court division of the General Court of Justice in the county in which the burial association is located. The procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of Chapter 7A of the General Statutes of North Carolina regulating appeals from the magistrate to the district court. (1947, c. 100, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b); 2007-531, s. 16.)

§ 90-210.103. Board authorized to subpoena witnesses, administer oaths and compel attendance at hearings.

For the purpose of holding hearings the Board of Funeral Service shall have power to subpoena witnesses, administer oaths, and compel attendance of witnesses and parties. (1957, c. 820, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.104. Authority of Board to examine financial records.

The Board of Funeral Service shall have authority to examine all records relating to a burial association's financial condition wherever such records are located, including records maintained by any corporation, building and loan association, savings and loan association, credit union, or other legal entity organized and operating pursuant to the authority contained in Chapters 53 and 54 of the General Statutes. (1977, c. 748, s. 4; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.105. Board authorized to freeze certain funds of Association.

Whenever in the opinion of the Board of Funeral Service it deems it necessary for the protection of the interest of members of a burial association, it shall have authority by written order to direct that the funds of any burial association on deposit in any institution organized and operating under Chapters 53 and 54 of the General Statutes be frozen and not paid out by such legal entity. Any legal entity freezing the funds of a burial association pursuant to the directive of the Board of Funeral Service shall not be liable to any burial association for freezing said account pursuant to the order of the Board. (1977, c. 748, s. 5; 1987, c. 864, s. 12; 1997-313, ss. 5, 6; 2003-420, ss. 1, 17(b).)

§ 90-210.106. Authority of foreign or domestic mutual burial association or domestic or foreign insurance company to purchase, merge or consolidate with North Carolina mutual burial associations.

(a) Any mutual burial association or insurance company operating pursuant to the laws of this State or any other state may purchase the assets of, merge, or consolidate with a North Carolina chartered mutual burial association in accordance with the laws of this State and any rules promulgated by the Board of Funeral Service to protect the interest of members of mutual burial associations prior to the purchase, merger, or consolidation of the association.

(b) Notwithstanding any provision of Chapter 55 or Chapter 55A, any domestic or foreign insurance company which if organized in North Carolina would have to be organized under Chapter 55 may merge or consolidate with any domestic mutual burial association. When a domestic or foreign insurance company consolidates or merges with a domestic mutual burial association and sells insurance or burial benefits in excess of two hundred dollars ($200.00), it shall be subject to all of the provisions of the insurance laws of North Carolina.

(c) If the assets and liabilities of a North Carolina mutual burial association are purchased, and no merger, consolidation or dissolution is effectuated in connection with the purchase, the management and administrative operations of the North Carolina mutual burial association shall be transferred to the purchasing entity.

(d) In any purchase, merger, or consolidation pursuant to this section, the membership of the mutual burial association shall be guaranteed coverage in the amounts held by each member at the time of such purchase, merger, or consolidation. During the life of the member, this coverage shall not exceed the annual rate charged by the mutual burial association that is being purchased, merged, or consolidated. An insurance company which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain life insurance reserves in accordance with the insurance laws of North Carolina for those burial insurance policies existing at the time of the purchase, merger, or consolidation. A North Carolina mutual burial association or foreign mutual burial association which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain burial insurance reserves in accordance with the burial insurance laws of North Carolina for those burial insurance policies

existing at the time of the purchase, merger, or consolidation. (1981, c. 989, s. 5; 1983, c. 766; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.107. Acquisition, merger, dissolution, and liquidation of mutual burial associations.

(a) Any insurance company which desires to purchase the assets of or to merge with a burial association as provided in G.S. 90-210.106 shall submit to the Board of Funeral Service and to the secretary of the association a written proposal containing the terms and conditions of the proposed purchase or merger. A proposal may be conditioned upon an increase in the assessments of an association in the manner set out in subsection (g) of this section. In such a case, the issues of purchase or merger and an increase in assessments may be considered at the same meeting of the association.

(b) Upon receipt of a written proposal:

(1) The Board shall issue an order directing the association to hold a meeting of the membership within 30 days following receipt of the order for the purpose of voting on the proposal.

(2) Within 10 days of receiving the order from the Board, the association shall give at least 10 days' written notice of the meeting to each of its members. The notice shall:

a. State the date, time, and place of the meeting.

b. State the purpose of the meeting.

c. Contain or have attached the proposal submitted by the insurance company.

d. Contain a statement limiting the time that each member will be permitted to speak to the proposal, if the association deems it advisable.

e. Contain a written proxy form and instructions concerning the proxy prescribed by the Board.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting or has issued a written proxy pursuant to G.S. 55A-7-24 and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the

Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars ($21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

(1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.

(2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.

(3) No vote may be had on the question of an increase in assessments unless a quorum of the members of the association is present at the meeting. A quorum shall be conclusively presumed if 15 members or ten percent (10%) of the membership of the association, whichever is greater, is present at the meeting.

(4) The proposal to increase the assessments shall be approved by an affirmative vote of a majority of the members present and voting.

(5) The secretary of the association within five days following the meeting shall certify the result of the vote and the presence of a quorum to the Board in the manner and for the purposes set out in subsections (e) and (f) of this section.

(h) Upon a written request from an association that has held a valid meeting and voted for voluntary dissolution in accordance with G.S. 90-210.81, the Board shall issue an order of liquidation for that association.

(i) Upon receipt of a request for voluntary dissolution under subsection (h) of this section or if the sponsoring funeral establishment has its permit revoked or ceases operation for any reason, the Board shall issue an order of liquidation. The Board's order may direct that the agreements for members' benefits be transferred to a financially sound mutual burial association, as well as all records, property, and unexpended balances of funds of the association to be liquidated, if the financially sound mutual burial association agrees in writing to accept the transfer. The Board's order shall direct the burial association to complete the liquidation and to file a final report with the Board no later than December 31 of the year of the liquidation. Upon receipt of the order of liquidation, the burial association shall:

(1) Cease accepting new members.

(2) Collect all debts owed to the association and pay all debts owed by the association from monies on hand, including the reserve.

(3) Distribute pro rata any remaining monies on hand and in the reserve among those who were members of the association and whose transfer could not be accomplished on the date that the liquidation order was issued by the Board. Each member's distributive share shall be determined by dividing the amount

of the member's benefit by the aggregate benefits of all members of the association and then multiplying the total amount of money available for distribution by the percentage so derived. Assessments owed by the members to the association at the time of distribution shall be taken into account and shall be offset against the members' distributive shares.

(4) Issue a certificate to members in an amount that equals the difference between the distributive share issued in subdivision (3) of this subsection and the full amount of the member's association benefit. Any certificate issued shall supersede and supplant any other certificate already issued by the association. The certificate shall be on a form prescribed by the Board and shall be prepared and distributed by the association at its expense.

(5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 90-210.84 are automatically cancelled. (1999-425, s. 3; 2003-420, ss. 1, 17(b); 2007-531, s. 17.)

§§ 90-210.108 through 90-210.119: Reserved for future codification purposes.

Article 13F.

Cremations.

§ 90-210.120. Short title.

This Article shall be known and may be cited as the North Carolina Crematory Act. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2.)

§ 90-210.121. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.124.

(2) "Board" means the North Carolina Board of Funeral Service.

(3) "Body parts" means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.

(4) "Casket" means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.

(5) "Certificate of cremation" means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:

a. Name of decedent;
b. Date of cremation;
c. Name and address of crematory; and
d. Signature of crematory manager or person acting as crematory manager.

(6) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(7) "Cremation" means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

(8) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(9) "Cremation container" means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:

a. Be composed of readily combustible materials suitable for cremation;
b. Be able to be closed in order to provide a complete covering for the human remains;
c. Be resistant to leakage or spillage;
d. Be rigid enough for handling with ease;
e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and
f. Be easily identifiable. The covering of the cremation container shall contain the following information:
    1. The name of the decedent;
    2. The date of death;
    3. The sex of the decedent; and
    4. The age at death of the decedent.

(10) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(11) "Crematory" or "crematorium" means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(12) "Crematory licensee" means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.

(13) "Crematory manager" means the person who is responsible for the management and operation of the crematory. A crematory manager must either be licensed to practice funeral directing or funeral service and be qualified as a crematory technician or must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be qualified as a crematory technician.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, gift, or any other disposal of a controlling interest in the crematory.

(13a) "Cremation society" means any person, firm, corporation, or organization that is affiliated with a crematory licensed under this Article and provides cremation information to consumers.

(14) "Crematory technician" means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board. The Board shall recognize the cremation certificate program that is conducted by the Cremation Association of North America (CANA).

(15) "Final disposition" means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

(16) "Holding and processing facility" means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.

(17) "Human remains" means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.

(17a) "Initial container" means a receptacle for cremated remains, for which the intended use and design is to hold cremated remains, usually composed of cardboard, plastic, or similar material that can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and is a single container of sufficient size to hold the cremated remains.

(18) "Niche" means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.

(19) "Processing" means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or initial container.

(20) "Pulverization" means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.

(21) "Scattering area" means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.

(22) Repealed by Session Laws 2007-531, s. 18, effective August 31, 2007.

(23) "Urn" means a receptacle designed to permanently encase the cremated remains. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 16; 2003-420, s. 2; 2007-531, s. 18; 2011-284, s. 64.)

§ 90-210.122. Crematory Authority established.

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board shall conduct the election for members of the Crematory Authority and shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided

for in this Article shall be paid from funds received and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. Four members shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2; 2007-531, s. 19.)

§ 90-210.123. Licensing and inspection.

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity may erect, maintain, and operate a crematory in this State and may provide the necessary employees, facilities, structure, and equipment for the cremation of human remains, provided that the person or entity has secured a license as a crematory licensee in accordance with this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning and environmental regulations.

(c) Application for a license as a crematory licensee shall be made on forms furnished and prescribed by the Board. The Board shall inspect the premises, facilities, structure, and equipment to be used as a crematory, confirm that the crematory manager's and crematory technician's educational certificate is valid, and issue a renewable license to the crematory licensee if the applicant meets all the requirements and standards of the Board and the requirements of this Article.

(d) Every application for licensure shall identify the crematory manager and all crematory technicians employed by the crematory licensee providing that nothing in this Article shall prohibit the designation and identification by the crematory licensee of one individual to serve as a crematory manager and crematory technician. Each crematory licensed in North Carolina shall employ on a full-time basis at least one crematory technician. Every application for licensure and renewal thereof shall include all crematory technicians' educational certificates. The crematory licensee shall keep the Board informed at all times of the names and addresses of the crematory manager and all crematory technicians. In the event a licensee is in the process of replacing its only crematory technician at the time of license renewal, the licensee may continue to operate the crematory for a reasonable time period not to exceed 180 days.

(d1) Crematory licensees that offer at-need cremation goods and services to the public shall comply with the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended.

(e) All licenses and permits shall expire on the last day of December of each year. On or after February 1, a license or permit may be renewed by paying a late fee as provided

in G.S. 90-210.132 in addition to the annual renewal fee. Licenses and permits that remain expired six months or more require a new application for renewal. Licenses and permits are not transferable. A new application for a license or permit shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(f) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.

(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

(1) Conviction of a felony or a crime involving fraud or moral turpitude.

(1a) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

(2) Fraud or misrepresentation in obtaining or renewing a license, in the practice of cremation, or in the operation of a licensee's business.

(3) False or misleading advertising.

(4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this subdivision shall not be construed to prohibit general advertising by the licensee.

(5) Employment directly or indirectly of any agent, assistant, or other person on a part-time or full-time basis or on commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

(6) The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agent, assistant, or employees for the purpose of securing business.

(7) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.

(8) Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

(9) Failing to treat a dead human body with respect at all times.

(10) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board or violation of Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended.

(11) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(12) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.131(e).
(13) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.
(14) Practicing funeral directing, embalming, or funeral service without a license.
(15) Allowing anyone other than a licensee of the Board or a crematory technician to perform a cremation.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000).

(h) Where the Board finds a licensee is guilty of one or more of the acts or omissions listed in subsection (g) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation. The Board may determine the length and conditions of any period of probation, suspension, revocation, or refusal to issue or renew a license.

(i) The Board may hold hearings in accordance with the provisions of this Article and Article 3A of Chapter 150B of the General Statutes. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected. The Board may obtain preliminary and final injunctions whenever a violation of this Article has occurred or threatens to occur. The Board may enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended, and in accordance with subsection (d1) of this section.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1993, c. 539, s. 639; 1997-399, s. 17; 2003-420, s. 2; 2007-531, ss. 20, 21; 2018-78, s. 14; 2019-207, s. 1(c), (d).)

§ 90-210.124. Authorizing agent.

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods provided under G.S. 130A-420(a). An individual may delegate his or her right to dispose of his or her own body to any person by one of the methods provided under G.S. 130A-420(a1).When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

(2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

a. The surviving spouse.

b. A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

c. The surviving parents.

d. A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

e. A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

f. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

g. In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

h. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

i. In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63 or permit modification of preneed contracts under G.S. 90-210.63A. If a person under this subsection is incompetent at the time of the decedent's death, the person shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of a person and the certification shall apply to the rights under this subsection only. Any

person under this subsection may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b) A person who does not exercise his or her right to dispose of the decedent's body under subdivision (a)(2) of this section within five days of notification or 10 days from date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or to contest disposition in accordance with this section. Pursuant to G.S. 130A-415(c) or (j), upon such a waiver, and upon the Commissioner of Anatomy declining or failing to request delivery of the dead body, the director of social services having the duty to dispose of the human remains shall become vested with all interests and rights to the dead body and shall authorize and arrange for disposition, including cremation.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the cremation and disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the cremation and disposition, a person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as if the individual were deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes. (2003-420, s. 2; 2007-531, s. 22; 2008-153, s. 5; 2010-191, s. 2; 2018-78, s. 15.)

§ 90-210.125. Authorization to cremate.

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

(1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.

(2) The time and date of death of the decedent.

(3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.

(4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.

(5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.

(6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.124. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and has no

reason to believe that such person would object to the cremation of the decedent.

(7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-210.124, or does not know the location of any other living person with an equal right to that of the authorizing agent.

(8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

(9) A representation that the human remains do not contain a pacemaker that is not approved for cremation by the pacemaker's manufacturer or proper regulating agency or any other material or implant that may be potentially hazardous to the person performing the cremation.

(10) The name of the person authorized to receive the cremated remains from the crematory licensee.

(11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.

(12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.

(13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.126. The authorizing agent may specify in writing religious practices that conflict with Article 13 of this Chapter. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed crematory as specified under G.S. 90-210.123 or the required documentation and record keeping.

(14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation, except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form

shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence, provided that the crematory licensee performs such functions in compliance with the provisions of this Article. There shall be no liability for a funeral establishment or licensee thereof that causes a crematory licensee to cremate human remains pursuant to such authorization, except for gross negligence, provided that the funeral establishment and licensee thereof and crematory licensee perform their respective functions in compliance with the provisions of this section.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains. (2003-420, s. 2; 2018-78, s. 16.)

§ 90-210.126. Preneed cremation arrangements.

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person shall have the right to transfer or cancel this authorization at any time prior to the person's death by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

/ / I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

/ / I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my wishes for cremation and purchasing services and merchandise if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are

cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee that complies with the preneed cremation authorization form under these circumstances may do so without any liability. A funeral establishment or licensee thereof that causes a crematory licensee to act in accordance with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with, a funeral establishment that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.130. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee, and any funeral establishment or licensee thereof who caused the crematory licensee to act in compliance with the terms of the preneed agreement, shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act. (2003-420, s. 2.)

§ 90-210.127. Record keeping.

(a) The crematory licensee shall furnish to the person who delivers such human remains to the crematory licensee a receipt, signed by both the crematory licensee and the person who delivers the human remains, showing the date and time of the delivery; the type of casket or cremation container that was delivered; the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom such person is affiliated; the name of the person who received the human remains on behalf of the crematory licensee; and the name of the decedent. The crematory licensee shall retain a copy of this receipt in its permanent records for three years.

(b) Upon its release of cremated remains, the crematory licensee shall furnish to the person who receives such cremated remains from the crematory licensee a receipt, signed by both the crematory licensee and the person who receives the cremated remains, showing the date and time of the release; the name of the person to whom the cremated remains were released and the name of the funeral establishment, cemetery, or other entity with whom such person is affiliated; the name of the person who released the cremated remains on behalf of the crematory licensee; and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records for three years.

(c) A crematory licensee shall maintain at its place of business a record of all forms required by the Board of each cremation that took place at its facility for three years.

(d) The crematory licensee shall maintain a record for three years of all cremated remains disposed of by the crematory licensee in accordance with G.S. 90-210.126(d).

(e) Upon completion of the cremation, the crematory licensee shall issue a certificate of cremation.

(f) All records that are required to be maintained under this Article shall be subject to inspection by the Board or its agents upon request. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 18; 2003-420, s. 2.)

§ 90-210.128. Cremation containers.

(a) No crematory licensee shall make or enforce any rules requiring that any human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall any crematory licensee refuse to accept human remains for cremation for the reason that they are not in a casket.

(b) No crematory licensee shall make or enforce any rules requiring that any cremated remains be placed in an urn or receptacle designed to permanently encase the cremated remains after the cremation process has been performed. (2003-420, s. 2.)

§ 90-210.129. Cremation procedures.

(a) For any death occurring in North Carolina certified by the attending physician or other person authorized by law to sign a death certificate under the supervision of a physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the person authorized to sign the death certificate, which shall contain at a minimum the following information:

(1) Decedent's name;
(2) Date of death;
(3) Date of birth;
(4) Sex;
(5) Place of death;
(6) Facility name (if not institution, give street and number);
(7) County of death;
(8) City of death; and
(9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(c1) For any death occurring outside North Carolina, a crematory licensee shall not cremate a dead human body without first obtaining a copy of the burial-transit or disposal permit issued under the law of the state, province, or foreign government in which death or disinterment occurred.

The provisions of this subsection shall not be construed to waive the jurisdiction of the medical examiner or subsection (b) of this section.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator not approved for cremation by the pacemaker's manufacturer or proper regulating agency or other potentially hazardous implant or condition in place. The authorizing agent for the

cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator not approved for cremation by the pacemaker's manufacturer or proper regulating agency or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director, funeral service licensee, or the crematory licensee, whichever is applicable, on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director, funeral service licensee, or the crematory licensee, whichever is applicable or responsible for obtaining the information required to complete the decedent's death certificate, shall also be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory. Anyone removing a hazardous implanted device or material under this subsection shall comply with the laws and rules governing the handling of such material and with any other regulations enforced by the proper regulating authority.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission for Public Health, pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden, provided that the following human remains may be cremated simultaneously upon the express written direction of the authorized agent:

(1) The human remains of multiple fetuses from the same mother and the same birth.

(2) The human remains of multiple persons up to the age of one year old from the same mother and the same birth.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(*l*) The cremated remains with proper identification shall be placed in an initial container or the urn selected or provided by the authorizing agent. The initial container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of an initial container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the initial container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

(o) Unless the provisions of G.S. 130A-114 apply, before cremation the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances, date, and time of the delivery of the fetal remains from the mother. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall obtain documentation of the circumstances, date, and time of delivery of the fetal remains prepared by a hospital, medical facility, law enforcement agency, or other entity. Notwithstanding any other provision of law, health care providers may release to a licensee, in accordance with the federal Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), medical records that document the circumstances, date, and time of delivery of fetal remains. If the crematory licensee cannot identify documents sufficient to meet the requirements of this subsection, the licensee shall report to the local medical examiner pursuant to G.S. 130A-383(a).

(p) If the provisions of Article 4 of Chapter 130A of the General Statutes apply, the crematory licensee shall receive a fetal report of death as prescribed in G.S. 130A-114.

(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to Part 3A of Article 16 of Chapter 130A of the General Statutes. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 19; 2003-420, s. 2; 2007-182, s. 1.2; 2007-531, s. 23; 2008-153, s. 6; 2018-78, s. 17; 2018-93, s. 2; 2019-207, s. 1(e), (f).)

§ 90-210.130. Final disposition of cremated remains.

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.127.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may release the cremated remains to another family member upon written notification to the authorizing agent delivered by certified mail or dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent, no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt, and contain a representation that the handling of the final disposition will be in a proper manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 20; 2003-420, s. 2; 2007-531, s. 24.)

§ 90-210.131. Limitation of liability.

(a) Any person signing a cremation authorization form as authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory licensee shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory licensee that cremates human remains pursuant to such authorization or that releases or disposes of the cremated remains pursuant to such authorization. A crematory licensee and funeral establishment or licensee thereof who causes the crematory licensee to act shall have no liability for the final disposition or manner in which the cremated remains are handled after the cremated remains are released in accordance with the directions of the authorizing agent.

(c) A crematory licensee shall not be responsible or liable for any valuables delivered to the crematory licensee with human remains.

(d) A crematory licensee shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

(1) It is aware of any dispute concerning the cremation of human remains;

(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(3) For any other lawful reason.

(e) If a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory licensee shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection. A crematory licensee may charge a reasonable storage fee if the dispute is not resolved within 30

days after it is received by the crematory licensee. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 21; 2003-420, s. 2.)

§ 90-210.132. Fees.

(a) By rule, the Board may set and collect fees from crematory and hydrolysis licensees, crematory and hydrolysis manager permit holders, and applicants not to exceed the following amounts:

(1) Licensee application fee.....$400.00
(2) Annual renewal fee. 150.00
(3) Late renewal fee.....75.00
(4) Reinspection fee.....150.00
(5) Per cremation or hydrolysis fee. 10.00
(6) Late fee, per cremation or hydrolysis. 10.00
(7) Late fee, cremation or hydrolysis report..... 75.00 per month
(8) Crematory or hydrolysis manager permit application fee.....150.00
(9) Annual crematory or hydrolysis manager permit renewal fee.....40.00.

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 22; 2003-420, s. 2; 2018-78, s. 18.)

§ 90-210.133. Crematory licensee rights.

(a) A crematory licensee may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory licensee from adopting rules which are more stringent than the provisions of this Article.

(b) Nothing in this Article may be construed to relieve the crematory licensee from obtaining any other licenses or permits required by law.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory licensees or crematory managers for or directly with the public or exclusively for or through licensed funeral directors. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2.)

§ 90-210.134. Rulemaking, applicability, violations, and prohibitions of Article.

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board may develop a Standard Cremation Authorization Form and procedures for its execution that shall be used by the crematory licensee subject to this Article, unless a crematory has its own form approved by the Board. A crematory licensee that uses its own approved cremation authorization form must have the cremation authorization form reapproved if changed or after amendments are made to this Article or the rules adopted by the Board related to cremation authorization forms. The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools,

and the office of the Chief Medical Examiner when the disposition of such medical waste is the legal responsibility of the institutions.

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

(d) No person, firm, or corporation may request or authorize cremation or cremate human remains when the person, firm, or corporation has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate the human remains has thereafter been obtained. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1993, c. 539, s. 640; 1994 Ex. Sess., c. 24, s. 14(c); 2003-420, s. 2.)

§ 90-210.135. Cremation societies.

No person, firm, or corporation licensed as a crematory under the provisions of this Article may operate a cremation society without first registering the name of the cremation society with the Board. (2007-531, s. 25.)

§ 90-210.136. Hydrolysis of human remains.

(a) The following definitions shall apply in this section:

(1) Alkaline hydrolysis. – The technical process using water, heat, and other chemicals to destroy, dissolve, or reduce human remains to simpler or essential elements.

(2) Hydrolysis container. – A container, other than a casket, designed to enclose human remains and made of suitable material to be easily destroyed during hydrolysis and to resist spillage and leakage. A hydrolysis container may be a cremation container or any other container that meets the requirements of this subdivision.

(3) Hydrolysis licensee. – A person or entity licensed to hydrolyze human remains and perform hydrolysis.

(4) Liquid waste. – Any liquid remaining after hydrolysis that does not contain any trace elements of human tissue.

(b) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or other entity shall hydrolyze human remains without first obtaining a license from the Board.

(c) Except as otherwise provided by this section, a license for the hydrolysis of human remains shall have the same requirements and fees as for the licensing of crematories under this Article. The hydrolysis of human remains shall be conducted in compliance with all requirements for cremation, and the licensee shall pay the same fees for monthly reports for each hydrolysis as crematories under this Article.

(d) The Board shall have the same powers to regulate, enforce, discipline, and inspect hydrolysis licensees and the practice of hydrolysis that have been granted under this Article for the regulation, enforcement, discipline, and inspection of crematories and the practice of cremation.

(e) Any solid remains or residue remaining after hydrolysis shall be treated and disposed of as cremated remains under this Article. Disposal of liquid waste shall be subject to all applicable health and environmental laws and regulations.

(f) Human remains shall be hydrolyzed in a hydrolysis container and shall not be required to be hydrolyzed in a casket.

(g) Unless specified otherwise by the manufacturer of the equipment used for hydrolysis, human remains may be hydrolyzed without first removing a pacemaker or defibrillator. Any other potentially hazardous implanted device or material shall be handled in accordance with G.S. 90-210.129(d).

(h) The Board shall promulgate rules necessary to effectuate the licensing of alkaline hydrolysis. (2018-78, s. 20; 2019-207, s. 1(g).)

Article 14.

Cadavers for Medical Schools.

§ 90-211: Repealed by Session Laws 1973, c. 476, s. 128.

§§ 90-212 through 90-216. Repealed by Session Laws 1975, c. 694, s. 1.

Article 14A.

Bequest of Body or Part Thereof.

§§ 90-216.1 through 90-216.5. Repealed by Session Laws 1969, c. 84, s. 2.

Article 14B.

Disposition of Unclaimed Bodies.

§§ 90-216.6 through 90-216.11. Repealed by Session Laws 1983, c. 891, s. 3, effective January 1, 1984.

Article 14C.

Final Disposition or Transportation of Deceased Migrant Farm Workers and Their Dependents.

§ 90-216.12. Repealed by Session Laws 1983, c. 891, s. 4, effective January 1, 1984.

Article 15.

Autopsies.

§§ 90-217 through 90-220. Repealed by Session Laws 1983, c. 891, s. 5, effective January 1, 1984.

Article 15A.

Uniform Anatomical Gift Act.

§§ 90-220.1 through 90-220.11. Repealed by Session Laws 1983, c. 891, s. 6, effective January 1, 1984.

Article 15B.

Blood Banks.

§ 90-220.12. Supervision of licensed physician required; penalty for violation.

It shall be unlawful for any person, firm or corporation to engage in the selection of blood donors or in the collection, storage, processing, or transfusion of human blood, except at the direction or under the supervision of a physician licensed to practice medicine in North Carolina. Any person, firm or corporation convicted of the violation of this section shall be guilty of a Class 1 misdemeanor. (1971, c. 938; 1993, c. 539, s. 641; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-220.13. Selection of donors; due care required.

In the selection of donors due care shall be exercised to minimize the risks of transmission of agents that may cause hepatitis or other diseases. (1971, c. 938.)

§ 90-220.14. Inapplicability.

Nothing in this Article shall be construed to affect the provisions of G.S. 20-16.2 and G.S. 20-139.1. (1971, c. 938.)

Article 16.

Dental Hygiene Act.

§ 90-221. Definitions.

(a) "Dental hygiene" as used in this Article shall mean the performance of the following functions: Complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, preparation of diagnostic aids, and written records of oral conditions for interpretation by the dentist, together with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.

(b) "Dental hygienist" as used in this Article, shall mean any person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

(c) "License" shall mean a certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene.

(d) "Renewal certificate" shall mean the annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina.

(e) "Board" shall mean "The North Carolina State Board of Dental Examiners" created by Chapter 139, Public Laws of 1879, and Chapter 178, Public Laws of 1915 as continued in existence by G.S. 90-22.

(f) "Supervision" as used in this Article shall mean that acts are deemed to be under the supervision of a licensed dentist when performed in a locale where a licensed dentist is physically present during the performance of such acts, except those acts performed under direction and in compliance with G.S. 90-233(a) or G.S. 90-233(a1), and such acts are being performed pursuant

to the dentist's order, control and approval. (1945, c. 639, s. 1; 1971, c. 756, s. 1; 1981, c. 824, s. 1; 2007-124, s. 1.)

§ 90-222. Administration of Article.

The Board is hereby vested with the authority and is charged with the duty of administering the provisions of this Article. (1945, c. 639, s. 2.)

§ 90-223. Powers and duties of Board.

(a) The Board is authorized and empowered to:

(1) Conduct examinations for licensure,

(2) Issue licenses and provisional licenses,

(3) Issue annual renewal certificates,

(4) Renew expired licenses, and

(5) Contract with a regional or national testing agency to conduct clinical examinations. Prior to entering a contract with a regional or national testing agency, the Board shall evaluate the agency based on the following criteria:

a. The number of states that recognize the results of the testing agency's examination.

b. The cost to the applicant of the examination.

c. How long the testing agency has been conducting examinations.

d. Whether the examination includes procedures performed on human subjects as part of the assessment of clinical competencies.

(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule adopted under this Article shall be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board.

(2) The Board shall issue every two years a compilation or supplement of the Dental Hygiene Act and the Board rules and regulations, and, upon written request therefor, a directory of dental hygienists to each licensed dentist and dental hygienist.

(c) The Board shall keep on file in its office at all times a complete record of the names, addresses, license numbers and renewal certificate numbers of all persons entitled to practice dental hygiene in this State.

(d) The Board shall, in addition to any other requirements for Board approval of a school or program of dental hygiene for purposes of this Article, require that any school or program in North Carolina develop and implement a procedure for advanced placement of potentially qualified persons. This procedure shall be designed to encourage and allow credit for any person who has attained special capabilities in dental work through military service, on-the-job training or working experience, or other means not otherwise qualifying the person to be immediately eligible for licensure. The procedure shall include these elements: public announcement of the procedure, a method for persons who have special capabilities through training or experience to make application to the school or program for advanced placement, personal counseling on obtaining advanced placement, administration of specially prepared written and clinical examinations for all parts of the curriculum otherwise required for graduation, exemption from course requirements when results of the examinations so indicate, and appropriate modification of

curriculum requirements, when necessary, to facilitate individual advancement in education programs. The procedure for advanced placement shall not be approved by the Board unless it is fairly designed to facilitate the substitution of military or civilian training and experience for regular curricula, taking into account that the special nature of military and certain civilian training and experience may be equivalent without necessarily being identical to the courses of the school or program.

(e) The Board shall have the authority to provide for programs for impaired dental hygienists as authorized in G.S. 90-48.3. (1945, c. 639, s. 3; 1971, c. 756, s. 2; 1973, c. 871, s. 2; 1979, 2nd Sess., c. 1195, s. 14; 1987, c. 827, s. 1; 1999-382, s. 2; 2000-189, s. 7; 2006-235, s. 1.)

§ 90-224. Examination.

(a) The applicant for licensure must be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or unit authorized to issue the same, and be a graduate of a program of dental hygiene in a school or college approved by the Board.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application;

(2) The time and place of examination;

(3) The type of examination;

(4) The qualifications for passing the examination.

(b1) The Board also may grant a license to an applicant who is found to have passed an examination given by a Board-approved regional or national dental hygiene testing agency, provided that the Board deems the regional or national examination to be substantially equivalent to or an improvement upon the examination given by the Board, and the applicant meets the other qualifications set forth in this Article.

(c) The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1945, c. 639, s. 4; 1971, c. 756, s. 3; 2002-147, s. 10; 2006-235, s. 2; 2014-100, s. 17.1(o).)

§ 90-224.1. Licensure by credentials.

(a) The Board may issue a license by credentials to an applicant who has been licensed to practice dental hygiene in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; has passed satisfactory examinations of proficiency in the knowledge and practice of dental hygiene as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dental hygiene.

(b) The applicant for licensure shall be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or authorized unit, and have graduated from a dental hygiene program or school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dental hygiene, as defined in G.S. 90-221, under the supervision of a licensed dentist for a minimum of two years immediately preceding the date of application.

(2) Has no history of disciplinary action or pending disciplinary action in the Armed Forces of the United States or in any state or territory in which the applicant is or has ever been licensed.

(3) Has no felony convictions and has no other criminal convictions that would affect the applicant's ability to render competent dental hygiene care.

(4) Has not failed a licensure examination administered by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application, the form of which shall be determined by the Board, pay the fee required by G.S. 90-232, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet other criteria or requirements established by the Board, which may include an examination or interview before the Board or its authorized agents.

(e) This section shall not be construed to include licensure by reciprocity, which is prohibited. (2002-37, s. 3; 2011-183, s. 65.)

§ 90-225. License issue and display.

(a) The Board shall issue licenses to examinees who pass the Board's examination.

(b) The Board shall determine:

(1) The method and time of notifying successful candidates,

(2) The time and form for issuing licenses, and

(3) The place license must be displayed. (1945, c. 639, s. 5; 1971, c. 756, s. 4.)

§ 90-225.1. Continuing education courses required.

All dental hygienists licensed under G.S. 90-225 shall be required to attend Board-approved courses of study in subjects relating to dental hygiene. The Board shall have authority to consider

and approve courses, or providers of courses, to the end that those attending will gain (i) information on existing and new methods and procedures used by dental hygienists, (ii) information leading to increased safety and competence in their dealings with patients and supervising dentists, and (iii) information on other matters, as they develop, that are of continuing importance to the practice of dental hygiene as a part of the practice of dentistry. The Board shall determine the number of hours of study within a particular period and the nature of course work required. Failure to comply with continuing education requirements adopted under the authority of this section shall be grounds for the Board to decline to issue a renewal certificate under G.S. 90-227. (1993, c. 307, s. 3.)

§ 90-226. Provisional license.

(a) The North Carolina State Board of Dental Examiners shall, subject to its rules and regulations, issue a provisional license to practice dental hygiene to any person who is licensed to practice dental hygiene anywhere in the United States, or in any country, territory or other recognized jurisdiction, if the Board shall determine that said licensing jurisdiction imposed upon said person requirements for licensure no less exacting than those imposed by this State. A provisional licensee may engage in the practice of dental hygiene only in strict accordance with the terms, conditions and limitations of her license and with the rules and regulations of the Board pertaining to provisional license.

(b) A provisional license shall be valid until the date of the announcement of the results of the next succeeding Board examination of candidates for licensure to practice dental hygiene in this State, unless the same shall be earlier revoked or suspended by the Board.

(c) No person who has failed an examination conducted by the North Carolina State Board of Dental Examiners shall be eligible to receive a provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-232.

(e) A provisional licensee shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-229 upon a determination of the Board that said provisional licensee has violated any of the terms or provisions of this Article. (1971, c. 756, s. 5; 1975, c. 19, s. 5.)

§ 90-227. Renewal certificates.

(a) The Board shall issue annual renewal certificates to licensed dental hygienists.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application for renewal certificates;
(2) The time the application must be submitted;
(3) The type of certificate to be issued;
(4) How the certificate must be displayed;
(5) The penalty for late application;
(6) The automatic loss of license if applications are not submitted. (1945, c. 639, s. 6; 1971, c. 756, s. 6.)

§ 90-228. Renewal of license.

The Board shall have the authority to renew the license of a dental hygienist who fails to obtain a renewal certificate for any year provided she

(1) Makes application for a renewal of license and

(2) Meets the qualifications established by the Board. (1945, c. 639, s. 7; 1971, c. 756, s. 7.)

§ 90-229. Disciplinary measures.

(a) The North Carolina State Board of Dental Examiners shall have the power and authority to (i) Refuse to issue a license to practice dental hygiene; (ii) Refuse to issue a certificate of renewal to practice dental hygiene; (iii) Revoke or suspend a license to practice dental hygiene; [and] (iv) Invoke such other disciplinary measures, censure or probative terms against a licensee as it deems proper; in any instance or instances in which the Board is satisfied that such applicant or licensee:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;

(2) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;

(3) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;

(4) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs her ability to practice dental hygiene;

(5) Is incompetent in the practice of dental hygiene;

(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;

(7) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients;

(8) Has made fraudulent or misleading statements pertaining to her skill, knowledge, or method of treatment or practice;

(9) Has committed any fraudulent or misleading acts in the practice of dental hygiene;

(10) Has, in the practice of dental hygiene, committed an act or acts constituting malpractice;

(11) Has employed a person not licensed in this State to do or perform any act or service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which cannot lawfully be done or performed by such person;

(12) Has engaged in any unprofessional conduct as the same may be from time to time, defined by the rules and regulations of the Board;

(13) Is mentally, emotionally, or physically unfit to practice dental hygiene or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice dental hygiene unless or until such person shall have been subsequently lawfully declared to be mentally competent.

(b) As used in this section the term "licensee" includes licensees and provisional licensees and the term "license" includes licenses and provisional licenses. (1945, c. 639, s. 8; 1971, c. 756, s. 8; 1997-456, s. 27.)

§ 90-230. Certificate upon transfer to another state.

Any dental hygienist duly licensed by the North Carolina State Board of Dental Examiners, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said Board, upon application to said Board and the payment to it of the fee in this Article provided, shall be issued a certificate showing her full name and address, the date of license originally issued to her, the date and number of her renewal of license, and whether any charges have been filed with the Board against her. The Board may provide forms for such certificate, requiring such additional information as it may determine proper. (1971, c. 756, s. 10.)

§ 90-231. Opportunity for licensee or applicant to have hearing.

(a) With the exception of applicants for reinstatement after revocation, every applicant for a license or provisional license to practice dental hygiene or licensee or provisional licensee to practice dental hygiene shall after notice have an opportunity to be heard before the North Carolina State Board of Dental Examiners shall take any action the effect of which would be:

(1) To deny permission to take an examination for licensing for which application has been duly made; or
(2) To deny a license after examination for any cause other than failure to pass an examination; or
(3) To withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee; or
(4) To suspend a license; or
(5) To revoke a license; or
(6) To revoke or suspend a provisional license; or
(7) To invoke any other disciplinary measures, censure or probative terms against a licensee or provisional licensee,

such proceedings to be conducted in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(b) In lieu of or as a part of such hearing and subsequent proceedings the Board is authorized and empowered to enter any consent order relative to the discipline, censure, or probation of a licensee, provisional licensee or an applicant for a license or provisional license, or relative to the revocation or suspension of a license or provisional license.

(c) Following the service of the notice of hearing as required by Chapter 150B of the General Statutes, the Board and the person upon whom such notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process as might be necessary or proper to effect the purposes of this subsection; provided, however, that no member of the Board shall be subject to examination hereunder. (1945, c. 639, s. 10; 1967, c. 489, s. 1; 1971, c. 756, s. 11; 1973, c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 90-232. Fees.

(a) In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

(1) Each applicant for examination $350.00

(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist 250.00

(3) Each restoration of license 150.00

(4) Each provisional license 150.00

(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory 50.00

(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists 80.00

(7) Each license by credentials ..... 1,500.

(b) In all instances where the Board uses the services of a regional or national testing agency for preparation, administration, or grading of examinations, the Board may require applicants to pay the actual cost of the testing agency in lieu of the fee authorized in subdivision (a)(1) of this section.

(c) In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article. (1945, c. 639, s. 11; 1965, c. 163, s. 7; 1967, c. 489, s. 2; 1971, c. 756, s. 12; 1987, c. 555, s. 2; 1999-382, s. 3; 2002-37, s. 6; 2003-348, s. 2; 2006-235, s. 3.)

§ 90-233. Practice of dental hygiene.

(a) A dental hygienist may practice only under the supervision of one or more licensed dentists. This subsection shall be deemed to be complied with in the case of dental hygienists employed by or under contract with a local health department or State government dental public health program and especially trained by the Dental Health Section of the Department of Health and Human Services as public health hygienists, while performing their duties for the persons officially served by the local health department or State government program under the direction of a duly licensed dentist employed by that program or by the Dental Health Section of the Department of Health and Human Services.

(a1) A dental hygienist who has three years of experience in clinical dental hygiene or a minimum of 2,000 hours performing primarily prophylaxis or periodontal debridement under the supervision of a licensed dentist, who completes annual CPR certification, who completes six hours each year of Board-approved continuing education in medical emergencies in addition to the requirements of G.S. 90-225.1, and who is designated by the employing dentist as being capable of performing clinical hygiene procedures without the direct supervision of the dentist, may perform one or more dental hygiene functions as described in G.S. 90-221(a) without a licensed dentist being physically present if all of the following conditions are met:

(1) A licensed dentist directs in writing the hygienist to perform the dental hygiene functions.

(2) The licensed dentist has personally conducted an evaluation of the patient which shall include a complete oral examination of the patient, a thorough analysis of the patient's health history, a diagnosis of the patient's condition, and a specific written plan for treatment.

(3) The dental hygiene functions directed to be performed in accordance with this subsection shall be conducted within 120 days of the dentist's evaluation.

(4) The services are performed in nursing homes; rest homes; long-term care facilities; rural and community clinics operated by Board-approved nonprofits; rural and community clinics operated by federal, State, county, or local governments; and any other facilities identified by the Office of Rural Health and approved by the Board as serving dental access shortage areas.

(a2) A dental hygienist shall not establish or operate a separate care facility that exclusively renders dental hygiene services.

(a3) A dental hygienist who has been disciplined by the Board may not practice outside the direct supervision of a dentist under G.S. 90-233(a1). A dentist who has been disciplined by the Board may not allow a hygienist to work outside of that dentist's direct supervision under G.S. 90-233(a1).

(a4) Each dentist who chooses to order dental hygiene services under G.S. 90-233(a1) shall report annually to the Board the number of patients who were treated outside the direct supervision of the dentist, the location in which the services were performed by the hygienist, and a description of any adverse circumstances which occurred during or after the treatment, if any. The dentist's report shall not identify hygienists or patients by name or any other identifier.

(a5) Clinical dental hygiene services shall be provided in compliance with both CDC and OSHA standards for infection control and patient treatment.

(b) A dentist in private practice may not employ more than two dental hygienists at one and the same time who are employed in clinical dental hygiene positions.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly issued by the Board. The following acts, practices, functions or operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

(3) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by

the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3). (1945, c. 639, s. 12; 1971, c. 756, s. 13; 1973, c. 476, s. 128; 1981, c. 824, ss. 2, 3; 1989, c. 727, s. 219(6a); 1997-443, s. 11A.23; 1999-237, s. 11.65; 2007-124, s. 2.)

§ 90-233.1. Violation a misdemeanor.

Any person who shall violate, or aid or abet another in violating, any of the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1945, c. 639, s. 13; 1971, c. 756, s. 14; 1993, c. 539, s. 642; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 17.

Dispensing Opticians.

§ 90-234. Necessity for certificate of registration.

On and after the first day of July, 1951, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice as a dispensing optician as hereinafter defined in the State of North Carolina without a certificate of registration issued pursuant to the provisions of this Article by the North Carolina State Board of Opticians hereinafter established. (1951, c. 1089, s. 1.)

§ 90-235. Definition.

Within the meaning of the provisions of this Article, the term "dispensing optician" defines one who prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye. The services and appliances related to ophthalmic dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by a physician or an optometrist; but duplications, replacements, reproductions or repetitions may be done without prescription, in which event any such act shall be construed to be ophthalmic dispensing, the same as if performed on the basis of a written prescription. (1951, c. 1089, s. 2.)

§ 90-236. What constitutes practicing as a dispensing optician.

Any one or combination of the following practices when done for pay or reward shall constitute practicing as a dispensing optician: Interpreting prescriptions issued by licensed physicians and/or optometrists; fitting glasses on the face; servicing glasses or spectacles; measuring of patient's face, fitting frames, compounding and fabricating lenses and frames, and any therapeutic device used or employed in the correction of vision, and alignment of frames to the face of the wearer, provided, however, that the provisions of this section shall not apply to students and apprentices. (1951, c. 1089, s. 3; 1977, c. 755, s. 1.)

§ 90-236.1. Requirements for filling contact lens prescriptions.

No person, firm or corporation licensed or registered under this Article shall fill a prescription or dispense lenses, other than spectacle lenses, unless the prescription specifically states on its face that the prescriber intends it to be for contact lenses and includes the type and specifications of the contact lenses being prescribed. No person, firm or corporation licensed under this Article shall fill a prescription beyond the expiration date stated on the face thereof.

Any person, firm or corporation that dispenses contact lenses on the prescription of a practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the lenses, inform the recipient both orally and in writing that he return to the prescriber for insertion of the lens, instruction on lens insertion and care, and to ascertain the accuracy and suitability of the prescribed lens. The statement shall also state that if the recipient does not return to the prescriber after delivery of the lens for the purposes stated above, the prescriber shall not be responsible for any damages or injury resulting from the prescribed lens, except that this sentence does not apply if the dispenser and the prescriber are the same person.

Prescriptions filled pursuant to this section shall be kept on file by the prescriber and the person filling the prescription for at least 24 months after the prescription is filled.

Any person, firm or corporation dispensing, furnishing or supplying contact lenses in interstate commerce or at retail to recipients in this State, other than a practitioner licensed under Article 1 or Article 6 of this Chapter, is deemed a "dispensing optician" under G.S. 90-235 and is subject to the provisions of this Article. (1981, c. 600, s. 1; 1985, c. 748.)

§ 90-237. Qualifications for dispensing opticians.

In order to be issued a license as a registered licensed optician by the North Carolina State Board of Opticians, the applicant:

(1) Shall not have violated this Article or the rules of the Board.

(2) Shall be at least 18 years of age and a high school graduate or equivalent.

(2a) Shall be of good moral character.

(3) Shall have passed an examination conducted by the Board to determine his or her fitness to engage in the business of a dispensing optician.

(4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, optometrist, or physician trained in ophthalmology, in order to demonstrate proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face, lens recognition, lens design, and prescription interpretation. (1951, c. 1089, s. 4; 1977, c. 755, s. 2; 1981, c. 600, s. 2; 1997-424, s. 1.)

§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.

The North Carolina State Board of Opticians is created. The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

(1) Five licensed dispensing opticians, each of whom shall serve three-year terms;

(2) Two residents of North Carolina who are not licensed as dispensing opticians, physicians, or optometrists, who shall serve three-year terms.

Each member of the Board shall serve until the member's successor is appointed and qualifies. No person shall serve on this Board for more than two complete consecutive terms. Before beginning office, each member of the Board shall take all oaths prescribed for other State officers

in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board each year and open to all licensees. In naming candidates for election, the Board must ensure that its candidates reflect the composition of the State with regards to gender, ethnic, racial, and age composition. If the Board fails to fulfill its requirements under this section, the Governor may appoint a licensed optician to fill a vacancy on the Board. (1951, c. 1089, s. 5; 1979, c. 533; 1981, c. 600, s. 3; 1997-424, s. 7; 2007-525, s. 13.)

§ 90-239. Organization, meetings and powers of Board.

Within 30 days after appointment of the Board, the Board shall hold its first regular meeting, and at said meeting and annually thereafter shall choose from among its members a chairman, vice-chairman, a secretary and a treasurer. The Board may combine the offices of secretary and treasurer. The Board shall make such rules and regulations not inconsistent with the law as may be necessary to the proper performance of its duties, may employ agents to carry out the purposes of this Article, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the Board, and a majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of meeting to be designated by the chairman. Special meetings may be called by the chairman or upon request of three members. The secretary of the Board shall keep a full and complete record of its proceedings, which shall at all reasonable times be open to public inspection. (1951, c. 1089, s. 6; 1981, c. 600, ss. 4-7.)

§ 90-240. Examination.

(a) Applicants to take the examination for dispensing opticians shall be high school graduates or the equivalent who have done one of the following:

(1) Successfully completed a two-year course of training in an accredited school of opticianry with a minimum of 1600 hours.

(2) Completed two and one-half years of apprenticeship while registered with the Board under a licensed dispensing optician, with time spent in a recognized school credited as part of the apprenticeship period.

(3) Completed two and one-half years of apprenticeship while registered with the Board under the direct supervision of an optometrist or a physician specializing in ophthalmology, provided the supervising optometrist or physician elects to operate the apprenticeship under the same requirements applicable to dispensing opticians.

(a1) Applicants to take the examination for dispensing opticians who are graduates from an accredited college or university with a four-year degree or comparable degree in a health-related field shall satisfy one of the following:

(1) The requirements of subdivision (1) of subsection (a) of this section.

(2) Successful completion of two years of apprenticeship while registered with the Board under a health care professional identified in subdivision (2) or (3) of subsection (a) of this section. The Board may adopt rules specifying the colleges, universities, and coursework that meet the accreditation requirements of this subsection.

(b) The examination shall be confined to such knowledge as is reasonably necessary to engage in preparation and dispensing of optical devices and shall include the following:

(1) The skills necessary for the proper analysis of prescriptions;

(2) The skills necessary for the dispensing of eyeglasses and contact lenses; and

(3) The processes by which the products offered by dispensing opticians are manufactured.

(c) The examination shall be given at least twice each year at sites and on dates that are publicly announced 60 days in advance.

(d) Each applicant shall, upon request, receive his or her examination score on each section of the examination.

(e) The Board shall include as part or all of the examination, any nationally prepared and recognized examination, and will periodically review and validate any exam in use by the Board. The Board will credit an applicant with the score on any national test successfully completed in the three years immediately preceding the date the applicant is scheduled to take the North Carolina examination, to the extent that such test is included in the North Carolina examination. The Board shall adopt rules designating the nationally prepared and recognized examinations that will satisfy and serve as credit for parts or all of the North Carolina examination.

(f) Completion of the six-month internship required of all applicants under G.S. 90-237(4) may, at the election of the applicant, occur before or after the applicant sits for the examination as provided in this section, so long as the applicant has met the minimum qualifications for examination under subsection (a) or (a1) of this section at the time the internship commences. (1951, c. 1089, s. 7; 1977, c. 755, s. 3; 1981, c. 600, s. 8; 2016-117, s. 3(a).)

§ 90-241. Waiver of written examination requirements.

(a) The Board shall grant a license without examination to any applicant who:

(1) Is at least 18 years of age.

(2) Is of good moral character.

(3) Holds a license in good standing as a dispensing optician in another state.

(4) Has engaged in the practice of opticianry in the other state for four years immediately preceding the application to the Board.

(5) Has not violated this Article or the rules of the Board.

(b) The Board shall grant admission to the next examination and grant license upon attainment of a passing score on the examination to a person who has worked, in a state that does not license opticians, in opticianry for four years immediately preceding the application to the Board performing tasks and taking the curriculum equivalent to the North Carolina apprenticeship, and who meets the requirements of G.S. 90-237(1) through (3).

(c) Any person desiring to secure a license under this section shall make application therefor in the manner and form prescribed by the rules of the Board and shall pay the fee prescribed in G.S. 90-246.

(d) Repealed by Session Laws 1997-424, s. 2. (1951, c. 1089, s. 8; 1977, c. 755, s. 4; 1979, c. 166, ss. 2, 3; 1981, c. 600, s. 9; 1997-424, s. 2.)

§ 90-242. Repealed by Session Laws 1981, c. 600, s. 10.

§ 90-243. Registration of places of business, apprentices.

The Board may adopt rules requiring, as a condition of dispensing, the registration of places of business where ophthalmic dispensing is engaged in, and for registration of apprentices and interns who are working under direct supervision of a licensed optician. The Board may also require that any information furnished to it as required by law or regulation be furnished under oath. (1951, c. 1089, s. 10; 1967, c. 691, s. 49; 1979, c. 166, s. 1; 1981, c. 600, s. 11.)

§ 90-244. Display, use, and renewal of license of registration.

(a) Every person to whom a license has been granted under this Article shall display the same in a conspicuous part of the office or establishment wherein he is engaged as a dispensing optician. The Board may adopt regulations concerning the display of registrations of places of business and of apprentices and interns.

(b) A license issued by the Board automatically expires on the first day of January of each year. A license shall be reinstated without penalty from January 1 through January 15 immediately following expiration. After January 15, a license shall be reinstated by payment of the renewal fee and a penalty of fifty dollars ($50.00). Licenses that remain expired two years or more shall not be reinstated. (1951, c. 1098, s. 11; 1981, c. 600, s. 12; 1997-424, s. 3.)

§ 90-245. Collection of fees.

The administrator for the Board is hereby authorized and empowered to collect in the name and on behalf of this Board the fees prescribed by this Article and shall turn over to the State Treasurer all funds collected or received under this Article, which funds shall be credited to the North Carolina State Board of Opticians, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Article. Nothing in this Article shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from the fees collected under the provisions of this Article and received by the State Treasurer in the manner aforesaid. (1951, c. 1089, s. 12; 1981, c. 884, s. 9; 2016-117, s. 3(b).)

§ 90-246. Fees.

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect the following fees:

(1) Each examination $300.00
(2) Each initial license $100.00
(3) Each renewal of license $150.00
(4) Each license issued to a practitioner of another state to practice in this State $300.00
(5) Each registration of an optical place of business ..... $ 75.00
(6) Each application for registration as an opticianry apprentice or intern, and renewals thereof ..... $ 35.00
(7) Repealed by Session Laws 1997-424, s. 4.
(8) Each registration of a training establishment ..... $ 35.00

(9) Each license verification ..... $ 15.00
(10) Each registration of an optician in charge..... $ 50.00
(11) Late fee for restoration of an expired license within the first year after expiration..... $ 75.00
(12) Late fee for restoration of an expired license within the second year after expiration $150.00
(13) Restoration fee for an inactive license within the second year ..... $100.00.

(1951, c. 1089, s. 13; 1977, c. 755, s. 5; 1981, c. 600, s. 13; 1989, c. 673, s. 1; 1997-424, s. 4; 2016-117, s. 3(c).)

§ 90-247. Repealed by Session Laws 1981, c. 600, s. 14.

§ 90-248. Compensation and expenses of Board members and secretary.

Each member of the Board shall receive for his or her services for time actually in attendance upon Board meetings and affairs of the Board only, the amount of per diem provided by G.S. 138-5 and shall be reimbursed for subsistence, mileage and necessary expenses incurred in the discharge of such duties at the same rates as set forth in G.S. 138-6 and G.S. 138-7. (1951, c. 1089, s. 15; 1953, c. 894; 1965, c. 730; 1969, c. 445, s. 6; 1981, c. 600, s. 15.)

§ 90-249. Powers of the Board.

(a) The Board shall have the power to make rules, not inconsistent with this Article and the laws of the State of North Carolina, with respect to the following areas of the business of opticianry in North Carolina:

(1) Misrepresentation to the public.
(2) Baiting or deceptive advertising.
(3) Continuing education of licensees.
(4) Location of registrants in the State.
(5) Registration of established optical places of business, but no rule restricting type or location of a business may be enacted.
(6) Requiring photographs for purposes of identification of persons subject to this Article.
(7) Content of licensure examination and reexamination.
(8) Revocation, suspension, and reinstatement of licenses, probation, and reprimands of licensees, and other penalties.
(9) Fees within the limits of G.S. 90-246.
(10) Accreditation of schools of opticianry.
(10a) Designation of accredited colleges, universities, and coursework that satisfy the qualifications for examination pursuant to G.S. 90-240(a1).
(11) Registration and training of apprentices and interns.
(12) Licenses and examinations pursuant to G.S. 90-241.

(b) through (d) Repealed by Session Laws 1997-424, s. 5. (1951, c. 1089, s. 16; 1953, c. 1041, s. 19; 1973, c. 1331, s. 3; 1977, c. 755, s. 6; 1981, c. 600, s. 16; 1987, c. 827, s. 1; 1997-424, s. 5; 2016-117, s. 3(d).)

§ 90-249.1. Disciplinary actions.

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Offering to practice or practicing as a dispensing optician without a license.
(2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.
(3) Selling, transferring, or assigning a license.
(4) Engaging in fraud or misrepresentation to obtain or renew a license.
(5) Engaging in false or misleading advertising.
(6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article or optical places of business registered under this Article.
(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.
(8) Being convicted of a crime involving fraud or moral turpitude.
(9) Violating any provision of this Article or the rules adopted by the Board.

(b) In addition or as an alternative to taking any of the actions permitted in subsection (a) of this section, the Board may assess a licensee a civil penalty of not more than one thousand dollars ($1,000) for the violation of any section of this Article. In any case in which the Board is authorized to take any of the actions permitted in subsection (a) of this section, the Board may instead accept an offer in compromise of the charges whereby the accused licensee shall pay to the Board a civil penalty of not more than one thousand dollars ($1,000). All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(c) In determining the amount of a civil penalty, the Board may consider:

(1) The degree and extent of harm caused by the violation to public health and safety or the potential for harm.
(2) The duration and gravity of the violation.
(3) Whether the violation was willful or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception.
(5) Prior disciplinary actions against the licensee.
(6) Whether and to what extent the licensee profited from the violation.

(d) Any person, including the Board and its staff, may file a complaint with the Board alleging that a licensee committed acts in violation of subsection (a) of this section. The Board may, without holding a hearing, dismiss the complaint as unfounded or trivial. Any hearings held pursuant to this section shall be conducted in accordance with Chapter 150B of the General Statutes. (1997-424, s. 6.)

§ 90-250. Sale of optical glasses.

No optical glass or other kindred products or instruments of vision shall be dispensed, ground or assembled in connection with a given formula prescribed by a licensed physician or optometrist except under the supervision of a licensed dispensing optician and in a registered optical establishment or office. Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles without advice or aid as to the selection thereof as merchandise from permanently located or established places of business. (1951, c. 1089, s. 17.)

§ 90-251. Licensee allowing unlicensed person to use his certificate or license.

Each licensee licensed under the provisions of this Article who shall rent, loan or allow the use of his registration certificate or license to an unlicensed person for any unlawful use shall be guilty of a Class 1 misdemeanor. (1951, c. 1089, s. 18; 1993, c. 539, s. 643; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-252. Engaging in practice without license.

Any person, firm or corporation owning, managing or conducting a store, shop or place of business and not having in its employ and on duty, during all hours in which acts constituting the business of opticianry are carried on, a licensed dispensing optician engaged in supervision of such store, office, place of business or optical establishment, or representing to the public, by means of advertisement or otherwise or by using the words, "optician, licensed optician, optical establishment, optical office, ophthalmic dispenser," or any combination of such terms within or without such store representing that the same is a legally established optical place of business duly licensed as such and managed or conducted by persons holding a dispensing optician's license, when in fact such permit is not held by such person, firm or corporation, or by some person employed by such person, firm or corporation and on the premises and in charge of such optical business, shall be guilty of a Class 1 misdemeanor. (1951, c. 1089, s. 19; 1981, c. 600, s. 17; 1993, c. 539, s. 644; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-253. Exemptions from Article.

Nothing in this Article shall be construed to apply to optometrists, or physicians trained in ophthalmology who are authorized to practice under the laws of this State, or to an unlicensed person working within the practice and under the direct supervision of the optometrist or physician trained in ophthalmology. An apprentice or intern registered with the Board and working under direct supervision of a licensed optician, optometrist or physician trained in ophthalmology will not be deemed to have engaged in opticianry by reason of performing acts defined as preparation and dispensing, provided the apprentice is in compliance with the rules of the Board respecting the training of apprentices.

As used in this section, "supervision" means the provision of general direction and control through immediate personal on-site inspection and evaluation of all work constituting the practice of opticianry and the provision of consultation and instruction by a licensed dispensing optician, except that on-site supervision is not required for minor adjustments or repairs to eyeglasses. (1951, c. 1089, s. 20; 1981, c. 600, s. 18.)

§ 90-254. General penalty for violation.

Any person, firm or corporation who shall violate any provision of this Article for which no other penalty has been provided shall, upon conviction, be fined not more than two hundred dollars ($200.00) or imprisoned for a period of not more than 12 months, or both, in the discretion of the court.

Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective or whether or not criminal prosecution has been instituted or administrative sanctions imposed by reasons of the violation. The venue for actions brought under this subsection shall be the superior

court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside. (1951, c. 1089, s. 21; 1981, c. 600, s. 19.)

§ 90-255. Rebates.

It shall be unlawful for any person, firm or corporation to offer or give any gift or premium or discount, directly or indirectly, or in any form or manner participate in the division, assignment, rebate or refund of fees or parts thereof with any ophthalmologist, optometrist, or wholesaler, for the purpose of diverting or influencing the freedom of choice of the consumer in the selection of an ophthalmic dispenser. (1951, c. 1089, s. 23; 1981, c. 600, s. 20.)

§ 90-255.1. Sale of flammable frames.

No person shall distribute, sell, exchange or deliver, or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass frame or sunglass frame which contains any form of cellulose nitrate or other highly flammable materials. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. (1971, c. 239, s. 1; 1993, c. 539, s. 645; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 18.

Physical Therapy.

§§ 90-256 through 90-270: Recodified as §§ 90-270.24 through 90-270.39.

Article 18A.

Psychology Practice Act.

§ 90-270.1. Title; purpose.

(a) This Article shall be known and may be cited as the "Psychology Practice Act."

(b) The practice of psychology in North Carolina is hereby declared to affect the public health, safety, and welfare, and to be subject to regulation to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology. (1967, c. 910, s. 1; 1993, c. 375, s. 1.)

§ 90-270.2. Definitions.

The following definitions apply in this Article:

(1) Board. – The North Carolina Psychology Board.

(2) Examination. – Any and all examinations that are adopted by the Board and administered to applicants and licensees, including, but not limited to, the national examination, Board-developed examinations, and other examinations that assess the competency and ethics of psychologists and applicants.

(3) Jurisdiction. – Any governmental authority, including, but not limited to, a state, a territory, a commonwealth, a district of the United States, and a country or a local governmental authority thereof, that licenses, certifies, or registers psychologists.

(4) Health services. – Those activities of the practice of psychology that include the delivery of preventive, assessment, or therapeutic intervention services directly

to individuals whose growth, adjustment, or functioning is actually impaired or may be at substantial risk of impairment.

(5) Institution of higher education. – A university, a college, a professional school, or another institution of higher learning that:

a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.

b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.

c. In another country, is accredited by the comparable official organization having this authority.

(6) Licensed psychologist. – An individual to whom a license has been issued pursuant to the provisions of this Article, whose license is in force and not suspended or revoked, and whose license permits him or her to engage in the practice of psychology as defined in this Article.

(7) Licensed psychological associate. – An individual to whom a license has been issued pursuant to the provisions of this Article, whose license is in force and not suspended or revoked, and whose license permits him or her to engage in the practice of psychology as defined in this Article.

(7a) Neuropsychological. – Pertaining to the study of brain-behavior relationships, including the diagnosis, including etiology and prognosis, and treatment of the emotional, behavioral, and cognitive effects of cerebral dysfunction through psychological and behavioral techniques and methods.

(8) Practice of psychology. – The observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior or of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, or mental health. The practice of psychology includes, but is not limited to: psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis, including etiology and prognosis, and treatment of mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological and neuropsychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. Psychological services may be rendered to individuals, families, groups, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

(9) Psychologist. – A person represents himself or herself to be a psychologist if that person uses any title or description of services incorporating the words "psychology", "psychological", "psychologic", or "psychologist", states that he or she possesses expert qualification in any area of psychology, or provides or

offers to provide services defined as the practice of psychology in this Article. All persons licensed under this Article may present themselves as psychologists, as may those persons who are exempt by G.S. 90-270.4 and those who are qualified applicants under G.S. 90-270.5. (1967, c. 910, s. 2; 1977, c. 670, s. 1; 1979, c. 670, s. 1; 1993, c. 375, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 14; 1999-292, ss. 1, 2.)

§ 90-270.3. Practice of medicine and optometry not permitted.

Nothing in this Article shall be construed as permitting licensed psychologists or licensed psychological associates to engage in any manner in all or any of the parts of the practice of medicine or optometry licensed under Articles 1 and 6 of Chapter 90 of the General Statutes, including, among others, the diagnosis and correction of visual and muscular anomalies of the human eyes and visual apparatus, eye exercises, orthoptics, vision training, visual training and developmental vision. A licensed psychologist or licensed psychological associate shall assist his or her client or patient in obtaining professional help for all aspects of the client's or patient's problems that fall outside the boundaries of the psychologist's own competence, including provision for the diagnosis and treatment of relevant medical or optometric problems. (1967, c. 910, s. 3; 1977, c. 670, s. 2; 1979, c. 670, s. 2; 1993, c. 375, s. 1.)

§ 90-270.4. Exemptions to this Article.

(a) Nothing in this Article shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions, provided that such teaching, research, service, or consultation does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in this Article shall prevent the provision of expert testimony by psychologists who are otherwise exempted by this act. Persons holding an earned master's, specialist, or doctoral degree in psychology from an institution of higher education may use the title "psychologist" in activities permitted by this subsection.

(b) Nothing in this Article shall be construed as limiting the activities, services, and use of official titles on the part of any person in the regular employ of the State of North Carolina or whose employment is included under the North Carolina Human Resources Act who has served in a position of employment involving the practice of psychology as defined in this Article, provided that the person was serving in this capacity on December 31, 1979.

(c) Persons certified by the State Board of Education as school psychologists and serving as regular salaried employees of the Department of Public Instruction or local boards of education are not required to be licensed under this Article in order to perform the duties for which they serve the Department of Public Instruction or local boards of education, and nothing in this Article shall be construed as limiting their activities, services, or titles while performing those duties for which they serve the Department of Public Instruction or local boards of education. If a person certified by the State Board of Education as a school psychologist and serving as a regular salaried employee of the

Department of Public Instruction or a local board of education is or becomes a licensed psychologist under this Article, he or she shall be required to comply with all conditions, requirements, and obligations imposed by statute or by Board rules upon all other licensed psychologists as a condition to retaining that license. Other provisions of this Article notwithstanding, if a person certified by the State Board of Education as a school psychologist and serving as a regular salaried employee of the Department of Public Instruction or a local board of education is or becomes a licensed psychological associate under this Article, he or she shall not be required to comply with the supervision requirements otherwise applicable to licensed psychological associates by Board rules or by this Article in the course of his or her regular salaried employment with the Department of Public Instruction or a local board of education, but he or she shall be required to comply with all other conditions, requirements, and obligations imposed by statute or a local board of education or by Board rules upon all other licensed psychological associates as a condition to retaining that license.

(d) Nothing in this Article shall be construed as limiting the activities, services, and use of title designating training status of a student, intern, fellow, or other trainee preparing for the practice of psychology under the supervision and responsibility of a qualified psychologist in an institution of higher education or service facility, provided that such activities and services constitute a part of his or her course of study as a matriculated graduate student in psychology. For individuals pursuing postdoctoral training or experience in psychology, nothing shall limit the use of a title designating training status, but the Board may develop rules defining qualified supervision, disclosure of supervisory relationships, frequency of supervision, settings to which trainees may be assigned, activities in which trainees may engage, qualifications for trainee status, nature of responsibility assumed by the supervisor, and the structure, content, and organization of postdoctoral experience.

(e) Subject to subsection (g) of this section, nothing in this Article shall be construed to prevent a qualified member of other professional groups licensed or certified under the laws of this State from rendering services within the scope of practice, as defined in the statutes regulating those professional practices, provided the person does not hold himself or herself out to the public by any title or description stating or implying that the person is a psychologist or licensed, certified, or registered to practice psychology.

(f) Nothing in this Article is to be construed as prohibiting a psychologist who is not a resident of North Carolina who holds an earned doctoral, master's, or specialist degree in psychology from an institution of higher education, and who is licensed or certified only in another jurisdiction, from engaging in the practice of psychology, including the provision of health services, in this State for up to five days in any calendar year. All such psychologists shall comply with supervision requirements established by the Board, and shall notify the Board in writing of their intent to practice in North Carolina, prior to the provision of any services in this State. The Board shall adopt rules implementing and defining this provision.

(g) Except as provided in subsection (c) of this section, if a person who is otherwise exempt from the provisions of this Article and not required to be licensed under this Article

is or becomes licensed under this Article, he or she shall comply with all Board rules and statutes applicable to all other psychologists licensed under this Article. These requirements apply regardless of whether the person holds himself or herself out to the public by any title or description stating or implying that the person is a psychologist, a licensed psychological associate, or licensed to practice psychology.

(h) A licensee whose license is suspended or revoked pursuant to the provisions of G.S. 90-270.15, or an applicant who is notified that he or she has failed an examination for the second time, as specified in G.S. 90-270.5(b), or an applicant who is notified that licensure is denied pursuant to G.S. 90-270.11 or G.S. 90-270.15, or an applicant who discontinues the application process at any point must terminate the practice of psychology, in accordance with the duly adopted rules of the Board. (1967, c. 910, s. 4; 1977, c. 670, s. 3; 1979, c. 670, ss. 3, 4; c. 1005, s. 1; 1981, c. 654, ss. 1, 2; 1983, c. 82, s. 5; 1985, c. 734, ss. 1-3; 1993, c. 375, s. 1; 1995, c. 509, s. 44; 2006-175, s. 1; 2007-468, ss. 1, 2; 2013-382, s. 9.1(c).)

§ 90-270.5. Application; examination; supervision; provisional and temporary licenses.

(a) Except as otherwise exempted by G.S. 90-270.4, persons who are qualified by education to practice psychology in this State must make application for licensure to the Board within 30 days of offering to practice or undertaking the practice of psychology in North Carolina. Applications must then be completed for review by the Board within the time period stipulated in the duly adopted rules of the Board. Persons who practice or offer to practice psychology for more than 30 days without making application for licensure, who fail to complete the application process within the time period specified by the Board, or who are denied licensure pursuant to G.S. 90-270.11 or G.S. 90-270.15, may not subsequently practice or offer to practice psychology without first becoming licensed.

(b) After making application for licensure, applicants must take the first examination to which they are admitted by the Board. If applicants fail the examination, they may continue to practice psychology until they take the next examination to which they are admitted by the Board. If applicants fail the second examination, they shall cease the practice of psychology per G.S. 90-270.4(h), and may not subsequently practice or offer to practice psychology without first reapplying for and receiving a license from the Board. An applicant who does not take an examination on the date prescribed by the Board shall be deemed to have failed that examination.

(c) All individuals who have yet to apply and who are practicing or offering to practice psychology in North Carolina, and all applicants who are practicing or offering to practice psychology in North Carolina, shall at all times comply with supervision requirements established by the Board. The Board shall specify in its rules the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. Individuals shall be supervised for all activities comprising the practice of psychology until they have met the following conditions:

(1) For licensed psychologist applicants, until they have passed the examination to which they have been admitted by the Board, have been notified of the results, have completed supervision requirements specified in subsection (d) of this section, and have been informed by the Board of permanent licensure as a licensed psychologist; or

(2) For licensed psychological associate applicants, until they have passed the examination to which they have been admitted by the Board, have been notified of the results, and have been informed by the Board of permanent licensure as a licensed psychological associate, after which time supervision is required only for those activities specified in subsection (e) of this section.

(d) For permanent licensure as a licensed psychologist, an otherwise qualified psychologist must secure two years of acceptable and appropriate supervised experience germane to his or her training and intended area of practice as a psychologist. The Board shall permit such supervised experience to be acquired on a less than full-time basis, and shall additionally specify in its rules the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. Supervision of health services must be received from qualified licensed psychologists holding health services provider certificates, or from other psychologists recognized by the Board in accordance with Board rules.

(1) One of these years of experience shall be postdoctoral, and for this year, the Board may require, as specified in its rules, that the supervised experience be comparable to the knowledge and skills acquired during formal doctoral or postdoctoral education, in accordance with established professional standards.

(2) One of these years may be predoctoral and the Board shall establish rules governing appropriate supervised predoctoral experience.

(3) A psychologist who meets all other requirements of G.S. 90-270.11(a) as a licensed psychologist, except the two years of supervised experience, may be issued a provisional license as a psychologist or a license as a psychological associate, without having received a master's degree or specialist degree in psychology, by the Board for the practice of psychology.

(e) A licensed psychological associate shall be supervised by a qualified licensed psychologist, or other qualified professionals, in accordance with Board rules specifying the format, setting, content, time frame, amounts of supervision, qualifications of supervisors, disclosure of supervisory relationships, the organization of the supervised experience, and the nature of the responsibility assumed by the supervisor. A licensed psychological associate who provides health services shall be supervised, for those activities requiring supervision, by a qualified licensed psychologist holding health services provider certification or by other qualified professionals under the overall direction of a qualified licensed psychologist holding health services provider certification, in accordance with Board rules. Except as provided below, supervision, including the supervision of health services, is required only when a licensed psychological associate engages in: assessment of personality functioning; neuropsychological evaluation; psychotherapy, counseling, and other interventions with clinical populations for the

purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior; and, the use of intrusive, punitive, or experimental procedures, techniques, or measures. The Board shall adopt rules implementing and defining this provision, and as the practice of psychology evolves, may identify additional activities requiring supervision in order to maintain acceptable standards of practice.

(f) A nonresident psychologist who is either licensed or certified by a similar Board in another jurisdiction whose standards, in the opinion of the Board, are, at the date of his or her certification or licensure, substantially equivalent to or higher than the requirements of this Article, may be issued a temporary license by the Board for the practice of psychology in this State for a period not to exceed the aggregate of 30 days in any calendar year. The Board may issue temporary health services provider certification simultaneously if the nonresident psychologist can demonstrate two years of acceptable supervised health services experience. All temporarily licensed psychologists shall comply with supervision requirements established by the Board.

(g) An applicant for reinstatement of licensure, whose license was suspended under G.S. 90-270.15(f), may be issued a temporary license and temporary health services provider certification in accordance with the duly adopted rules of the Board. (1967, c. 910, s. 5; 1977, c. 670, s. 4; 1979, c. 670, s. 3; 1985, c. 734, s. 4; 1993, c. 375, s. 1; 2012-72, s. 1.)

§ 90-270.6. Psychology Board; appointment; term of office; composition.

For the purpose of carrying out the provisions of this Article, there is created a North Carolina Psychology Board, which shall consist of seven members appointed by the Governor. At all times three members shall be licensed psychologists, two members shall be licensed psychological associates, and two members shall be members of the public who are not licensed under this Article. The Governor shall give due consideration to the adequate representation of the various fields and areas of practice of psychology and to adequate representation from various geographic regions in the State. Terms of office shall be three years. All terms of service on the Board expire June 30 in appropriate years. As the term of a psychologist member expires, or as a vacancy of a psychologist member occurs for any other reason, the North Carolina Psychological Association, or its successor, shall, having sought the advice of the chairs of the graduate departments of psychology in the State, for each vacancy, submit to the Governor a list of the names of three eligible persons. From this list the Governor shall make the appointment for a full term, or for the remainder of the unexpired term, if any. Each Board member shall serve until his or her successor has been appointed. As the term of a member expires, or if one should become vacant for any reason, the Governor shall appoint a new member within 60 days of the vacancy's occurring. No member, either public or licensed under this Article, shall serve more than three complete consecutive terms. (1967, c. 910, s. 6; 1977, c. 670, s. 5; 1979, c. 670, s. 3; c. 1005, s. 2; 1983, c. 82, ss. 1-3; 1993, c. 375, s. 1; 2007-468, s. 3.)

§ 90-270.7. Qualifications of Board members; removal of Board members.

(a) Each licensed psychologist and licensed psychological associate member of the Board shall have the following qualifications:

(1) Shall be a resident of this State and a citizen of the United States;

(2) Shall be at the time of appointment and shall have been for at least five years prior thereto, actively engaged in one or more branches of psychology or in the education and training of master's, specialist, doctoral, or postdoctoral students of psychology or in psychological research, and such activity during the two years preceding appointment shall have occurred primarily in this State.

(3) Shall be free of conflict of interest in performing the duties of the Board.

(b) Each public member of the Board shall have the following qualifications:

(1) Shall be a resident of this State and a citizen of the United States;

(2) Shall be free of conflict of interest or the appearance of such conflict in performing the duties of the Board;

(3) Shall not be a psychologist, an applicant or former applicant for licensure as a psychologist, or a member of a household that includes a psychologist.

(c) A Board member shall be automatically removed from the Board if he or she:

(1) Ceases to meet the qualifications specified in this subsection;

(2) Fails to attend three successive Board meetings without just cause as determined by the remainder of the Board;

(3) Is found by the remainder of the Board to be in violation of the provisions of this Article or to have engaged in immoral, dishonorable, unprofessional, or unethical conduct, and such conduct is deemed to compromise the integrity of the Board;

(4) Is found to be guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction or is found to have entered a plea of nolo contendere to a felony or an unlawful act involving moral turpitude;

(5) Is found guilty of malfeasance, misfeasance, or nonfeasance in relation to his or her Board duties by a court of competent jurisdiction; or

(6) Is incapacitated and without reasonable likelihood of resuming Board duties, as determined by the Board. (1967, c. 910, s. 7; 1977, c. 670, s. 6; 1985, c. 734, s. 5; 1993, c. 375, s. 1.)

§ 90-270.8. Compensation of members; expenses; employees.

Members of the Board shall receive no compensation for their services, but shall receive their necessary expenses incurred in the performance of duties required by this Article, as prescribed for State boards generally. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board; however, the Board shall not employ any of its own members to perform inspectional or similar ministerial tasks for the Board. In no event shall the State of North Carolina be liable for expenses incurred by the Board in excess of the income derived from this Article. (1967, c. 910, s. 8.)

§ 90-270.9. Election of officers; meetings; adoption of seal and appropriate rules; powers of the Board.

The Board shall annually elect the chair and vice-chair from among its membership. The Board shall meet annually, at a time set by the Board, in the City of Raleigh, and it may hold additional meetings and conduct business at any place in the State. Four members of the Board shall constitute a quorum. The Board may empower any member to conduct any proceeding or investigation necessary to its purposes and may empower its agent or counsel to conduct any investigation necessary to its purposes, but any final action requires a quorum of the Board. The

Board may order that any records concerning the practice of psychology relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board be produced before the Board or for inspection and copying by representatives of or counsel to the Board by the custodian of such records. The Board shall adopt an official seal, which shall be affixed to all licenses issued by it. The Board shall make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to implement the provisions of this Article. (1967, c. 910, s. 9; 1985, c. 734, s. 6; 1993, c. 375, s. 1.)

§ 90-270.10. Annual report.

On June 30 of each year, the Board shall submit a report to the Governor of the Board's activities since the preceding July 1, including the names of all licensed psychologists and licensed psychological associates to whom licenses have been granted under this Article, any cases heard and decisions rendered in matters before the Board, the recommendations of the Board as to future actions and policies, and a financial report. Each member of the Board shall review and sign the report before its submission to the Governor. Any Board member shall have the right to record a dissenting view. (1967, c. 910, s. 10; 1979, c. 670, s. 3; 1993, c. 375, s. 1.)

§ 90-270.11. Licensure; examination; foreign graduates.

(a) Licensed Psychologist. – The Board shall issue a permanent license to practice psychology to any applicant who pays an application fee and any applicable examination fee as specified in G.S. 90-270.18(b), who passes an examination in psychology as prescribed by the Board, and who submits evidence verified by oath and satisfactory to the Board that he or she:

(1) Is at least 18 years of age;

(2) Is of good moral character;

(3) Has received a doctoral degree based on a planned and directed program of studies in psychology from an institution of higher education. The degree program, wherever administratively housed, must be publicly identified and clearly labeled as a psychology program. The Board shall adopt rules implementing and defining these provisions, including, but not limited to, such factors as residence in the educational program, internship and related field experiences, number of course credits, course content, numbers and qualifications of faculty, and program identification and identity.

(4) Has had at least two years of acceptable and appropriate supervised experience germane to his or her training and intended area of practice as a psychologist as specified in G.S. 90-270.5(d).

(b) Licensed Psychological Associate. –

(1) The Board shall issue a permanent license to practice psychology to any applicant who pays an application fee and any applicable examination fee as specified in G.S. 90-270.18(b), who passes an examination in psychology as prescribed by the Board, and who submits evidence verified by oath and satisfactory to the Board that he or she:

a. Is at least 18 years of age;

b. Is of good moral character;

c. Has received a master's degree in psychology or a specialist degree in psychology from an institution of higher education. The degree program, wherever administratively housed, must be publicly identified

and clearly labeled as a psychology program. The Board shall adopt rules implementing and defining these provisions, including, but not limited to, such factors as residence in the program, internship and related field experiences, number of course credits, course content, numbers and qualifications of faculty, and program identification and identity.

(2) Notwithstanding the provisions of this subsection, a licensed psychologist applicant who has met all requirements for licensure except passing the examination at the licensed psychologist level, may be issued a license as a licensed psychological associate without having a master's degree or specialist degree in psychology if the applicant passes the examination at the licensed psychological associate level.

(c) Foreign Graduates. – Applicants trained in institutions outside the United States, applying for licensure at either the licensed psychologist or licensed psychological associate level, must show satisfactory evidence of training and degrees substantially equivalent to those required of applicants trained within the United States, pursuant to Board rules and regulations.

(d) Prior Licensure. – A person who is licensed in good standing as a licensed practicing psychologist or psychological associate under the provisions of the Practicing Psychologist Licensing Act in effect immediately prior to the ratification of this Psychology Practice Act shall be deemed, as of October 1, 1993 to have met all requirements for licensure under this act and shall be eligible for renewal of licensure in accordance with the provisions of this act. (1967, c. 910, s. 11; 1971, c. 889, ss. 2, 3; 1975, c. 675, ss. 1, 2; 1977, c. 670, s. 7; 1979, c. 670, ss. 5, 6; 1979, 2nd Sess., c. 1176; 1981, c. 738, ss. 1, 2; 1983, c. 37, ss. 1, 2; c. 82, s. 4; 1985, c. 734, s. 7; 1987, c. 326, ss. 1, 2; c. 500, s. 1; 1989, c. 554; 1993, c. 375, s. 1; 1995, c. 509, s. 45.)

§ 90-270.12. Repealed by Session Laws 1977, c. 670, s. 8.

§ 90-270.13. Licensure of psychologists licensed or certified in other jurisdictions; licensure of diplomates of the American Board of Professional Psychology; reciprocity.

(a) Upon application and payment of the required fee, the Board shall grant permanent licensure at the appropriate level to any person who, at the time of application meets all of the following requirements:

(1) Is licensed or certified as a psychologist by a similar psychology licensing board in another jurisdiction.
(2) The license or certification is in good standing.
(3) Is a graduate of an institution of higher education.
(4) Who passes an examination prescribed by the Board.
(5) Meets the definition of a senior psychologist as that term is defined by the rules of the Board.

(a1) Upon application and payment of the required fee, the Board shall grant permanent licensure at the appropriate level to any person who, at the time of application, meets all of the following requirements:

(1) Is licensed or certified as a psychologist by a similar psychology licensing board in another jurisdiction.
(2) The license or certification is in good standing.

(3) Possesses a doctoral degree in psychology from an institution of higher education.
(4) Passes an examination prescribed by the Board.
(5) Has no unresolved complaints in any jurisdiction at the time of application in this State.
(6) Holds a current credential for psychology licensure mobility, as defined in rules adopted by the Board.

(b) The Board may establish formal written agreements of reciprocity with the psychology boards of other jurisdictions if the Board determines that the standards of the boards of the other jurisdictions are substantially equivalent to or greater than those required by this Article.

(c) The Board shall grant health services provider certification to any person licensed under the provisions of subsections (a) and (b) above when it determines that the applicant's training and experience are substantially equivalent to or greater than that specified in G.S. 90-270.20.

(d) Upon application and payment of the requisite fee, the Board shall waive the requirement of the national written examination to any person who is a diplomate in good standing of the American Board of Professional Psychology.

(e) The Board shall adopt rules implementing and defining these provisions, and, with respect to the senior psychologist, shall adopt rules including, but not limited to, such factors as educational background, professional experience, length and status of licensure, ethical conduct, and examination required.

(f) The Board may deny licensure to any person otherwise eligible for permanent licensure under this section upon documentation of conduct specified in G.S. 90-270.15. (1967, c. 910, s. 13; 1993, c. 375, s. 1; 2007-468, ss. 4-6.)

§ 90-270.14. Renewal of licenses; duplicate or replacement licenses.

(a) A license in effect on October 1, 1993, must be renewed on or before January 1, 1994. Thereafter, a license issued under this Article must be renewed biennially on or before the first day of October in each even-numbered year, the requirements for such renewal being:

(1) Each application for renewal must be made on a form prescribed by the Board and accompanied by a fee as specified in G.S. 90-270.18(b). If a license is not renewed on or before the renewal date, an additional fee shall be charged for late renewal as specified in G.S. 90-270.18(b).
(2) The Board may establish continuing education requirements as a condition for license renewal.

(b) A licensee may request the Board to issue a duplicate or replacement license for a fee as specified in G.S. 90-270.18(b). Upon receipt of the request and a showing of good cause for the issuance of a duplicate or replacement license, and the payment of the fee, the Board shall issue a duplicate or replacement license. (1967, c. 910, s. 14; 1971, c. 889, s. 1; 1975, c. 675, s. 3; 1979, c. 710; 1985, c. 734, s. 8; 1987, c. 500, s. 2; 1989 (Reg. Sess., 1990), c. 1029, s. 2; 1993, c. 375, s. 1.)

§ 90-270.15. Denial, suspension, or revocation of licenses and health services provider certification, and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license.

(a) Any applicant for licensure or health services provider certification and any person licensed or certified under this Article shall have behaved in conformity with the ethical and professional standards specified in this Code of Conduct and in the rules of the Board. The Board may deny, suspend, or revoke licensure and certification, and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation, or any combination thereof, all as provided for in subsection (b) below. The Board shall act upon proof that the applicant or licensee engaged in illegal, immoral, dishonorable, unprofessional, or unethical conduct by violating any of the provisions of the Code of Conduct as follows:

(1) Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge;

(2) Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice psychology, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients;

(3) Has engaged in fraud or deceit in securing or attempting to secure or renew a license or in securing or attempting to secure health services provider certification under this Article or has willfully concealed from the Board material information in connection with application for a license or health services provider certification, or for renewal of a license under this Article;

(4) Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of psychology, the offer of psychological services, the filing of Medicare, Medicaid, or other claims to any third party payor, or in any manner otherwise relevant to fitness for the practice of psychology;

(5) Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of psychology to the public, any individual, the Board, or any other organization;

(6) Has had a license or certification for the practice of psychology in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article;

(7) Has violated any provision of this Article or of the duly adopted rules of the Board;

(8) Has aided or abetted the unlawful practice of psychology by any person not licensed by the Board;

(9) For a licensed psychologist, has provided health services without health services provider certification;

(10) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, or in the then-current code of ethics of the American Psychological Association, except as the provisions of such code of ethics may be inconsistent and in conflict with the provisions of this Article, in which case, the provisions of this Article control;

(11) Has practiced psychology in such a manner as to endanger the welfare of clients or patients;

(12) Has demonstrated an inability to practice psychology with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition;

(13) Has practiced psychology or conducted research outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience;

(14) Has failed to use, administer, score, or interpret psychological assessment techniques, including interviewing and observation, in a competent manner, or has provided findings or recommendations which do not accurately reflect the assessment data, or exceed what can reasonably be inferred, predicted, or determined from test, interview, or observational data;

(15) Has failed to provide competent diagnosis, counseling, treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State;

(16) In the absence of established standards, has failed to take all reasonable steps to ensure the competence of services;

(17) Has failed to maintain a clear and accurate case record which documents the following for each patient or client:

a. Presenting problems, diagnosis, or purpose of the evaluation, counseling, treatment, or other services provided;

b. Fees, dates of services, and itemized charges;

c. Summary content of each session of evaluation, counseling, treatment, or other services, except that summary content need not include specific information that may cause significant harm to any person if the information were released;

d. Test results or other findings, including basic test data; and

e. Copies of all reports prepared;

(18) Except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record for at least seven years from the date of the last provision of psychological services; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record for three years from the date of the attainment of majority age by the patient or client or for at least seven years from the date of the last provision of psychological services, whichever is longer; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance;

(19) Has failed to cooperate with other psychologists or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or has behaved in ways which substantially impede or impair other psychologists' or other professionals' abilities to perform professional duties;

(20) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the psychologist or a third party;

(21) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee;

(22) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional psychological associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction; or has failed to cooperate with institutional review boards or professional standards review organizations, when those organizations or entities have jurisdiction; or

(23) Has refused to appear before the Board after having been ordered to do so in writing by the Chair;

(b) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, issue a formal reprimand or formally censure the applicant or licensee, may place the applicant or licensee upon probation with such appropriate conditions upon the continued practice as the Board may deem advisable, may require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee, may require supervision for the services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee, may limit or circumscribe the practice of psychology provided by the applicant or licensee with respect to the extent, nature, or location of the services provided, as the Board deems advisable, or may discipline and impose any appropriate combination of the foregoing. In addition, the Board may impose such conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as requirements for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether or not an applicant or licensee is physically or mentally capable of practicing psychology with reasonable skill and safety with patients or clients, then, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing psychology with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. Such psychologist or physician shall be designated by the court. The expenses of such evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license or health services provider certification, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing's having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of psychological services' having been provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of psychological services to a client or a patient who has not consented to the public disclosure of such treatment or services as may be necessary for the protection and rights of such patient or client of the accused applicant or licensee and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters will not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of such investigation, inquiry, or hearing except that identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of such treatment or services may be deleted; and provided, further, that if any such record, paper, or other document containing information theretofore collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of psychological services to a patient or client who has not consented to the public disclosure of such treatment or services.

(f) A license and a health services provider certificate issued under this Article are suspended automatically by operation of law after failure to renew a license for a period of more than sixty days after the renewal date. The Board may reinstate a license and a health services provider certificate suspended under this subsection upon payment of a fee as specified in G.S. 90-270.18(b), and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is suspended under this

subsection and, upon proof of any violation of this Article by any such person, the Board may take disciplinary action as authorized by this section.

(g) A person whose license or health services provider certification has been denied or revoked may reapply to the Board for licensure or certification after the passage of one calendar year from the date of such denial or revocation.

(h) A licensee may, with the consent of the Board, voluntarily relinquish his or her license or health services provider certificate at any time. The Board may delay or refuse the granting of its consent as it may deem necessary in order to investigate any pending complaint, allegation, or issue regarding violation of any provision of this Article by the licensee. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by any such person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt such rules as it deems reasonable and appropriate to interpret and implement the provisions of this section. (1967, c. 910, s. 15; 1973, c. 1331, s. 3; 1977, c. 670, s. 9; 1979, c. 1005, s. 4; 1985, c. 734, s. 9; 1987, c. 827, s. 1; 1991, c. 239, s. 1; c. 761, ss. 14-16; 1993, c. 375, s. 1; 1993 (Reg. Sess., 1994), c. 570, s. 7.)

§ 90-270.16. Prohibited acts.

(a) Except as permitted in G.S. 90-270.4 and G.S. 90-270.5, it shall be a violation of this Article for any person not licensed in accordance with the provisions of this Article to represent himself or herself as a psychologist, licensed psychologist, licensed psychological associate, or health services provider in psychology.

(b) Except as provided in G.S. 90-270.4 and G.S. 90-270.5, it shall be a violation of this Article for any person not licensed in accordance with the provisions of this Article to practice or offer to practice psychology as defined in this Article whether as an individual, firm, partnership, corporation, agency, or other entity.

(c) Except as provided in G.S. 90-270.4 and G.S. 90-270.5, it shall be a violation of this Article for any person not licensed in accordance with the provisions of this Article to use a title or description of services including the term "psychology," or any of its derivatives such as "psychologic", "psychological", or "psychologist", singly or in conjunction with modifiers such as "licensed", "practicing", "certified", or "registered". (1967, c. 910, s. 16; 1979, c. 670, s. 3; c. 1005, s. 3; 1993, c. 375, s. 1.)

§ 90-270.17. Violations and penalties.

Any person who violates G.S. 90-270.16 is guilty of a Class 2 misdemeanor. Each violation shall constitute a separate offense. (1967, c. 910, s. 17; 1993, c. 539, s. 646; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-270.18. Disposition and schedule of fees.

(a) Except for fees paid directly to the vendor as provided in subdivision (b)(2) of this section, all fees derived from the operation of this Article shall be deposited with the State Treasurer to the credit of a revolving fund for the use of the Board in carrying out its functions. All fees derived from the operation of this Article shall be nonrefundable.

(b) Fees for activities specified by this Article are as follows:

(1) Application fees for licensed psychologists and licensed psychological associates per G.S. 90-270.11(a) and (b)(1), or G.S. 90-270.13, shall not exceed one hundred dollars ($100.00).
(2) Fees for the national written examination shall be the cost of the examination as set by the vendor plus an additional fee not to exceed fifty dollars ($50.00). The Board may require applicants to pay the fee directly to the vendor.
(3) Fees for additional examinations shall be as prescribed by the Board.
(4) Fees for the renewal of licenses, per G.S. 90-270.14(a)(1), shall not exceed two hundred fifty dollars ($250.00) per biennium. This fee may not be prorated.
(5) Late fees for license renewal, per G.S. 90-270.14(a)(1), shall be twenty-five dollars ($25.00).
(6) Fees for the reinstatement of a license, per G.S. 90-270.15(f), shall not exceed one hundred dollars ($100.00).
(7) Fees for a duplicate license, per G.S. 90-270.14(b), shall be twenty-five dollars ($25.00).
(8) Fees for a temporary license, per G.S. 90-270.5(f) and 90-270.5(g), shall be thirty-five dollars ($35.00).
(9) Application fees for a health services provider certificate, per G.S. 90-270.20, shall be fifty dollars ($50.00).

(c) The Board may specify reasonable charges for duplication services, materials, and returned bank items in its rules. (1967, c. 910, s. 19; 1993, c. 257, s. 5; c. 375, s. 1; 2003-368, s. 4.)

§ 90-270.19. Injunctive authority.

The Board may apply to the superior court for an injunction to prevent violations of this Article or of any rules enacted pursuant thereto. The court is empowered to grant such injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of such violation. (1983, c. 82, s. 6.)

§ 90-270.20. Provision of health services; certification as health services provider.

(a) Health services, as defined in G.S. 90-270.2(4) and G.S. 90-270.2(8), may be provided by qualified licensed psychological associates, qualified licensed psychologists holding provisional, temporary, or permanent licenses, or qualified applicants. Qualified licensed psychological associates, qualified licensed psychologists holding provisional or temporary licenses, or qualified applicants may provide health services only under supervision as specified in the duly adopted rules of the Board.

(b) After January 1, 1995, any licensed psychologist who is qualified by education, who holds permanent licensure and a doctoral degree, and who provides or offers to provide health services to the public must be certified as a health services provider psychologist (HSP-P) by the Board. The Board shall certify as health services provider psychologists those applicants who shall demonstrate at least two years of acceptable supervised health services experience, of which at least one year is postdoctoral. The Board shall specify the format, setting, content, and organization of the supervised health services experience or program. The Board may, upon verification of supervised experience and the meeting of all requirements as a licensed psychologist, issue the license and certificate simultaneously. An application fee, as specified in G.S. 90-270.18(b)(9), must be paid.

(c) After January 1, 1995, any licensed psychological associate who is qualified by education may be granted certification as a health services provider psychological associate (HSP-PA). The Board may, upon verification of qualifications and the meeting of all requirements as a licensed psychological associate, issue the license and certificate simultaneously. An application fee, as specified in G.S. 90-270.18(b)(9), must be paid.

(d) After January 1, 1995, any licensed psychologist holding a provisional license who is qualified by education may be granted certification as a health services provider psychologist (provisional) (HSP-PP) by the Board. The Board may, upon verification of qualifications and the meeting of all requirements for a provisional license, issue the license and certificate simultaneously. An application fee, as specified in G.S. 90-270.18(b)(9), must be paid.

(e) Notwithstanding the provisions of subsection (b) of this section, if application is made to the Board before June 30, 1994, by a licensed psychologist who is listed in the National Register of Health Services Providers in Psychology, or who holds permanent licensure and who can demonstrate that he or she has been engaged acceptably in the provision of health services for two years or its equivalent, that licensed psychologist shall be certified as a health services provider psychologist. The applicant, in order to demonstrate two years of acceptable experience or its equivalent, must meet one of the following conditions:

(1) The applicant is a diplomate in good standing of the American Board of Professional Psychology in any of the areas of professional practice deemed appropriate by the Board;

(2) The applicant has the equivalent of two years of acceptable full-time experience, one of which was postdoctoral, at sites where health services are provided;

(3) The applicant submits evidence satisfactory to the Board demonstrating that he or she has been engaged acceptably for the equivalent of at least two years full-time in the provision of health services; or

(4) Any other conditions that the Board may deem acceptable.

(f) Notwithstanding the provisions of subsection (c) of this section, if application is made to the Board before June 30, 1994, by a licensed psychological associate who can demonstrate that he or she has been engaged acceptably in the provision of health services under supervision for two years or its equivalent, that licensed psychological associate shall be certified as a health services provider psychological associate.

(g) The Board shall have the authority to deny, revoke, or suspend the health services provider certificate issued pursuant to these subsections upon a finding that the psychologist has not behaved in conformity with the ethical and professional standards prescribed in G.S. 90-270.15. (1985, c. 734, s. 10; 1993, c. 375, s. 1; 1993 (Reg. Sess., 1994), c. 569, s. 13.)

§ 90-270.21. Ancillary services.

A psychologist licensed under this Article may employ or supervise unlicensed individuals who assist in the provision of psychological services to clients, patients, and their families. The Board may adopt rules specifying the titles used by such individuals, the numbers employed or supervised by any particular psychologist, the activities in which they may engage, the nature and extent of supervision which must be provided, the qualifications of such individuals, and the nature of the responsibility assumed by the employing or supervising psychologist. (1993, c. 375, s. 1.)

§ 90-270.22. Criminal history record checks of applicants for licensure and licensees.

(a) The Board may request that an applicant for licensure or reinstatement of a license or that a licensed psychologist or psychological associate currently under investigation by the Board for allegedly violating this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or reinstatement of a license to an applicant or take disciplinary action against a licensee, including revocation of a license. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for the cost of conducting the criminal history record check.

(b) Limited Immunity. – The Board, its officers and employees, acting reasonably and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or the revocation of a license or other discipline of a licensee based on information provided in the applicant's or licensee's criminal history record check. (2006-175, s. 2; 2014-100, s. 17.1(o).)

§ 90-270.23. Reserved for future codification purposes.

Article 18B.

Physical Therapy.

§§ 90-270.24 through 90-270.39: Recodified as Article 18E of Chapter 90, G.S. 90-270.90 through G.S. 90-270.110, by Session Laws 2017-28, s. 1, effective October 1, 2017.

§ 90-270.40: Reserved for future codification purposes.

§ 90-270.41: Reserved for future codification purposes.

§ 90-270.42: Reserved for future codification purposes.

§ 90-270.43: Reserved for future codification purposes.

§ 90-270.44: Reserved for future codification purposes.

Article 18C.

Marriage and Family Therapy Licensure.

§ 90-270.45. Title of Article.

This Article shall be known as the "Marriage and Family Therapy Licensure Act." (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.46. Policy and purpose.

Marriage and family therapy in North Carolina is a professional practice that affects the public safety and welfare and requires appropriate licensure and control in the public interest.

It is the purpose of this Article to establish a licensure agency, a structure, and procedures that will (i) ensure that the public has a means of protecting itself from the practice of marriage and family therapy by unprofessional, unauthorized, and unqualified individuals, and (ii) protect the public from unprofessional, improper, unauthorized and unqualified use of certain titles by persons who practice marriage and family therapy. This Article shall be liberally construed to carry out these policies and purposes. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.47. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

(1) Renumbered.

(2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.

(2a) "Clinical experience" means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.

(2b) "Larger systems" means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.

(3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.

(3a) "Licensed marriage and family therapy associate" means an individual to whom a license has been issued pursuant to this Article whose license is in force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the supervision of an American Association for Marriage and Family Therapy (AAMFT) approved supervisor in accordance with rules adopted by the Board.

(3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with health care and other professionals when appropriate.

(4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

(5) "Recognized educational institution" means any university, college, professional school, or other institution of higher learning that:

a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.

b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.

c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board.

(6) "Related degree" means:

a. Master's or doctoral degree in clinical social work;

b. Master's or doctoral degree in psychiatric nursing;

c. Master's or doctoral degree in counseling or clinical or counseling psychology;

d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or

e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 1.)

§ 90-270.48. Prohibited acts.

Except as specifically provided elsewhere in this Article, it is unlawful for a person not licensed as a marriage and family therapist or as a licensed marriage and family therapy associate under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 2.)

§ 90-270.48A. Exemptions.

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, licensed or certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title "Licensed Marriage and Family Therapist" or "Licensed Marriage and Family Therapy Associate," use the letters "LMFT" or "LMFTA," or in any way imply that the person is a licensed marriage and family therapist or a licensed marriage and family therapy associate unless the person is licensed as such under this Article.

(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

(1) The person is (i) enrolled in a master's level program or higher in a recognized educational institution, (ii) under supervision as approved by the Board in a training institution approved by the Board, and (iii) designated by a title such as "marriage and family therapy intern."

(2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.

(3) Repealed by Session Laws 2009-393, s. 3, effective October 1, 2009.

(4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes. Provided, however, no such person shall hold himself out as a licensed marriage and family therapist.

(c) No such person practicing marriage and family therapy under the exemptions provided by this section shall hold himself or herself out as a licensed marriage and family therapist or licensed marriage and family therapy associate. (1993 (Reg. Sess., 1994), c. 564, s. 2; 2001-487, s. 40(i); 2009-393, s. 3.)

§ 90-270.48B: Repealed by Session Laws 2003-117, s. 2, effective October 1, 2003, and applicable to claims for payment or reimbursement for services rendered on or after that date.

§ 90-270.49. North Carolina Marriage and Family Therapy Licensure Board.

(a) Establishment. – There is established as an agency of the State of North Carolina the North Carolina Marriage and Family Therapy Licensure Board, which shall be composed of seven Board members to be appointed as provided in G.S. 90-270.50. Board members shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Board member whom the appointee shall succeed. Upon the expiration of a Board member's term of office, the Board member shall continue to serve until a successor has qualified. No person may be appointed more than once to fill an unexpired term or for more than two consecutive full terms. The Board shall elect a chair and vice-chair from its membership to serve a term of four years. No person may serve as chairperson for more than four years.

The Governor may remove any member from the Board or remove the chairperson from the position of chairperson only for neglect of duty, malfeasance, or conviction of a felony or crime of moral turpitude while in office.

No Board member shall participate in any matter before the Board in which the member has a pecuniary interest, personal bias, or other similar conflict of interest.

(b) Quorum and Principal Office. – Four of the members of the Board shall constitute a quorum of the Board. The Board shall specify the principal office of the Board within this State.

(c) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 564, s. 2. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 4.)

§ 90-270.50. Appointment and qualification of Board members.

(a) Nominations for Appointment. – The Governor shall appoint members of the Board only from among the candidates who meet the following qualifications:

(1) Four members shall be practicing marriage and family therapists who are licensed marriage and family therapists in the State at the time of their appointment, each of whom has been for at least five years immediately preceding appointment actively engaged as a marriage and family therapist in rendering professional services in marriage and family therapy, or in the education and training of graduate or postgraduate students of marriage and family therapy, and has spent the majority of the time devoted to this activity in this State during the two years preceding appointment.

(2) Three members shall be representatives of the general public who have no direct affiliation with the practice of marriage and family therapy.

(b) The appointment of any member of the Board shall automatically terminate 30 days after the date the member is no longer a resident of the State of North Carolina.

(c) The Governor shall fill any vacancy by appointment for the unexpired term.

(d) Each member of the Board must be a citizen of this State and must reside in a different congressional district in this State. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.51. Powers and duties.

(a) The Board shall administer and enforce this Article.

(b) Subject to the provisions of Chapter 150B of the General Statutes, the Board may adopt, amend, or repeal rules to administer and enforce this Article, including rules of professional ethics for the practice of marriage and family therapy.

(c) The Board shall examine and pass on the qualifications of all applicants for licensure under this Article, and shall issue a license to each successful applicant.

(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.

(e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year.

(f) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, attorneys, experts, and other employees as necessary to perform its duties.

(g) Reserved for future codification purposes.

(h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1987, c. 827, s. 78; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, ss. 5.1, 5.2.)

§ 90-270.52. License application.

(a) Each person desiring to obtain a license under this Article shall apply to the Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish evidence satisfactory to the Board that the applicant:

(1) Is of good moral character;

(2) Has not engaged or is not engaged in any practice or conduct that would be a ground for denial, revocation, or suspension of a license under G.S. 90-270.60;

(3) Is qualified for licensure pursuant to the requirements of this Article.

(b) A license obtained through fraud or by any false representation is void. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.53: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 564, s. 2.

§ 90-270.54. Requirements for licensure as a marriage and family therapist.

(a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Meets educational and experience qualifications as follows:

a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and family therapy, or a related degree, which degree is evidenced by the applicant's official transcripts. An applicant with a related degree may meet the educational requirements if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or a related degree (with ongoing supervision consistent with standards approved by the Board); and

(2) Passes an examination approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58. (1979, c. 697, s. 1; 1981, c. 611, s. 2; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 6.)

§ 90-270.54A. Requirements for licensure as a marriage and family therapy associate.

(a) Each applicant shall be issued a license by the Board to engage in practice as a marriage and family therapy associate if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Has completed a marriage and therapy degree or related degree in accordance with G.S. 90-270.54(a)(1)a.

(2) Has shown evidence of intent to accrue the required supervised clinical experience for licensure under G.S. 90-270.54(a)(1)b.

(3) Has filed with the Board an application for licensure as a marriage and family therapy associate, which application includes evidence of the appropriate coursework and an agreement by at least one supervisor approved by the American Association of Marriage and Family Therapy to provide supervision to the applicant.

(4) Has passed the examination approved by the Board pursuant to G.S. 90-270.54(a)(2).

(b) Upon approval by the Board, a license designating the applicant as a licensed marriage and family therapy associate shall be issued. Notwithstanding G.S. 90-270.58, a license issued under this section shall be valid for three years from the date of issuance.

(c) A marriage and family therapy associate license shall not be renewed. However, if upon written petition to the Board a person licensed pursuant to this section demonstrates special circumstances and steady progress towards licensure as a marriage and family therapist, the Board may grant a one-year extension of the marriage and family therapy associate license upon receipt and approval of an application for extension and payment of the fee authorized by G.S. 90-270.57(a)(9).

(d) Nothing in this Article shall be construed to require direct third-party reimbursement under private insurance policies to a person licensed as a marriage and family therapy associate under this Article. (2009-393, s. 7.)

§ 90-270.55. Examinations.

Each applicant for licensure as a licensed marriage and family therapist shall pass an examination as determined by the Board. The Board shall set the passing score for examinations. Any request by an applicant for reasonable accommodations in taking the examination shall be submitted in writing to the Board and shall be supported by documentation as may be required by the Board in assessing the request. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 8.)

§ 90-270.55A: Repealed by Session Laws 2009-393, s. 9, effective October 1, 2009.

§ 90-270.56. Reciprocal licenses.

The Board may issue a license as a marriage and family therapist or a marriage and family therapy associate by reciprocity to any person who applies for the license as prescribed by the Board and who at all times during the application process:

(1) Has been licensed for five continuous years and is currently licensed as a marriage and family therapist or marriage and family therapy associate in another state.

(2) Has an unrestricted license in good standing in the other state.

(3) Has no unresolved complaints in any jurisdiction.

(4) Has passed the National Marriage and Family Therapy examination. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 10.)

§ 90-270.57. Fees.

(a) In order to fund the Board's activities under this Article, the Board may charge and collect fees not exceeding the following:

(1)	Each license examination	$50.00
(2)	Each license application as a marriage and family therapist	200.00
(2a)	Each license application as a marriage and family therapy associate	200.00
(3)	Each renewal of license	200.00
(4)	Each reciprocal license application	200.00
(5)	Each reinstatement of an expired license	200.00
(6)	Each application to return to active status	200.00
(7)	Each duplicate license	25.00
(8)	Each annual maintenance of inactive status	50.00
(9)	Each application to extend associate license	50.00.

In addition to the examination fee provided in subdivision (1) of this subsection, the Board may charge and collect from each applicant for license examination the cost of processing test results and the cost of test materials.

(b) The Board may establish fees for the actual cost of (i) document duplication services, (ii) materials, and (iii) returned bank items as allowed by law. All fees listed in subsection (a) of this section shall be nonrefundable. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1989, c. 581, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 11.)

§ 90-270.58. Renewal of license.

All licenses for marriage and family therapists issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of G.S. 90-270.58C and (ii) payment of the renewal fee. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1989, c. 581, s. 2; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 12.)

§ 90-270.58A. Reinstatement after expiration.

A person whose license has expired may have the license reinstated as prescribed by the Board. The Board shall charge and collect a fee for reinstatement of the license. (1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.58B. Inactive status.

(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal fees, but shall be required to pay an annual inactive status maintenance fee. A person who is on inactive status shall not have to meet continuing education requirements.

(b) A person on inactive status shall not practice or hold himself out as practicing marriage and family therapy or perform any other activities prohibited by this Article.

(c) A person desiring to return to active status shall submit written application to the Board. The Board shall return the person to active status upon payment of the fee specified in G.S. 90-270.57 and upon such showing of competency to resume practice as the Board may require. (1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 13.)

§ 90-270.58C. Continuing education requirements.

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship. The Board may waive, upon request, continuing education requirements for licensees who are on active military duty and serving overseas. (1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 14.)

§ 90-270.59. Disposition of funds.

All monies received by the Board shall be used to implement this Article. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 15.)

§ 90-270.60. Denial, revocation, or suspension of license; other disciplinary or remedial actions.

(a) The Board may deny, revoke, or suspend licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation, or any combination of the disciplinary actions described in this subsection, of any applicant or person licensed under this Article on one or more of the following grounds:

(1) Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice marriage and family therapy, or a misdemeanor charge reflecting the inability to practice marriage and family therapy with due regard to the health and safety of clients.

(3) Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of marriage and family therapy, the offer of professional marriage and family therapy services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any

manner otherwise relevant to fitness for the practice of marriage and family therapy.

(5) Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of marriage and family therapy to the public, any individual, the Board, or any other organization.

(6) Has had a license or certification for the practice of marriage and family therapy in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.

(7) Has violated any provision of this Article or any rules adopted by the Board.

(8) Has aided or abetted the unlawful practice of marriage and family therapy by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Association for Marriage and Family Therapy. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced marriage and family therapy in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice marriage and family therapy with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced marriage and family therapy outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, student, supervisee, or trainee for the financial or other personal advantage or gratification of the marriage and family therapist or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(b) The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of marriage and family therapy deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the marriage and family therapy services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of marriage and family therapy provided by the applicant or licensee with respect to the extent, nature, or location of the marriage and family therapy services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this subsection.

In addition, the Board may impose conditions of probation or restrictions on the continued practice of marriage and family therapy at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing marriage and family therapy with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the

Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be redacted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of marriage and family therapy services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at anytime. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1987, c. 827, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2; 2009-393, s. 16.)

§ 90-270.61. Penalties.

Any person not licensed as a marriage and family therapist under this Article who engages in the practice of marriage and family therapy, or holds himself or herself out to be a marriage or family therapist or engaged in marriage and family therapy in violation of this Article is guilty of a Class 2 misdemeanor. (1979, c. 697, s. 1; 1985, c. 223, ss. 1, 1.1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.62. Injunction.

As an additional remedy, the Board may proceed in a superior court to enjoin and restrain any person without a valid license from violating the prohibitions of this Article. The Board shall not

be required to post bond to such proceeding. (1979, c. 697, s. 1; 1985, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 564, s. 2.)

§ 90-270.63. Criminal history record checks of applicants for licensure as a marriage and family therapist and a marriage and family therapy associate.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a licensed marriage and family therapy associate pursuant to G.S. 90-270.54A or licensed marriage and family therapist pursuant to G.S. 90-270.54.

(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal history record check and the use of fingerprints and other identifying information required by the

State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety in accordance with G.S. 143B-958. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(c) If an applicant's or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the duties and responsibilities of a licensee.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant's or licensee's criminal history record check. (2009-393, s. 17; 2012-12, s. 2(jj); 2014-100, s. 17.1(kk); 2015-181, s. 47.)

§ 90-270.64. Reserved for future codification purposes.

Article 18D.

Occupational Therapy.

§ 90-270.65. Title.

This Article shall be known as the "North Carolina Occupational Therapy Practice Act." (1983 (Reg. Sess., 1984), c. 1073, s. 1.)

§ 90-270.66. Declaration of purpose.

The North Carolina Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional services and conduct on the part of occupational therapists and occupational therapy assistants, to provide for the establishment of licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 1.)

§ 90-270.67. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

(1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.

(1a) Board. – The North Carolina Board of Occupational Therapy.

(1b) Examining body. – The National Board for Certification in Occupational Therapy.

(2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

(3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.

(4) Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.

(5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article. (1983 Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 1; c. 770, s. 46; 2005-432, s. 2; 2006-226, s. 18.)

§ 90-270.68. Establishment of Board, terms, vacancies, removal, meetings, compensation.

(a) Establishment of Board. – The North Carolina Board of Occupational Therapy is created. The Board shall consist of seven members who are appointed by the Governor and are residents of this State at the time of and during their appointment, as follows:

(1) Three members shall be occupational therapists and one member shall be an occupational therapy assistant. Each of these members shall be licensed to practice in North Carolina and have practiced, taught, or engaged in research in occupational therapy for at least three of the five years immediately preceding appointment to the Board.

(2) One member shall be a physician in good standing with the North Carolina Medical Board and licensed by and registered with the North Carolina Medical Board to practice medicine in this State.

(3) One member shall represent the public at large and shall be a person who is not a health care provider licensed under this Chapter or the spouse of a licensed health care provider.

(4) One member shall be a counselor, educator, or school-based professional certified or licensed under North Carolina law who is employed in the North Carolina public school system and is not an occupational therapist or an occupational therapy assistant.

The occupational therapist members and the occupational therapy assistant member shall be nominated by the North Carolina Occupational Therapy Association, Inc., following the use of a procedure made available to all occupational therapists and occupational therapy assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association shall give consideration to geographic distribution, clinical specialty, and other factors that will promote representation of all aspects of occupational therapy practice. The records of the nomination procedures shall be filed with the Board and made available for a period of six months following nomination for reasonable inspection by any licensed practitioner of occupational therapy.

The physician member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina Medical Society. The counselor, educator, or school-based professional member shall be nominated by the North Carolina Occupational Therapy Association, Inc., after consultation with the North Carolina School Counselors Association.

(b) Terms. – Members of the Board shall serve four-year staggered terms. No member shall serve more than two consecutive four-year terms, unless a member is appointed to fill a vacancy for an unexpired term, then that member may complete the unexpired term and serve one additional four-year term.

(c) Vacancies. – In the event a member of the Board cannot complete a term of office, the vacancy shall be filled by appointment by the Governor, in accordance with the procedures set forth in this section, for the remainder of the unexpired term. Vacancies shall be filled by the Governor within 45 days of receipt of the nominations from the North Carolina Occupational Therapy Association, Inc., or, in the case of public members, within 45 days of the receipt of notice of vacancy.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings shall be disqualified from participating in Board business until the charges are resolved.

(e) Meetings. – Each year the Board shall meet and designate a chairperson, a vice-chairperson, and a secretary-treasurer from among its members. The Board may hold additional meetings upon call of the chairperson or any two board members. A majority of the Board membership shall constitute a quorum.

(f) Compensation. – Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 2; 2005-432, s. 3.)

§ 90-270.69. Powers and duties of the Board.

The Board shall have the following powers and duties:

(1) Establish and determine the qualifications and fitness of applicants for licensure to practice occupational therapy in this State.

(2) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(2a) Communicate disciplinary actions to relevant State and federal authorities and to other state occupational therapy licensing authorities.

(3) Issue and renew, and deny, suspend, revoke or refuse to issue or renew any license under this Article.

(4) Adopt, amend, or repeal any reasonable rules or regulations necessary to carry out the purposes of this Article, including but not limited to rules establishing ethical standards of practice.

(5) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and supplies.

(6) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(7) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this Article.

(8) Establish reasonable fees for applications, initial and renewal licenses, and other services provided by the Board.

(9) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvement of the profession of occupational therapy.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules and regulations established by the Board.

(11) Conduct a training program as needed for new Board members designed to familiarize new members with their duties. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1987, c. 827, ss. 1, 77; 2005-432, s. 4; 2008-187, s. 40(a).)

§ 90-270.70. Requirements for licensure.

(a) Any individual who desires to be licensed as an occupational therapist or occupational therapy assistant shall file a written application with the Board on forms provided by the Board, showing to the satisfaction of the Board that the applicant:

(1) Is of good moral character; and

(2) Has passed an examination approved by the Board as provided in this Article.

Applicants for licensure as an occupational therapist must also have successfully completed an accredited occupational therapy educational curriculum and the required supervised fieldwork as determined by the Board. Applicants for licensure as an occupational therapy assistant must also have successfully completed an accredited occupational therapy assistant educational curriculum and the required supervised fieldwork as determined by the Board.

(b) Occupational therapists who are trained outside of the United States and its territories shall satisfy the examination and educational requirements as stated in subsection (a) of this section. The Board shall require these applicants to meet examination eligibility requirements as

established by the credentialing body recognized by the Board before taking the examination. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 5.)

§ 90-270.71: Repealed by Session Laws 2005-432, s. 6, effective September 22, 2005.

§ 90-270.72. Exemption from requirements.

The Board may exempt an applicant from certain licensure requirements if the applicant presents proof satisfactory to the Board of current licensure as an occupational therapist or occupational therapy assistant in another state or the District of Columbia, Puerto Rico, or Guam, provided the other jurisdiction's licensure standards are considered by the Board to be substantially equivalent to or higher than those prescribed in this Article. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 7.)

§ 90-270.73. Issuance of license.

(a) The Board shall issue a license to any individual who meets the requirements of this Article upon payment of the license fee prescribed in G.S. 90-270.77.

(b) Any individual licensed as an occupational therapist under this Article may use the words "occupational therapist" and may use the letters "O.T." or "O.T./L." in connection with his or her name or place of business.

(c) Any individual licensed as an occupational therapy assistant under this Article may use the words "occupational therapy assistant" and may use the letters "O.T.A." or "O.T.A./L." in connection with his or her name or place of business.

(d) Repealed by Session Laws 2008-187, s. 40(b), effective August 7, 2008. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 8; 2008-187, s. 40(b).)

§ 90-270.74: Expired.

§ 90-270.75. Renewal of license.

(a) Licenses issued under this Article shall be subject to annual renewal upon completion of continuing education and competency requirements as may be required by the Board, upon the payment of a renewal fee specified under G.S. 90-270.77 and in compliance with this Article, and shall expire unless renewed in the manner prescribed by the Board. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with G.S. 90-270.77, but no such late renewal may be granted more than five years after a license expires.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended until the license is reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee shall pay the renewal fee and any late fee that may be applicable. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1989, c. 256, s. 3; 2005-432, s. 10.)

§ 90-270.76. Suspension, revocation and refusal to renew license.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
(2) Engaging in unprofessional conduct pursuant to rules established by the Board or violating the Code of Ethics adopted and published by the Board.
(3) Having been convicted of or pleaded guilty or nolo contendere to a crime involving moral turpitude or any crime which indicates that the occupational therapist or occupational therapy assistant is unfit or incompetent to practice occupational therapy or that the occupational therapist or occupational therapy assistant has deceived or defrauded the public.
(4) Engaging in any act or practice violative of any of the provisions of this Article or any rule or regulation adopted by the Board or aiding, abetting or assisting any person in such a violation.
(5) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of occupational therapy.
(6) Practicing as a licensed occupational therapist or occupational therapy assistant without a current license.
(7) Engaging in conduct that could result in harm or injury to the public.
(8) Having an occupational therapy license revoked or suspended or other disciplinary action taken whether in this State or another jurisdiction.
(9) Being unfit or incompetent to practice occupational therapy by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(b) The denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with G.S. Chapter 150B and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1987, c. 827, s. 1; 2005-432, s. 11.)

§ 90-270.77. Fees.

The Board shall adopt and publish, in the manner established by its rules and regulations, fees reasonably necessary to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed ten dollars ($10.00).
(2) For issuance of an initial license, a fee not to exceed one hundred dollars ($100.00).
(3) For the renewal of a license, a fee not to exceed fifty dollars ($50.00).
(4) For the late renewal of a license, a fee not to exceed fifty dollars ($50.00).
(5) Expired.
(6) For copies of Board rules and licensure standards, charges not to exceed the actual cost of printing and mailing. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 12.)

§ 90-270.78. False representation of license prohibited.

(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational therapy.

(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational therapy.

(3) Use in connection with his or her name or place of business the words "occupational therapist" or "occupational therapy assistant", or the letters "O.T.", "O.T./L.", "O.T.A.", or "O.T.A./L.", or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist, or occupational therapy assistant.

(b) Any person who resides in another state or foreign country and who, by use of electronic or other medium, performs any of the acts described as the practice of occupational therapy pursuant to this Article, but is not licensed pursuant to this Article, shall be regarded as practicing occupational therapy without a North Carolina license and is subject to the provisions of this Article and appropriate regulation by the Board. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 13; 2008-187, s. 40(c); 2009-570, s. 11.)

§ 90-270.79. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 1993, c. 539, s. 648; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-270.80. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action. (1983 (Reg. Sess., 1984), c. 1073, s. 1.)

§ 90-270.80A. Civil penalties, disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

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

(d) Costs. – The Board may assess the costs of disciplinary actions against any person found to be in violation of this Article or rules adopted by the Board. (2005-432, s. 14.)

§ 90-270.81. Persons and practices not affected.

Nothing in this Article shall be construed to prevent or restrict:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State from performing work incidental to the practice of that profession or occupation as long as the person does not represent himself or herself as an occupational therapist or occupational therapy assistant.

(2) Any person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if he or she provides occupational therapy solely under the direction or control of the organization by which he or she is employed.

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if the activities and services constitute a part of a supervised course of study and if the person is designated by a title which clearly indicates his or her status as a student or trainee.

(4) Any person fulfilling the supervised fieldwork experience required for licensure under this Article if the person is designated by a title, which clearly indicates his or her status as a student or trainee.

(5) Occupational therapists or occupational therapy assistants licensed in other jurisdictions who are consulting, teaching, or participating in special occupational therapy education projects, demonstrations or courses in this State, provided their evaluation and treatment of patients is minimal.

(6) The practice of occupational therapy by an occupational therapist or occupational therapy assistant licensed in another jurisdiction who comes into this State, whether in person or by use of any electronic or other medium, on an irregular basis, to consult with a North Carolina licensed occupational therapist or occupational therapy assistant or to consult with faculty at an academic facility about education and training. This shall not apply to occupational therapists or occupational therapy assistants residing in a neighboring state and regularly practicing in this State. (1983 (Reg. Sess., 1984), c. 1073, s. 1; 2005-432, s. 15.)

Article 18E.

Physical Therapy.

§ 90-270.90. Definitions.

In this Article, unless the context otherwise requires, the following definitions shall apply:

(1) "Board" means the North Carolina Board of Physical Therapy Examiners.

(2) "Physical therapist" means any person who practices physical therapy in accordance with the provisions of this Article.

(3) "Physical therapist assistant" means any person who assists in the practice of physical therapy in accordance with the provisions of this Article, and who works under the supervision of a physical therapist by performing such patient-related activities assigned by a physical therapist which are

commensurate with the physical therapist assistant's education and training, but an assistant's work shall not include the interpretation and implementation of referrals from licensed medical doctors or dentists, the performance of evaluations, or the determination or major modification of treatment programs.

(4) "Physical therapy" means the evaluation or treatment of any person by the use of physical, chemical, or other properties of heat, light, water, electricity, sound, massage, or therapeutic exercise, or other rehabilitative procedures, with or without assistive devices, for the purposes of preventing, correcting, or alleviating a physical or mental disability. Physical therapy includes the performance of specialized tests of neuromuscular function, administration of specialized therapeutic procedures, interpretation and implementation of referrals from licensed medical doctors or dentists, and establishment and modification of physical therapy programs for patients. Evaluation and treatment of patients may involve physical measures, methods, or procedures as are found commensurate with physical therapy education and training and generally or specifically authorized by regulations of the Board. Physical therapy education and training shall include study of the skeletal manifestations of systemic disease. Physical therapy does not include the application of roentgen rays or radioactive materials, surgery, the practice of chiropractic, as defined by G.S. 90-143, or medical diagnosis of disease.

(5) "Physical therapy aide" means any nonlicensed person who aids in the practice of physical therapy in accordance with the provisions of this Article, and who at all times acts under the orders, direction, and on-site supervision of a licensed physical therapist or physical therapist assistant. An aide may perform physical therapy related activities which are assigned and are commensurate with an aide's training and abilities, but an aide's work shall not include the interpretation and implementation of referrals from licensed medical doctors or dentists, the performance of evaluations, the determination and modification of treatment programs, or any independent performance of any physical therapy procedures. (1951, c. 1131, s. 1; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1; 2019-43, s. 1.)

§ 90-270.91. Board of Examiners.

The North Carolina Board of Physical Therapy Examiners is hereby created. The Board shall consist of eight members, including one medical doctor licensed and residing in North Carolina, four physical therapists, two physical therapist assistants, and one public member. The public member shall be appointed by the Governor and shall be a person who is not licensed under Chapter 90 who shall represent the interest of the public at large. The medical doctor, physical therapists, and physical therapists assistants shall be appointed by the Governor from a list compiled by the North Carolina Physical Therapy Association, Inc., following the use of a nomination procedure made available to all physical therapists and physical therapist assistants licensed and residing in North Carolina. In soliciting nominations and compiling its list, the Association will give consideration to geographic distribution, practice setting (institution, independent, academic, etc.), and other factors that will promote representation of all aspects of physical therapy practice on the Board.

The records of the operation of the nomination procedure shall be filed with the Board, to be available for a period of six months following nomination, for reasonable inspection by any licensed practitioner. Each physical therapist member of the Board shall be licensed and reside in this State; provided that the physical therapist shall have not less than three years' experience as a physical therapist immediately preceding appointment and shall be actively engaged in the practice of physical therapy in North Carolina during incumbency. Each physical therapist assistant member shall be licensed and reside in this State; provided that the physical therapist assistant shall have not less than three years' experience as a physical therapist assistant immediately preceding appointment and shall be actively engaged in practice as a physical therapist assistant in North Carolina during incumbency.

Members shall be appointed to serve three-year terms, or until their successors are appointed, to commence on January 1 in respective years. In the event that a member of the Board for any reason shall become ineligible to or cannot complete a term of office, another appointment shall be made by the Governor, in accordance with the procedure stated above, to fill the remainder of the term. No member may serve for more than two successive three-year terms.

The Board may immediately remove a member from the Board if the member is found by the remainder of the Board to have (i) ceased to meet the qualifications specified in this section, (ii) failed to attend three successive Board meetings without just cause, (iii) violated any of the provisions of this Article or rules adopted by the Board, or (iv) otherwise engaged in immoral, dishonorable, unprofessional, or unethical conduct. Before removing a Board member for immoral, dishonorable, unprofessional, or unethical conduct, the Board shall further find that the relevant conduct has compromised the integrity of the Board.

The Board each year shall designate one of its physical therapist members as chairman and one member as secretary-treasurer. Each member of the Board shall receive such per diem compensation and reimbursement for travel and subsistence as shall be set for licensing boards generally. (1951, c. 1131, s. 2; 1969, c. 445, s. 7; c. 556; 1979, c. 487; 1981, c. 765, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 82; 1985, c. 701, s. 1; 2013-312, s. 1; 2017-28, s. 1.)

§ 90-270.92. Powers of the Board.

The Board shall have the following general powers and duties:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice physical therapy in this State.

(2) Issue, renew, deny, suspend, or revoke licenses to practice physical therapy in this State, or reprimand or otherwise discipline licensed physical therapists and physical therapist assistants.

(3) Conduct confidential investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensed physical therapists or physical therapist assistants exist. Investigation records shall not be considered public records under Chapter 132 of the General Statutes. These records are privileged and are not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board or its

employees or consultants, except as provided in this section. However, any Board decisions rendered, hearing notices and statements of charges, and any material received and admitted into evidence at Board hearings shall be public records, regardless of whether the notices, statements, or materials are developed or compiled as a result of an investigation; provided that identifying information concerning the treatment or delivery of professional services to a patient who has not consented to its public disclosure may be deleted or redacted.

(4) Establish mechanisms for assessing the continuing competence of licensed physical therapists or physical therapist assistants to engage in the practice of physical therapy, including approving rules requiring licensees to periodically, or in response to complaints or incident reports, submit to the Board: (i) evidence of continuing education experiences; (ii) evidence of minimum standard accomplishments; or (iii) evidence of compliance with other Board-approved measures, audits, or evaluations; and specify remedial actions if necessary or desirable to obtain license renewal or reinstatement.

(5) Employ such professional, clerical or special personnel necessary to carry out the provisions of this Article, and may purchase or rent necessary office space, equipment and supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this Article.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules or regulations necessary to carry out the purposes of this Article and the duties and responsibilities of the Board.

(10) Request the Department of Public Safety to provide criminal history record checks pursuant to G.S. 90-270.96 in connection with licensure.

(11) Issue subpoenas, on signature of the Board Chair or Executive Director, to compel the attendance of any witness or the production of any documents relative to investigations or Board proceedings. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence sought does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence sought, or for any other reason in law the subpoena is invalid.

(12) Establish or participate in programs for aiding in the recovery and rehabilitation of physical therapists and physical therapist assistants who experience chemical or alcohol addiction or abuse or mental health problems.

(13) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

The powers and duties enumerated above are granted for the purpose of enabling the Board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of physical therapy, and are to be liberally construed to accomplish this objective. In instances where the Board makes a decision to discipline physical therapists or physical therapist assistants under powers set out by any of subsections (2) through (6) of this section, it may as part of its decision charge the reasonable costs of investigation and hearing to the person disciplined. (1979, c. 487; 1985, c. 701, s. 1; 1987, c. 827, ss. 1, 77; 2006-144, s. 1; 2013-312, s. 2; 2014-100, s. 17.1(o); 2017-28, s. 1.)

§ 90-270.93. Records to be kept; copies of record.

The Board shall keep a record of proceedings under this Article and a record of all persons licensed under it. The record shall show the name, last known place of business and last known place of residence, and date and number of licensure certificate as a physical therapist or physical therapist assistant, for every living licensee. Any interested person in the State is entitled to obtain a copy of that record on application to the Board and payment of such reasonable charge as may be fixed by it based on the costs involved. (1951, c. 1131, s. 12; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.94. Disposition of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article. The financial records of the Board shall be subjected to an annual audit and paid for out of the funds of the Board. (1951, c. 1131, s. 14; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.95. Qualifications of applicants for examination; application; fee.

Any person who desires to be licensed under this Article and who:

(1) Is of good moral character;

(2) If an applicant for physical therapy licensure, has been graduated from a physical therapy program accredited by an agency recognized by either the U.S. Office of Education or the Council on Postsecondary Accreditation; and

(3) If an applicant for physical therapist assistant licensure, has been graduated from a physical therapist assistant educational program accredited by an agency recognized by either the U.S. Office of Education or the Council on Postsecondary Accreditation; may make application on a form furnished by the Board for examination for licensure as a physical therapist or physical therapist assistant. At the time of making such application, the applicant shall pay to the secretary-treasurer of the Board the fee prescribed by the Board, no portion of which shall be returned. (1951, c. 1131, s. 3; 1959, c. 630; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.96. Criminal history record checks of applicants for licensure.

(a) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall be responsible for providing to the North

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

(b) The cost of the criminal history record check and the fingerprinting shall be borne by the applicant. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

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

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

If, after reviewing the factors, the Board determines that any of the grounds set forth in the subdivisions of G.S. 90-270.103 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record that is relevant to the denial if disclosure of the information is permitted by applicable State and federal law. The Board shall not provide a copy of the criminal history record to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record. (2013-312, s. 3; 2014-100, s. 17.1(o); 2017-28, s. 1.)

§ 90-270.97. Licensure of foreign-trained physical therapists.

Any person who has been trained as a physical therapist or physical therapist assistant in a foreign country and desires to be licensed under this Article and who:

(1) Is of good moral character;
(2) Holds a diploma from an educational program for physical therapists or physical therapist assistants approved by the Board;
(3) Submits documentary evidence to the Board of completion of a course of instruction substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.95; and
(4) Demonstrates satisfactory proof of proficiency in the English language;

may make application on a form furnished by the Board for examination as a foreign-trained physical therapist or physical therapist assistant. At the time of making such application, the

applicant shall pay to the secretary-treasurer of the Board the fee prescribed by the Board, no portion of which shall be returned. (1959, c. 630; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2013-312, s. 4; 2017-28, s. 1.)

§ 90-270.98. Certificates of licensure.

(a) The Board shall furnish a certificate of licensure to each applicant successfully passing the examination for licensure as a physical therapist or physical therapist assistant, respectively. Upon receipt of satisfactory evidence that an applicant has graduated, within six months prior to application, from a physical therapy or physical therapy assistant program accredited as required under G.S. 90-270.95, the Board may authorize the applicant to perform as a physical therapist or physical therapist assistant in this State, but only under the immediate supervision of a physical therapist licensed in this State, until a formal decision by the Board on the application for license. If a new graduate applicant that has been authorized to perform under supervision by a licensed physical therapist fails (without due cause as determined in the Board's discretion) to take the next succeeding examination, or if the applicant fails to pass the examination, and consequently does not become licensed, the authorization for the applicant to perform under supervision shall expire. Applicants approved by the Board for performance as physical therapists or physical therapist assistants while their applications are pending under circumstances described in this subsection shall be referred to as Physical Therapist Graduate or Physical Therapist Assistant Graduate.

(b) The Board shall furnish a certificate of licensure to any person who is a physical therapist or physical therapist assistant registered or licensed under the laws of another state or territory, if the individual's qualifications were at the date of his registration or licensure substantially equal to the requirements under this Article. When making such application, the applicant shall pay to the secretary-treasurer of the Board the fee prescribed by the Board, no portion of which shall be returned. (1951, c. 1131, ss. 4, 6; 1959, c. 630; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.99. Renewal of license; lapse; revival.

(a) Every licensed physical therapist or physical therapist assistant shall, during the month of January of every year, apply to the Board for a renewal of licensure and pay to the secretary-treasurer the prescribed fee. Licenses that are not so renewed shall automatically lapse. The Board may decline to renew licenses of physical therapists or physical therapist assistants for failure to comply with any required continuing competency measures.

(b) The manner in which lapsed licenses shall be revived, reinstated, or extended shall be established by the Board in its discretion. (1951, c. 1131, s. 7; 1959, c. 630; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2006-144, s. 2; 2017-28, s. 1.)

§ 90-270.100. Fees.

The Board may collect fees established by its rules, but those fees shall not exceed the following schedule for the specified items:

(1) Each application for licensure.....$150.00
(2) License renewal $120.00
(3) Transfer/verification/replace certificate.....$30.00
(4) Examination retake $60.00
(5) Late renewal.....$20.00
(6) Licensure revival (in addition to renewal).....$30.00
(7) Directory $10.00
(8) Licensee lists or labels 60.00

In all instances where the Board uses the services of a national testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees. (1951, c. 1131, s. 2; 1969, c. 445, s. 7; c. 556; 1979, c. 487; 1985, c. 161; c. 701, s. 1; 1999-345, s. 1; 2017-28, s. 1.)

§ 90-270.101. Exemptions from licensure; certain practices exempted.

(a) The following persons shall be permitted to practice physical therapy or assist in the practice in this State without obtaining a license under this Article upon the terms and conditions specified herein:

(1) Students enrolled in accredited physical therapist or physical therapist assistant educational programs, while engaged in completing a clinical requirement for graduation, which must be performed under the supervision of a licensed physical therapist;
(2) Physical therapists licensed in other jurisdictions while enrolled in graduate educational programs in this State that include the evaluation and treatment of patients as part of their experience required for credit, so long as the student is not at the same time gainfully employed in this State as a physical therapist;
(3) Practitioners of physical therapy employed in the Armed Forces of the United States, United States Public Health Service, Veterans Administration or other federal agency, to the extent permitted under federal law, so long as the practitioner limits services to those directly relating to work with the employing government agency;
(4) Physical therapists or physical therapist assistants licensed in other jurisdictions who are teaching or participating in special physical therapy education projects, demonstrations or courses in this State, in which their participation in the evaluation and treatment of patients is minimal;
(5) A physical therapy aide while in the performance of those acts and practices specified in G.S. 90-270.90(5);
(6) Persons authorized to perform as physical therapists or physical therapist assistants under the provision of G.S. 90-270.98;
(7) Physical therapists or physical therapist assistants who are licensed in another jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in this State for no more than 60 days in a calendar year;

(8) Physical therapists or physical therapist assistants licensed in another jurisdiction of the United States who enter this State to provide physical therapy during a declared local, State, or national disaster or emergency. The exemption applies no longer than the standard annual renewal time in the State. To be eligible for the exemption, the licensee shall notify the Board of the licensee's intent to practice physical therapy pursuant to this subdivision;

(9) Physical therapists or physical therapist assistants licensed in another jurisdiction of the United States who are forced to leave their residence or place of employment due to a declared local, State, or national disaster or emergency and, due to such displacement, need to practice physical therapy. The exemption applies no longer than the standard annual renewal time but may be renewed by the Board for additional periods. To be eligible for the exemption, the licensee shall notify the Board of the licensee's intent to practice physical therapy pursuant to this subdivision.

(b) Nothing in this Article shall be construed to prohibit:

(1) Any act in the lawful practice of a profession by a person duly licensed in this State;

(2) The administration of simple massages and the operation of health clubs so long as not intended to constitute or represent the practice of physical therapy. (1951, c. 1131, ss. 9, 11; 1959, c. 630; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2011-183, s. 66; 2013-312, s. 5; 2017-28, s. 1.)

§ 90-270.102. Unlawful practice.

Except as otherwise authorized in this Article, if any person, firm, or corporation shall:

(1) Practice, attempt to practice, teach, consult, or supervise in physical therapy, or hold out any person as being able to do any of these things in this State, without first having obtained a license or authorization from the Board for the person performing services or being so held out;

(2) Use in connection with any person's name any letters, words, numerical codes, or insignia indicating or implying that the person is a physical therapist or physical therapist assistant, or applicant with "Graduate" status, unless the person is licensed or authorized in accordance with this Article;

(3) Practice or attempt to practice physical therapy with a revoked, lapsed, or suspended license;

(4) Practice physical therapy and fail to refer to a licensed medical doctor or dentist any patient whose medical condition should have, at the time of evaluation or treatment, been determined to be beyond the scope of practice of a physical therapist;

(5) Aid, abet, or assist any unlicensed person to practice physical therapy in violation of this Article; or

(6) Violate any of the provisions of this Article;

said person, firm, or corporation shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense. (1951, c. 1131, ss. 9, 11; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 1993, c. 539, s. 647; 1994, Ex. Sess., c. 24, s. 14(c); 2017-28, s. 1.)

§ 90-270.103. Grounds for disciplinary action.

Grounds for disciplinary action shall include but not be limited to the following:

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

(2) The use of drugs or intoxicating liquors to an extent which affects professional competency;

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

(4) Conviction of a felony or other public offense involving moral turpitude, until proof of rehabilitation can be established;

(5) An adjudication of insanity or incompetency, until proof of recovery from the condition can be established;

(6) Engaging in any act or practice violative of any of the provisions of this Article or of any of the rules and regulations adopted by the Board, or aiding, abetting or assisting any other person in the violation of the same;

(7) The commission of an act or acts of malpractice, gross negligence or incompetence in the practice of physical therapy;

(8) Practice as a licensed physical therapist or physical therapist assistant without a valid certificate of renewal;

(9) Engaging in conduct that could result in harm or injury to the public. (1951, c. 1131, s. 8; 1959, c. 630; 1969, c. 556; 1973, c. 1331, s. 3; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.104. Enjoining illegal practices.

(a) The Board may, if it finds that any person is violating any of the provisions of this Article, apply in its own name to the superior court for a temporary or permanent restraining order or injunction to restrain such person from continuing such illegal practices. The court is empowered to grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of granting or continuing an injunction sought by the Board, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable damage.

(b) The venue for actions brought under this section shall be the superior court of any county in which such illegal or unlawful acts are alleged to have been committed, in the county in which the defendants in such action reside, or in the county in which the Board maintains its offices and records. (1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.105. Title.

This Article may be cited as the "Physical Therapy Practice Act". (1951, c. 1131, s. 15; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

§ 90-270.106. Osteopaths, chiropractors, and podiatrists not restricted.

Nothing in this Article shall restrict the use of physical therapy modalities by licensed osteopaths, chiropractors, or podiatrists, in the lawful practice of their professions; except

that, these licensed professionals shall not be permitted to in any way hold themselves, or any employee or associate, out as practicing physical therapy or being licensed by the Board of Physical Therapy Examiners, or any other agency, to do so. (1951, c. 1131, s. 15.1; 1969, c. 556; 1979, c. 487; 1985, c. 701, s. 1; 2017-28, s. 1.)

Article 18F.

Physical Therapy Licensure Compact.

§ 90-270.120. Purpose.

The purpose of this Compact is to facilitate the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This Compact is designed to achieve the following objectives:

(1) Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses.
(2) Enhance the states' ability to protect the public's health and safety.
(3) Encourage the cooperation of member states in regulating multistate physical therapy practice.
(4) Support spouses of relocating military members.
(5) Enhance the exchange of licensure, investigative, and disciplinary information between member states.
(6) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards. (2017-28, s. 2.)

§ 90-270.121. Definitions.

As used in this Compact, and except as otherwise provided, the following definitions apply:

(1) Active duty military. – Full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.
(2) Adverse action. – Disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.
(3) Alternative program. – A nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.
(4) Compact privilege. – The authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(5) Continuing competence. – A requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

(6) Data system. – A repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

(7) Encumbered license. – A license that a physical therapy licensing board has limited in any way.

(8) Executive board. – A group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

(9) Home state. – The member state that is the licensee's primary state of residence.

(10) Investigative information. – Information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(11) Jurisprudence requirement. – The assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

(12) Licensee. – An individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(13) Member state. – A state that has enacted the Compact. For purposes of this Article, the State of North Carolina may designate the North Carolina Board of Physical Therapy Examiners as the entity responsible for carrying out any action required by or of a member state under this Article, including the imposition of fees or the payment of assessments.

(14) Party state. – Any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(15) Physical therapist. – An individual who is licensed by a state to practice physical therapy.

(16) Physical therapist assistant. – An individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

(17) Physical therapy, physical therapy practice, or the practice of physical therapy. – The care and services provided by or under the direction and supervision of a licensed physical therapist.

(18) Physical Therapy Compact Commission or Commission. – The national administrative body whose membership consists of all states that have enacted the Compact.

(19) Physical Therapy Licensing Board or Licensing Board. – The agency that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(20) Remote state. – A member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.

(21) Rule. – A regulation, principle, or directive promulgated by the Commission that has the force of law.

(22) State. – Any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy. (2017-28, s. 2.)

§ 90-270.122. State participation in the compact.

(a) To participate in the Compact, a state must do all of the following:

(1) Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules.
(2) Have a mechanism in place for receiving and investigating complaints about licensees.
(3) Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee.
(4) Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with subsection (b) of this section.
(5) Comply with the rules of the Commission.
(6) Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission.
(7) Have continuing competence requirements as a condition for license renewal.

(b) Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

(c) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

(d) Member states may charge a fee for granting a compact privilege. (2017-28, s. 2.)

§ 90-270.123. Compact privilege.

(a) In order to exercise the compact privilege under the terms and provisions of the Compact, the licensee shall meet all of the following qualifications:

(1) Hold a license in the home state.
(2) Have no encumbrance on any state license.
(3) Be eligible for a compact privilege in any member state in accordance with subsections (d), (g), and (h) of this section.
(4) Have not had any adverse action against any license or compact privilege within the previous two years.
(5) Notify the Commission that the licensee is seeking the compact privilege within a remote state(s).
(6) Pay any applicable fees, including any state fee, for the compact privilege.
(7) Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege.
(8) Report to the Commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(b) The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection (a) of this section to maintain the compact privilege in the remote state.

(c) A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(d) A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(e) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until both of the following occur:

(1) The home state license is no longer encumbered.

(2) Two years have elapsed from the date of the adverse action.

(f) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection (a) of this section to obtain a compact privilege in any remote state.

(g) If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until all of the following occur:

(1) The specific period of time for which the compact privilege was removed has ended.

(2) All fines have been paid.

(3) Two years have elapsed from the date of the adverse action.

(h) Once the requirements of subsection (g) of this section have been met, the licensee must meet the requirements in subsection (a) of this section to obtain a compact privilege in a remote state. (2017-28, s. 2.)

§ 90-270.124. Active duty military personnel or their spouses.

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

(1) Home of record.

(2) State listed on Permanent Change of Station (PCS) order.

(3) State of current residence or duty station if it is different than the PCS state or home of record. (2017-28, s. 2.)

§ 90-270.125. Adverse actions.

(a) A home state shall have exclusive power to impose adverse action against a license issued by the home state.

(b) A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

(c) Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not

to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

(d) Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

(e) A remote state shall have the authority to do all of the following:

(1) Take adverse actions as set forth in subsection (d) of G.S. 90-270.123 against a licensee's compact privilege in the state.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

(3) If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

(f) Joint Investigations. –

(1) In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

(2) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact. (2017-28, s. 2.)

§ 90-270.126. Establishment of the Physical Therapy Compact Commission.

(a) The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

(1) The Commission is an instrumentality of the Compact states.

(2) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, Voting, and Meetings. –

(1) Each member state shall have and be limited to one delegate selected by that member state's licensing board.

(2) The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

(3) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
(4) The member state board shall fill any vacancy occurring in the Commission.
(5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.
(6) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
(7) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(c) The Commission shall have all of the following powers and duties:
(1) Establish the fiscal year of the Commission.
(2) Establish bylaws.
(3) Maintain its financial records in accordance with the bylaws.
(4) Meet and take such actions as are consistent with the provisions of this Compact and the bylaws.
(5) Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states.
(6) Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected.
(7) Purchase and maintain insurance and bonds.
(8) Borrow, accept, or contract for services of personnel, including employees of a member state.
(9) Hire employees, elect or appoint officers, fix compensation, define duties, and grant such individuals appropriate authority to (i) carry out the purposes of the Compact and (ii) establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.
(10) Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest.
(11) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety.
(12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed.
(13) Establish a budget and make expenditures.
(14) Borrow money.
(15) Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws.

(16) Provide and receive information from, and cooperate with, law enforcement agencies.
(17) Establish and elect an Executive Board.
(18) Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

(d) The Executive Board. –

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact:

(1) The Executive Board shall be composed of the following nine members:
  a. Seven voting members who are elected by the Commission from the current membership of the Commission.
  b. One ex officio, nonvoting member from the recognized national physical therapy professional association.
  c. One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
(2) The ex officio members will be selected by their respective organizations.
(3) The Commission may remove any member of the Executive Board as provided in bylaws.
(4) The Executive Board shall meet at least annually.
(5) The Executive Board shall have all of the following duties and responsibilities:
  a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege.
  b. Ensure Compact administration services are appropriately provided, contractual or otherwise.
  c. Prepare and recommend the budget.
  d. Maintain financial records on behalf of the Commission.
  e. Monitor Compact compliance of member states and provide compliance reports to the Commission.
  f. Establish additional committees as necessary.
  g. Other duties as provided in rules or bylaws.

(e) Meetings of the Commission. –

(1) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in G.S. 90-270.128.
(2) The Commission or the Executive Board or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Board or other committees of the Commission must discuss any of the following:
  a. Noncompliance of a member state with its obligations under the Compact.
  b. The employment, compensation, discipline, or other matters, practices or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures.

c. Current, threatened, or reasonably anticipated litigation.

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.

e. Accusing any person of a crime or formally censuring any person.

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

h. Disclosure of investigative records compiled for law enforcement purposes.

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact.

j. Matters specifically exempted from disclosure by federal or member state statute.

(3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(4) The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(f) Financing of the Commission.

(1) The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

(4) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly

by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(g) Qualified Immunity, Defense, and Indemnification. –

(1) The members, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person. (2017-28, s. 2.)

§ 90-270.127. Data system.

(a) The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(b) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including all of the following:

(1) Identifying information.

(2) Licensure data.

(3) Adverse actions against a license or compact privilege.

(4) Nonconfidential information related to alternative program participation.

(5) Any denial of application for licensure and the reason(s) for such denial.

(6) Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

(c) Investigative information pertaining to a licensee in any member state will only be available to other party states.

(d) The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(e) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system. (2017-28, s. 2.)

§ 90-270.128. Rule Making.

(a) The Commission shall exercise its rule-making powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(d) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rule Making on both of the following:

(1) On the Web site of the Commission or other publicly accessible platform.

(2) On the Web site of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(e) The Notice of Proposed Rule Making shall include all of the following:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.

(2) The text of the proposed rule or amendment and the reason for the proposed rule.

(3) A request for comments on the proposed rule from any interested person.

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(f) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(g) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following:

(1) At least 25 persons.

(2) A state or federal governmental subdivision or agency.

(3) An association having at least 25 members.

(h) If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings will be recorded. A copy of the recording will be made available on request.

(4) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

(k) The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(*l*) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to do any of the following:

(1) Meet an imminent threat to public health, safety, or welfare.

(2) Prevent a loss of Commission or member state funds.

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(4) Protect public health and safety.

(m) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the Web site of the Commission. The revision

shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission. (2017-28, s. 2.)

§ 90-270.129. Oversight, dispute resolution, and enforcement.

(a) Oversight. –

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

(3) The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination. –

(1) If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall do all of the following:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission.

b. Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(4) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute Resolution. –

(1) Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

(2) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement. –

(1) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

(2) By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law. (2017-28, s. 2.)

§ 90-270.130. Date of implementation of the interstate Commission for Physical Therapy Practice and associated rules, withdrawal, and amendment.

(a) The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rule-making powers necessary to the implementation and administration of the Compact.

(b) Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

(c) Any member state may withdraw from this Compact by enacting a statute repealing the same.

(1) A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and

adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this Compact.

(e) This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states. (2017-28, s. 2.)

§ 90-270.131. Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters. (2017-28, s. 2.)

Article 19.

Sterilization Operations.

§ 90-271. Operation lawful upon request of married person or person over 18.

It shall be lawful for any physician or surgeon licensed by this State when so requested by any person 18 years of age or over, or less than 18 years of age if legally married, to perform upon such person a surgical interruption of vas deferens or Fallopian tubes, as the case may be, provided a request in writing is made by such person prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation; and provided, further, that the surgical interruption of Fallopian tubes is performed in a hospital or ambulatory surgical facility licensed by the Department of Health and Human Services. (1963, c. 600; 1965, cc. 108, 941; 1971, c. 1231, s. 1; 1973, c. 476, s. 152; c. 998, s. 1; 1977, c. 7; 1979, c. 728; 1997-443, s. 11A.118(a).)

§ 90-272. Operation on unmarried minor.

Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of 18 years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in G.S. 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall determine that the

operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation. (1963, c. 600; 1971, c. 1231, s. 1.)

§ 90-273. Repealed by Session Laws 1973, c. 998, s. 2.

§ 90-274. No liability for nonnegligent performance of operation.

Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this State shall be liable either civilly or criminally by reason of having performed a surgical interruption of vas deferens or Fallopian tubes authorized by the provisions of this Article upon any person in this State. (1963, c. 600.)

§ 90-275. Article does not affect duty of guardian to obtain order permitting guardian to consent to sterilization of a ward with a mental illness or intellectual disability.

Nothing in this Article affects the provisions of G.S. 35A-1245. (1963, c. 600; 2003-13, s. 6; 2018-47, s. 1(f).)

Article 20.

Nursing Home Administrator Act.

§ 90-275.1. Title.

This Article shall be known and may be cited as the "Nursing Home Administrator Act." (1969, c. 843, s. 1.)

§ 90-276. Definitions.

For the purposes of this Article and as used herein:

(1) "Administrator-in-training" means an individual registered with the Board who serves a training period under the supervision of a preceptor.

(2) "Board" means the North Carolina State Board of Examiners for Nursing Home Administrators.

(3) "Nursing home" means any institution or facility defined as such for licensing purposes under G.S. 131E-101(6), whether proprietary or nonprofit, including but not limited to nursing homes owned or administered by the federal or State government or any agency or political subdivision thereof and nursing homes operated in combination with a home for the aged or any other facility.

(4) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a nursing home, whether such individual has an ownership interest in such home and whether his functions and duties are shared with one or more individuals.

(5) "Preceptor" means a person who is a licensed and registered nursing home administrator and meets the requirements of the Board to supervise administrators-in-training during the training period. (1969, c. 843, s. 1; 1981, c. 722, s. 3; 1981 (Reg. Sess., 1982), c. 1234, s. 1; 2001-153, s. 1.)

§ 90-277. Composition of Board.

There is created the State Board of Examiners for Nursing Home Administrators. The Board shall consist of seven members. The seven members shall be voting members and shall meet the following criteria:

(1) All shall be individuals representative of the professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients.

(2) Less than a majority of the Board members shall be representative of a single profession or institutional category.

(3) Three of the Board members shall be licensed nursing home administrators, at least one of whom shall be employed by a for-profit nursing home and at least one of whom shall be employed by a nonprofit nursing home. These three Board members shall be considered as representatives of institutions in construing this section.

(4) Four of the Board members shall be public, noninstitutional members, with no direct financial interest in nursing homes.

(5) The terms of the Board members shall be limited to two consecutive terms.

Effective July 1, 1973, the Governor shall appoint three members, one of whom shall be a licensed nursing home administrator, for terms of three years, and four members, two of whom shall be licensed nursing home administrators, for terms of two years. Thereafter, all terms shall be three years. However, no member shall serve more than two consecutive full terms. Any vacancy occurring in the position of an appointive member shall be filled by the Governor for the unexpired term in the same manner as for new appointments. Appointive members may be removed by the Governor for cause after due notice and hearing.

Any member of the Board shall be automatically removed from the Board upon certification by the Board to the Governor that the member no longer satisfies the criteria set forth in subdivisions (1) through (4) of this section for appointment to the Board. (1969, c. 843, s. 1; 1973, c. 728; 1981, c. 722, s. 4; 1995, c. 86, s. 1.)

§ 90-278. Qualifications for licensure.

The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators.

(1) A license as a nursing home administrator shall be issued to any person upon the Board's determination that the person:

a. Is at least 18 years of age, of good moral character and of sound physical and mental health; and

b. Has successfully completed the equivalent of two years of college level study (60 semester hours or 96 quarter hours) from an accredited community college, college or university prior to application for licensure;

or

has completed a combination of education and experience, acceptable under rules promulgated by the Board, prior to application for licensure. Under this provision, two years of supervisory experience in a nursing home shall be equated to one year of college study;

c. Has satisfactorily completed a course prescribed by the Board, which course contains instruction on the services provided by nursing homes, laws governing nursing homes, protection of patient interests and nursing home administration; and

d. Has successfully completed the training period as an administrator-in-training as prescribed by the Board. If a person has served at least 12 weeks as a hospital administrator or assistant administrator of a hospital-based long-term care nursing unit or hospital-based swing beds licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C, the Board shall consider this experience comparable to the initial on-the-job portion of the administrator-in-training program only; and

e. Has passed the national and State examinations designed to test for competence in the subject matters referred to in sub-subdivision c. of this subdivision within one year from the date of completion of the administrator-in-training program.

(2) Repealed by Session Laws 1981, c. 722, s. 6.

(3) A temporary license may be issued under requirements and conditions prescribed by the Board to any person to act or serve as administrator of a nursing home without meeting the requirements for full licensure, but only when there are unusual circumstances preventing compliance with the procedures for licensing elsewhere provided by this Article. The temporary license shall be issued by the chairman only for the period prior to the next meeting of the Board, at which time the Board may renew such temporary license for a further period only up to one year. (1969, c. 843, s. 1; 1973, c. 476, s. 128; 1981, c. 722, ss. 5-7; 1981 (Reg. Sess., 1982), c. 1234, s. 2; 1983, c. 737; 1987, c. 492, s. 1; 1991, c. 710, s. 1; 2013-346, s. 1.)

§ 90-279. Licensing function.

The Board shall license nursing home administrators in accordance with rules and regulations issued and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid until expiration or until suspended or revoked for violation of this Article or of the standards established by the Board pursuant to this Article. Denial of issuance or renewal, suspension or revocation by the Board shall be subject to the provisions of Chapter 150B of the General Statutes. (1969, c. 843, s. 1; 1973, c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 90-280. Fees; display of license; duplicate license; inactive list.

(a) Each applicant for an examination administered by the Board and each applicant for an administrator-in-training program and reciprocity endorsement shall pay a processing fee set by the Board not to exceed five hundred dollars ($500.00) plus the actual cost of the exam.

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount set by the Board not to exceed one thousand dollars ($1,000). A license shall expire on the thirtieth day of September of the second year following its

issuance and shall be renewable biennially upon payment of a renewal fee set by the Board not to exceed one thousand dollars ($1,000).

(c) Each person licensed as a nursing home administrator shall display his or her license certificate, along with the current certificate of renewal, in a conspicuous place in his or her place of employment.

(d) Any person licensed as a nursing home administrator may receive a duplicate license or verification of license by payment of a fee set by the Board not to exceed one hundred dollars ($100.00).

(e) Any person licensed as a nursing home administrator who is not acting, serving, or holding himself or herself out to be a nursing home administrator may have his or her name placed on an inactive list for such period of time not to exceed four years upon payment of a fee set by the Board not to exceed two hundred dollars ($200.00) per year. Each year during that four-year period, upon request and payment of the fee, the person's name may remain on an inactive list for one additional year.

(f) Any person having a temporary license issued pursuant to G.S. 90-278(3) shall pay a fee in an amount set by the Board not to exceed five hundred dollars ($500.00). If the Board renews the temporary license, no further fee shall be required.

(g) The Board may set fees not to exceed one thousand dollars ($1,000) for conducting and administering initial training and continuing education courses, and may set a fee not to exceed one hundred dollars ($100.00) per hour for certifying a course submitted for review by another individual or agency wishing to offer such courses or may set an annual fee not to exceed four thousand dollars ($4,000) for certifying a course provider in lieu of certifying each course offered by the provider. (1969, c. 843, s. 1; 1977, c. 652; 1979, 2nd Sess., c. 1282; 1981 (Reg. Sess., 1982), c. 1234, s. 4; 1983, c. 215; 1995 (Reg. Sess., 1996), c. 645, s. 1; 1999-217, s. 1; 2013-346, s. 2.)

§ 90-281. Collection of funds.

All fees and other moneys collected and received by the Board shall be handled as provided by law and as prescribed by the State Treasurer. Such funds shall be used and expended by the Board to pay the compensation and travel expenses of members and employees of the Board and other expenses necessary for the Board to administer and carry out the provisions of this Article. (1969, c. 843, s. 1; 1983, c. 913, s. 10.)

§ 90-282. Repealed by Session Laws 1981, c. 722, s. 8, effective July 1, 1981.

§ 90-283. Organization of Board; compensation; employees and services.

The Board shall elect from its membership a chairman, vice-chairman and secretary, and shall adopt rules and regulations to govern its proceedings. Board members shall be entitled to receive only such compensation and reimbursement as is prescribed by Chapter 93B of the General Statutes for State boards generally. At any meeting a majority of the voting members shall constitute a quorum. The Board shall have the power to employ or retain professional personnel, including legal counsel subject to G.S. 114-2.3, and clerical or other special personnel deemed necessary to carry out the provisions of this Article. (1969, c. 843, s. 1; 1981, c. 722, s. 9; 2001-153, s. 2; 2013-346, s. 3.)

§ 90-284. Exclusive jurisdiction of Board.

The Board shall have exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this Article, and the holder of a license under the provisions of this Article shall be deemed qualified to serve as the administrator of a nursing home for all purposes. (1969, c. 843, s. 1.)

§ 90-285. Functions and duties of the Board.

The Board shall meet at least once annually in Raleigh or any other location designated by the chairman and shall have the following functions and duties:

(1) Develop, impose and enforce rules and regulations setting out standards which must be met by individuals in order to receive and hold a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who are of good character and who are otherwise suitable, by education, training and experience in the field of institutional administration, to serve as nursing home administrators.

(2) Develop and apply appropriate methods and procedures, including examination and investigations, for determining whether individuals meet such standards, and administer an examination at least twice each year at such times and places as the Board shall designate.

(3) Issue licenses to qualified individuals consistent with G.S. 90-278 and G.S. 90-287 and any rules adopted by the Board implementing those provisions.

(4) Establish and implement procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

(5) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards.

(6) Conduct a continuing study and investigation of nursing homes and nursing home administrators within the State in order to make improvements in the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of such standards, and to raise the quality of nursing home administration in such other ways as may be effective.

(7) Conduct, or cause to be conducted by contract or otherwise, one or more courses of instruction and training sufficient to meet the requirements of this Article, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are sufficient courses conducted by others within this State. In lieu thereof the Board may approve courses conducted within and without this State as sufficient to meet the education and training requirements of this Article.

(8) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in section 1908 of the Social Security Act, the federal rules and regulations promulgated thereunder, and other pertinent federal authority.

(9) Receive and disburse any funds appropriated or given to the Board, including any federal funds, to carry out the purposes of this Article.

(10) Maintain a register of all applications for licensing and registration of nursing home administrators, which register shall show: the place or residence, name and age of each applicant; the name and address of employer or business connection of each applicant; the date of application; information of educational and experience qualifications; the action taken by the Board and the dates; the serial number of the license issued to the applicant; and such other pertinent information as may be deemed necessary.

(11) Develop an administrator-in-training program to insure that nursing home administrators have adequate training and experience prior to licensure. (1969, c. 843, s. 1; 1981, c. 722, ss. 10, 11; 1981 (Reg. Sess., 1982), c. 1234, s. 3; 2013-346, s. 4.)

§ 90-285.1. Suspension, revocation or refusal to issue a license.

The Board may suspend, revoke, or refuse to issue a license or may reprimand or otherwise discipline a licensee after due notice and an opportunity to be heard at a formal hearing, upon substantial evidence that a licensee:

(1) Has violated the provisions of this Article or the rules adopted by the Board;

(2) Has violated the provisions of Part 2 of Article 6 of Chapter 131E of the General Statutes and rules promulgated thereunder;

(3) Has been convicted of, or has tendered and has had accepted a plea of no contest to, a criminal offense showing professional unfitness;

(4) Has practiced fraud, deceit, or misrepresentation in securing or procuring a nursing home administrator license;

(5) Is incompetent to engage in the practice of nursing home administration or to act as a nursing home administrator;

(6) Has practiced fraud, deceit, or misrepresentation in his or her capacity as a nursing home administrator;

(7) Has committed acts of misconduct in the operation of a nursing home under his jurisdiction;

(8) Repealed by Session Laws 2013-346, s. 5, effective July 23, 2013.

(9) Is addicted or dependent upon the use of alcohol or any controlled substance, including morphine, opium, cocaine, or other drugs recognized as resulting in abnormal behavior;

(10) Has practiced without being registered biennially;

(11) Has transferred or surrendered possession of, either temporarily or permanently, his or her license or certificate to any other person;

(12) Has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home patronage;

(13) Has been guilty of fraudulent, misleading, or deceptive advertising;

(14) Has falsely impersonated another licensee;

(15) Has failed to exercise regard for the safety, health or life of the patient;

(16) Has permitted unauthorized disclosure of information relating to a patient or his or her records; or

(17) Has discriminated among patients, employees, or staff on account of race, gender, religion, color, national origin, mental or physical disability, or any other class protected by State or federal law. (1981, c. 722, s. 12; 2001-153, s. 3; 2008-187, s. 41; 2013-346, s. 5.)

§ 90-286. Renewal of license.

Every holder of a nursing home administrator's license shall renew it biennially by application to the Board. The Board shall grant renewals when the applicant has paid the fee required by this Article and has satisfactorily completed continuing education courses as may be prescribed by the Board, unless the Board finds that the applicant has acted or failed to act in such a manner as would constitute grounds for suspension, revocation or denial of a license as provided by this Article. The Board shall adopt rules defining the content of continuing education courses approved or required by it under this section and shall make a copy of these rules available to each licensee. The Board shall not require any licensee to successfully complete more than 30 hours of continuing education courses every two years. The Board shall certify and administer continuing education courses for nursing home administrators and shall keep a record of the courses successfully completed by each licensee. (1969, c. 843, s. 1; 1981, c. 722, s. 13; 1983, c. 72.)

§ 90-287. Reciprocity with other states.

The Board may issue a nursing home administrator's license to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the Board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State and that the applicant has passed the national and the State examinations administered by the Board and is otherwise qualified. (1969, c. 843, s. 1; 2013-346, s. 6.)

§ 90-288. Misdemeanor.

It shall be unlawful and constitute a Class 1 misdemeanor,

(1) For any person to act or serve in the capacity as, or hold himself out to be, a nursing home administrator, or use any title, sign, or other indication that he is a nursing home administrator, unless he is the holder of a valid license as a nursing home administrator, issued in accordance with the provisions of this Article, and

(2) For any person to violate any of the provisions of this Article or any rules and regulations issued pursuant thereto. (1969, c. 843, s. 1; 1993, c. 539, s. 649; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-288.01. Criminal history record checks of applicants for licensure.

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article

5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board shall require a criminal history record check of all applicants for initial licensure and temporary licensure. The Board, in its discretion, may require a criminal history record check of an applicant for license renewal. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

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

(7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – Except as otherwise provided by law, if the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check. (2008-183, s. 1; 2012-12, s. 2(kk); 2013-346, s. 7; 2014-100, s. 17.1(o); 2015-181, s. 47.)

§ 90-288.02. Confidentiality of investigative records.

Records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with certification, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges, notice of hearing, or decision rendered in connection with a hearing shall be a public record. Information that identifies a resident who has not consented to the public disclosure of services rendered to him or her by a person certified or licensed under this Chapter shall be deleted from the public record. All other records, papers, and documents containing information collected and compiled by or on behalf of the Board shall be public records, but any information that identifies a resident who has not consented to the public disclosure of services rendered to him or her shall be deleted. (2013-346, s. 8.)

§ 90-288.03. Reserved for future codification purposes.

§ 90-288.04. Reserved for future codification purposes.

§ 90-288.05. Reserved for future codification purposes.

§ 90-288.06. Reserved for future codification purposes.

§ 90-288.07. Reserved for future codification purposes.

§ 90-288.08. Reserved for future codification purposes.

§ 90-288.09. Reserved for future codification purposes.

Article 20A.

Assisted Living Administrator Act.

§ 90-288.10. Title.

This Article shall be known as the Assisted Living Administrator Act. (1999-443, s. 1.)

§ 90-288.11. Purpose.

The administrators of assisted living residences are responsible for the residents who require daily care to attend to their physical, mental, and emotional needs. Therefore, the certification of assisted living administrators is necessary to ensure adequate levels of care across the State and to protect public health, safety, and welfare. (1999-443, s. 1.)

§ 90-288.12. Certification required; exemptions.

(a) No person shall perform or offer to perform services as an assisted living administrator unless the person has been certified under the provisions of this Article. A certificate granted under this Article shall be valid throughout the State.

(b) The provisions of this Article shall not apply to:

(1) Combination homes as defined in G.S. 131E-101 and hospitals that contain adult care beds.

(2) Family care homes as defined in G.S. 131D-2.1(9).

(3) Continuing care facilities, as defined in Article 64 of Chapter 58 of the General Statutes, if adult care beds are housed in the same facility as nursing home beds. (1999-443, s. 1; 2009-462, s. 4(b).)

§ 90-288.13. Definitions.

The following definitions apply in this Article:

(1) Administrator-in-training. – An individual who serves a training period under the supervision of an approved preceptor.

(2) Assisted living administrator. – An individual certified to operate, administer, manage, and supervise an assisted living residence or to share in the performance of these duties with another person who has been so certified.

(3) Assisted living residence. – A facility defined in G.S. 131D-2.1(5), whether proprietary or nonprofit. The term also includes institutions or facilities that are owned or administered by the federal or State government or any agency or political subdivision of the State government.

(4) Department. – The Department of Health and Human Services.

(5) Preceptor. – An individual who is certified by the Department as an assisted living administrator and who meets the requirements established by the Department to serve as a supervisor of administrators-in-training. (1999-443, s. 1; 2009-462, s. 4(c).)

§ 90-288.14. Assisted living administrator certification.

The Department shall certify as an assisted living administrator any applicant who meets all of the following qualifications:

(1) Is at least 21 years old.

(2) Provides a satisfactory criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon its receiving fingerprints from the applicant. If the applicant has been a resident of this State for less than five years, the applicant shall provide a

satisfactory criminal background report from both the State and National Repositories of Criminal Histories.

(2a) Does not have a substantiated finding of neglect, abuse, misappropriation of property, diversion of drugs, or fraud listed on the Health Care Personnel Registry established under G.S. 131E-256.

(3) Has a high school diploma or its equivalent and successfully completes the equivalent of two years of coursework at an accredited college or university, or has a minimum of 60 months of supervisory experience, or has a combination of education and experience as approved by the Department. For purposes of this section, "supervisory experience" means having full-time, direct management responsibility, including some responsibility for hiring and firing, over the equivalent of at least two full-time employees with direct resident care responsibilities. Such supervisory experience shall have been in a licensed adult care home or licensed nursing home within the seven years preceding the date of application.

(4) Successfully completes a Department approved administrator-in-training program of at least 120 hours of study in courses relating to assisted living residences.

(5) Successfully completes a written examination administered by the Department. (1999-443, s. 1; 2019-180, s. 2.)

§ 90-288.14A. Approval for nursing home administrators to serve as adult care home administrators.

The Department shall approve as an adult care home administrator any individual licensed as a nursing home administrator under Article 20 of this Chapter who, within 90 calendar days after commencing employment as an adult care home administrator, successfully completes the written examination administered by the Department for assisted living administrator certification. An individual approved as an adult care home administrator pursuant to this section is deemed to meet the requirements of G.S. 90-288.14 and may renew his or her assisted living administrator certification pursuant to G.S. 90-288.15. (2018-5, s. 11G.1(b); 2018-97, s. 3.8.)

§ 90-288.15. Issuance, renewal, and replacement of certificates.

(a) The Department shall issue a certificate to any applicant who has satisfactorily met the requirements of this Article. The certificate shall show the full name of the person and an identification number and shall be signed by the Secretary of the Department. A certificate may not be transferred or assigned.

(b) All certificates shall expire on December 31 of the second year following issuance. All applications for renewal shall be filed with the Department and shall be accompanied by documentation of the certificate holder's completion of the annual continuing education requirements established by the Department regarding the management and operation of an assisted living residence.

(c) The Department shall replace any certificate that is lost, destroyed, or mutilated subject to rules established by the Department. (1999-443, s. 1.)

§ 90-288.15A. Fees.

The Department may impose fees not to exceed the following amounts:

(1)	Assisted Living Administrator Examination Fee	$50.00
(2)	Assisted Living Administrator Certificate Renewal Fee	$30.00 every two years.

(2010-31, s. 10.36A(b).)

§ 90-288.16. Certification by reciprocity.

The Department may grant, upon application, a certificate to a person who holds a valid certificate as an assisted living community administrator issued by another state if, in the Department's determination, the standards of competency for the certificate are substantially equivalent to those in this State. (1999-443, s. 1.)

§ 90-288.17. Posting certificates.

Every person issued a certificate under this Article shall display the certificate prominently in the assisted living residence where the person works. (1999-443, s. 1.)

§ 90-288.18. Adverse action on a certificate.

(a) Subject to subsection (b) of this section, the Department shall have the authority to deny a new or renewal application for a certificate, and to amend, recall, suspend, or revoke an existing certificate upon a determination that there has been a substantial failure to comply with the provisions of this Article or any rules promulgated under this Article.

(b) The provisions of Chapter 150B of the General Statutes shall govern all administrative action and judicial review in cases where the Department has taken action as described in subsection (a) of this section. A petition for a contested case shall be filed within 30 days after the Department mails the certificate holder a notice of its decision to deny a renewal application, or to recall, suspend, or revoke an existing certificate. (1999-443, s. 1.)

§ 90-288.19. Reporting requirement.

The holder of a facility license issued under G.S. 131D-2.4 shall report any incidents of suspected abuse, neglect, or exploitation of persons residing in an assisted living residence by a person certified under this Article to the Health Care Personnel Registry. (1999-443, s. 1; 2009-462, s. 4(d).)

§ 90-288.20. Penalties.

A person who serves as an assisted living administrator without first obtaining a certificate from the Department is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense. (1999-443, s. 1.)

Article 21.

Determination of Need for Medical Care Facilities.

§§ 90-289 through 90-291: Repealed by Session Laws 1973, c. 113.

Article 22.

Licensure Act for Speech and Language Pathologists and Audiologists.

§ 90-292. Declaration of policy.

It is declared to be a policy of the State of North Carolina that, in order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and from unprofessional conduct on the part of qualified speech and language pathologists and audiologists and to help assure the availability of the highest possible quality speech and language pathology and audiology services to the communicatively handicapped people of this State, it is necessary to provide regulatory authority over persons offering speech and language pathology and audiology services to the public. (1975, c. 773, s. 1.)

§ 90-293. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Audiologist" means any person who engages in the practice of audiology. A person is deemed to be an audiologist if he offers services to the public under any title incorporating the terms of "audiology," "audiologist," "audiological," "hearing clinic," "hearing clinician," "hearing therapist," or any similar title or description of service.

(2) "Board" means the Board of Examiners for Speech and Language Pathologists and Audiologists.

(3) "License" means a license issued by the Board under the provisions of this Article, including a temporary license.

(4) "Person" means an individual, organization, or corporate body, except that only individuals can be licensed under this Article.

(5) "Speech and language pathologist" means any person who represents himself or herself to the public by title or by description of services, methods, or procedures as one who evaluates, examines, instructs, counsels, or treats persons suffering from conditions or disorders affecting speech and language or swallowing. A person is deemed to be a speech and language pathologist if the person offers such services under any title incorporating the words "speech pathology," "speech pathologist," "speech correction," "speech correctionist," "speech therapy," "speech therapist," "speech clinic," "speech clinician," "language pathologist," "language therapist," "logopedist," "communication disorders," "communicologist," "voice therapist," "voice pathologist," or any similar title or description of service.

(6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and vestibular disorders for the purpose of identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals. For the purpose of this subdivision, the words "habilitation" and "rehabilitation" shall include auditory training, speech reading, aural rehabilitation, hearing aid use evaluation and recommendations, and fabrication of earmolds and similar accessories for clinical testing purposes.

(7) "The practice of speech and language pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, treating, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, language, and swallowing for the purpose of identifying, preventing, ameliorating, or modifying such disorders.

(8) Repealed by Session Laws 1987, c. 665, s. 1.

(9) "Accredited college or university" means an institution of higher learning accredited by the Southern Association of Colleges and Universities, or accredited by a similarly recognized association of another locale. (1975, c. 773, s. 1; 1987, c. 665, s. 1; 2007-436, s. 1.)

§ 90-294. License required; Article not applicable to certain activities.

(a) Licensure shall be granted in either speech and language pathology or audiology independently. A person may be licensed in both areas if qualified in both areas.

(b) No person may practice or hold himself or herself out as being able to practice speech and language pathology or audiology in this State unless the person holds a current, unsuspended, unrevoked license issued by the Board or is registered with the Board as an assistant. The license required by this section shall be kept conspicuously posted in the person's office or place of business at all times. Nothing in this Article, however, shall be construed to prevent a qualified person licensed in this State under any other law from engaging in the profession or occupation for which such person is licensed.

(c) Repealed by Session Laws 2013-410, s. 47.7(a), effective August 23, 2013.

(c1) The provisions of this Article do not apply to:

(1) The activities, services, and use of an official title by a person employed by an agency of the federal government and solely in connection with such employment.

(2) The activities and services of a student or trainee in speech and language pathology or audiology pursuing a course of study in an accredited college or university, or working in a training center program approved by the Board, if these activities and services constitute a part of the person's course of study.

(3) Individuals licensed under Chapter 93D of the General Statutes.

(d) Nothing in this Article shall apply to a physician licensed to practice medicine, or to any person employed by a physician licensed to practice medicine in the course of the physician's practice of medicine.

(e) This Article shall not be construed to prevent any person licensed in this State under Chapter 93D of the General Statutes of North Carolina from the practice of fitting and selling hearing aids.

(f) The provisions of this Article do not apply to registered nurses and licensed practical nurses or other certified technicians trained to perform audiometric screening tests and whose work is under the supervision of a physician, consulting physician, or licensed audiologist.

(g) The provisions of this Article do not apply to persons who are now or may become engaged in counseling or instructing laryngectomees in the methods, techniques or problems of learning to speak again.

(h) No license under this Article is required for persons originally employed by any agency of State government between October 1, 1975, and July 1, 1977, for the practice of speech and language pathology or audiology within and during the course and scope of employment with such agency.

(i) Nothing in this Article shall apply to a licensed physical therapy or occupational therapy practitioner providing evaluation and treatment of swallowing disorders, cognitive/communication deficits, and balance functions within the context of his or her licensed practice. (1975, c. 773, s. 1; 1977, c. 692, s. 3; 1981, c. 572, ss. 1, 2; 1987, c. 665, s. 2; 1989, c. 770, s. 17; 1993 (Reg. Sess., 1994), c. 688, s. 1; 1997-443, s. 11A.118(a); 2007-436, ss. 2, 3(a), 3(b); 2013-410, s. 47.7(a), (b).)

§ 90-295. Qualifications of applicants for permanent licensure.

(a) To be eligible for permanent licensure by the Board as a speech and language pathologist, the applicant must:

(1) Possess at least a master's degree in speech and language pathology or qualifications deemed equivalent by the Board under rules duly adopted by the Board under this Article. The degree or equivalent qualifications shall be from an accredited institution.

(2) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 75 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, development thereof, disorders thereof, and clinical techniques for evaluation and management of such disorders.

a. Fifteen of these 75 semester hours must be obtained in courses that provide information that pertains to normal development and use of speech, language and hearing.

b. Thirty-six of these 75 semester hours must be in courses that provide information relative to communication disorders and information about and training in evaluation and management of speech, language, and hearing disorders. At least 24 of these 30 semester hours must be in courses in speech and language pathology.

c. Credit for study of information pertaining to related fields that augment the work of the clinical practitioner of speech and language pathology or audiology may also apply toward the total 75 semester hours.

d. Thirty-six of the total 75 semester hours that are required for a license must be in courses that are acceptable toward a graduate degree by the college or university at which they are taken. Moreover, 21 of those semester hours must be in graduate level courses in speech and language pathology.

(3) Submit evidence of the completion of a minimum of 400 clock hours of supervised, direct clinical experience with individuals who present a variety of communication disorders. This experience must have been obtained within the

training institution or in one of its cooperating programs in the following areas: (i) Speech – Adult (20 diagnostic and 20 therapeutic); Children (20 diagnostic and 20 therapeutic); and (ii) Language – Adult (20 diagnostic and 20 therapeutic); Children (20 diagnostic and 20 therapeutic). Each new applicant must submit a verified clinical clock hour summary sheet signed by the clinic or program director, in addition to completion of the license application.

(4) Present written evidence of nine months of full-time professional experience in which bona fide clinical work has been accomplished in speech and language pathology. The professional work must have been supervised by a speech and language pathologist who is State-licensed or certified by the American Speech-Language-Hearing Association. This experience must follow the completion of the requirements listed in subdivisions (1), (2) and (3). Full time is defined as at least nine months in a calendar year and a minimum of 30 hours per week. Half time is defined as at least 18 months in two calendar years and a minimum of 20 hours per week. The supervision must be performed by a person who holds a valid license under this Article, or certificate of clinical competence from the American Speech-Language-Hearing Association, in speech and language pathology.

(5) Pass an examination established or approved by the Board.

(6) Exercise good moral conduct as defined in rules adopted by the Board or in a code of moral conduct adopted by the Board.

(b) To be eligible for permanent licensure by the Board as an audiologist, the applicant must:

(1) Possess a doctoral degree in audiology or qualifications deemed equivalent by the Board under rules duly adopted by the Board under this Article. The degree or equivalent qualifications shall be from an accredited institution.

(2) Persons who were engaged in the practice of audiology and do not possess a doctoral degree in audiology before October 1, 2007, shall be exempt from the degree requirement in subdivision (1) of this subsection provided those persons remain continuously licensed in the field.

(3) Submit transcripts from one or more accredited colleges or universities presenting evidence of the completion of 90 semester hours constituting a well-integrated program of course study dealing with the normal aspects of human communication, the development of human communication, the disorders associated with human communication, and the clinical techniques for evaluation and management of such disorders.

(4) Present written evidence documenting 1,800 clock hours of professional experience directly supervised by an audiologist who is State-licensed or certified by the American Speech-Language-Hearing Association or other Board-approved agency. The clock hours of professional experience must be with individuals who present a variety of communication and auditory disorders and must have been obtained within the training program at an accredited college or university or in one of its cooperating programs.

(5) Pass an examination established or approved by the Board.

(6) Exercise good moral conduct as defined in rules adopted by the Board or in a code of moral conduct adopted by the Board. (1975, c. 773, s. 1; 1987, c. 665, s. 3; 2007-436, s. 4; 2009-138, s. 1; 2013-410, s. 47.7(c).)

§ 90-296. Examinations.

(a) An applicant for licensure who has satisfied the academic requirements of G.S. 90-295, shall pass a written examination approved or established by the Board.

(b) The Board shall administer or approve at least two examinations of the type described in subsection (a) of this section each year, and additional examinations as the volume of applications makes appropriate.

(c) An examination shall not be required as a prerequisite for a license for:

(1) A person who holds a certificate of clinical competence issued by the American Speech-Hearing-Language Association in the specialized area for which such person seeks licensure; or

(2) A person who has met the educational, practical experience, and examination requirements of another state or jurisdiction which has requirements equivalent to or higher than those in effect pursuant to this Article for the practice of audiology or speech pathology. (1975, c. 773, s. 1; 1981, c. 572, s. 3; 1987, c. 665, s. 4; 2013-410, s. 47.7(d).)

§ 90-297. Repealed by Session Laws 1987, c. 665, s. 5.

§ 90-298. Qualifications for applicants for temporary licensure.

(a) To be eligible for temporary licensure an applicant must:

(1) Meet the academic and clinical practicum requirements of G.S. 90-295(1), (2), and (3); and

(2) Submit a plan of supervised experience complying with the provisions of G.S. 90-295(4); and

(3) Pay the temporary license fee required by G.S. 90-305(5).

(b) A temporary license is required when an applicant has not completed the required supervised experience and passed the required examination.

(c) A temporary license issued under this section shall be valid only during the period of supervised experience required by G.S. 90-295(4), and shall not be renewed. (1975, c. 773, s. 1; 1987, c. 665, s. 6; 2013-410, s. 47.7(e).)

§ 90-298.1. Registered assistant.

A licensed speech and language pathologist or a licensed audiologist may register with the Board an assistant who works under the licensee's supervision if all of the following requirements are met:

(1) The assistant meets the qualifications for registered assistants adopted by the Board.

(2) The licensee who supervises the assistant pays the registration fee set by the Board.

A registration of an assistant must be renewed annually. To renew the registration of an assistant, the licensee who supervises the assistant must submit an application for renewal and pay

the renewal fee. An initial or renewal fee for registering an assistant may not exceed the renewal license fee set under G.S. 90-305. (1993 (Reg. Sess., 1994), c. 688, s. 2.)

§ 90-299. Licensee to notify Board of place of practice.

(a) A person who holds a license shall notify the Board in writing of the address of the place or places where he engages or intends to engage in the practice of speech and language pathology or audiology.

(b) The Board shall keep a record of the places of practice of licensees.

(c) Any notice required to be given by the Board to a licensee may be given by mailing it to him at the address of the last place of practice of which he has notified the Board. (1975, c. 773, s. 1.)

§ 90-300. Renewal of licenses.

A licensee shall annually pay to the Board a fee in an amount established by the General Assembly for a renewal of his license. A 30-day grace period shall be allowed after expiration of a license during which the license may be renewed on payment of a fee in an amount established by the General Assembly. The Board may suspend the license of any person who fails to renew his license before the expiration of the 30-day grace period. After expiration of the grace period, the Board may renew such a license upon the payment of a fee in an amount established by the General Assembly. No person who applies for renewal whose license was suspended for failure to renew shall be required to submit to any examination as a condition of renewal. (1975, c. 773, s. 1.)

§ 90-301. Grounds for suspension or revocation of license.

Any person licensed under this Article may have his license revoked or suspended for a fixed period by the Board under the provisions of North Carolina General Statutes, Chapter 150B, for any of the following causes:

(1) His license has been secured by fraud or deceit practiced upon the Board.

(2) Fraud or deceit in connection with his services rendered as an audiologist or speech and language pathologist.

(3) Unethical or immoral conduct as defined in this Article or in a code of ethics adopted by the Board.

(4) Violation of any lawful order, rule or regulation rendered or adopted by the Board.

(5) Failure to exercise a reasonable degree of professional skill and care in the delivery of professional services.

(6) Any violation of the provisions of this Article.

(7) Failure to exercise good moral conduct as defined in rules adopted by the Board or in a code of moral conduct adopted by the Board. (1975, c. 773, s. 1; 1981, c. 572, s. 4; 1987, c. 665, s. 7; c. 827, s. 1; 2013-410, s. 47.7(f).)

§ 90-301A. Unethical acts and practices.

Unethical acts and practices shall be defined as including:

(1) Obtaining or attempting to obtain any fee by fraud or misrepresentation.

(2) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this Article.

(3) Using, or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.
(4) Aiding, abetting, or assisting any other person or entity in violating the provisions of this Article.
(5) Willfully harming any person in the course of the delivery of professional services licensed by this Article.
(6) Treating a person who cannot reasonably be expected to benefit from treatment.
(7) Charging a fee for treatment or services not rendered.
(8) Providing or attempting to provide services or supervision of services by persons not properly prepared or legally qualified to perform or permitting services to be provided by a person under such person's supervision who is not properly prepared or legally qualified to perform such services.
(9) Guaranteeing the result of any therapeutic or evaluation procedure. (1987, c. 665, s. 8.)

§ 90-302. Prohibited acts and practices.

No person, partnership, corporation, or other entity may:

(1) Sell, barter, transfer or offer to sell or barter a license.
(2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice audiology or speech and language pathology.
(3) Alter a license.
(4) Use or attempt to use a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered.
(5) Make a false, material statement in an application for a North Carolina license.
(6) Aid, assist, abet, or direct any person licensed under this Article in violation of the provisions of this Article. (1975, c. 773, s. 1; 1987, c. 665, s. 9; 2013-410, s. 47.7(g).)

§ 90-303. Board of Examiners for speech and language pathology and audiology; qualifications, appointment and terms of members; vacancies; meetings, etc.

(a) There shall be a Board of Examiners for Speech and Language Pathologists and Audiologists, which shall be composed of seven members, who shall all be residents of this State. Two members shall have a paid work experience in audiology for at least five years and hold a North Carolina license as an audiologist. Two members shall have paid work experience in speech pathology for at least five years and hold a North Carolina license as a speech and language pathologist. One member shall be a physician who is licensed to practice medicine in the State of North Carolina. Two members shall be appointed by the Governor to represent the interest of the public at large. These two members shall be neither licensed speech and language pathologists nor audiologists. These members shall be appointed not later than July 1, 1981; one shall be initially appointed for a term of two years; the other shall be appointed for a term of three years. Thereafter all public members shall serve three-year terms.

(b) The members of the Board shall be appointed by the Governor.

(c) The initial Board shall have members appointed for terms of one year, two years, three years, four years, and five years. All board members serving on June 30, 1981, shall be eligible to

complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive three-year terms.

(d) Members of the Board shall receive no compensation for their service, but shall receive the same per diem, subsistence and travel allowance as provided in G.S. 138-5. (1975, c. 773, s. 1; 1981, c. 572, ss. 5, 6; 2007-436, s. 5.)

§ 90-304. Powers and duties of Board.

(a) The powers and duties of the Board are as follows:

(1) To administer, coordinate, and enforce the provisions of this Article, establish fees, evaluate the qualifications of applicants, supervise the examination of applicants, and issue subpoenas, examine witnesses, and administer oaths, and investigate persons engaging in practices which violate the provisions of this Article.

(2) To conduct hearings and keep records and minutes as necessary to an orderly dispatch of business.

(3) To adopt responsible rules including rules that establish ethical standards of practice and require continuing professional education and to amend or repeal the same.

(4) To issue annually a list stating the names of persons currently licensed under the provisions of this Article.

(5) To employ such personnel as determined by its needs and budget.

(6) To adopt seals by which it shall authenticate their proceedings, copies of the proceedings, records and the acts of the Board, and licenses.

(7) To bring an action to restrain or enjoin violations of this Article in addition to and not in lieu of criminal prosecution or proceedings to revoke or suspend licenses issued under this Article.

(b) The Board shall not adopt or enforce any rule or regulation which prohibits advertising except for false or misleading advertising. (1975, c. 773, s. 1; 1981, c. 572, s. 7; 1987, c. 665, s. 10; 2007-436, s. 6.)

§ 90-305. Fees.

Persons subject to licensure under this Article shall pay fees to the Board not to exceed the following:

(1) Application fee.....$30.00
(2) Examination fee.....30.00
(3) Initial license fee.....100.00
(4) Renewal license fee.....100.00
(5) Temporary license.....40.00
(6) Delinquency fee.....25.00.

(1975, c. 773, s. 1; 1987, c. 665, s. 11; 2003-222, s. 1.)

§ 90-306. Penalty for violation.

Any person, partnership, or corporation who or which willfully violates the provisions of this Article shall be guilty of a Class 2 misdemeanor. (1975, c. 773, s. 1; 1987, c. 665, s. 12; 1993, c. 539, s. 650; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-307. Severability.

If any part of this Article is for any reason held unconstitutional, inoperative, or void, such holding of invalidity shall not affect the remaining portions of the Article; and it shall be construed to have been the legislative intent to pass this Article without such unconstitutional, invalid, or inoperative part therein; and the remainder of this Article, after the exclusion of such part or parts, shall be valid as if such parts were not contained therein. (1975, c. 773, s. 1.)

§§ 90-308 through 90-319. Reserved for future codification purposes.

Article 23.

Right to Natural Death; Brain Death.

§ 90-320. General purpose of Article.

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or the patient's representative has the fundamental right to control the decisions relating to the rendering of the patient's own medical care, including the decision to have life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or the patient's representative may exercise these rights. A military advanced medical directive executed in accordance with 10 U.S.C. § 1044 or other applicable law is valid in this State.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative. (1977, c. 815; 1979, c. 715, s. 1; 1983, c. 313, s. 1; 2007-502, s. 10.)

§ 90-321. Right to a natural death.

(a) The following definitions apply in this Article:

(1) Declarant. – A person who has signed a declaration in accordance with subsection (c) of this section.

(1a) Declaration. – Any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section.

(2) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

(3) Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.

(4) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(b) If a person has expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection (e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

(2) There is confirmation of the declarant's present condition as set out in subdivision (b)(1) of this section by a physician other than the attending physician;

then the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the life-prolonging measures; and

(3) That has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any adult care home in which the declarant resides.

(d) Repealed by Session Laws 2007-502, s. 11(b), effective October 1, 2007.

(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW

LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: *You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.*

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply ***IF*** my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____ *(Initial)* I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____ *(Initial)* I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____ *(Initial)* I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability

and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____ *(Initial)* may withhold or withdraw life-prolonging measures.

_____ *(Initial)* shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____ *(Initial)* I *DO* want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____ *(Initial)* Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

_____ *(Initial)* Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: **DO NOT INITIAL BOTH BLOCKS.** ***IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.***

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____
Print Name _____

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any adult care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of declarant)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date _____
(Official Seal)

_____
Signature of Notary Public

_____, Notary Public
Printed or typed name

My commission expires: _____

(e) A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(f) The execution and consummation of declarations made in accordance with subsection (c) shall not constitute suicide for any purpose.

(g) No person shall be required to sign a declaration in accordance with subsection (c) as a condition for becoming insured under any insurance contract or for receiving any medical treatment.

(h) The withholding or discontinuance of life prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms.

(j) The form provided by this section may be combined with or incorporated into a health care power of attorney form meeting the requirements of Article 3 of Chapter 32A of the General Statutes; provided, however, that the resulting form shall be signed, witnessed, and proved in accordance with the provisions of this section.

(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration that expresses a desire of the declarant that life-prolonging measures not be used if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State. (1977, c. 815; 1979, c. 112, ss. 1-6; 1981, c. 848, ss. 1-3; 1991, c. 639, s. 3; 1993, c. 553, s. 28; 2001-455, s. 4; 2001-513, s. 30(b); 2007-502, ss. 11(a)-(e).)

§ 90-322. Procedures for natural death in the absence of a declaration.

(a) If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

(1) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored or is being sustained by life-prolonging measures;

(4) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

then, life-prolonging measures may be withheld or discontinued in accordance with subsection (b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321, then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a).

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted.

(3) An agent, with powers to make health care decisions for the patient, appointed by the patient, to the extent of the authority granted.

(4) The patient's spouse.

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age.

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. (1977, c. 815; 1979, c. 715, s. 2; 1981, c. 848, s. 5; 1983, c. 313, ss. 2-4; c. 768, s. 5.1; 1991, c. 639, s. 4; 1993, c. 553, s. 29; 2007-502, s. 12; 2017-153, s. 2.6; 2018-142, s. 35(b).)

§ 90-323. Death; determination by physician.

The determination that a person is dead shall be made by a physician licensed to practice medicine applying ordinary and accepted standards of medical practice. Brain death, defined as irreversible cessation of total brain function, may be used as a sole basis for the determination that a person has died, particularly when brain death occurs in the presence of artificially maintained respiratory and circulatory functions. This specific recognition of brain death as a criterion of death of the person shall not preclude the use of other medically recognized criteria for determining whether and when a person has died. (1979, c. 715, s. 3.)

§§ 90-324 through 90-328. Reserved for future codification purposes.

Article 23A.

Right to Try Act.

Part 1. Experimental Treatments.

§ 90-325. Short title; purpose.

(a) This Article shall be known and may be cited as the Right to Try Act.

(b) The purpose of Part 1 of this Article is to authorize access to and use of experimental treatments for patients with a terminal illness; to establish conditions for use of experimental treatment; to prohibit sanctions of health care providers solely for recommending or providing experimental treatment; to clarify duties of a health insurer with regard to experimental treatment authorized under this Part; to prohibit certain actions by State officials, employees, and agents; and to restrict certain causes of action arising from experimental treatment. (2015-137, s. 1; 2019-70, s. 1.)

§ 90-325.1. Definitions.

The following definitions apply in this Part, unless the context requires otherwise:

(1) Eligible patient. – An individual who meets all of the following criteria:

a. Has a terminal illness, attested to by a treating physician.

b. Has, in consultation with a treating physician, considered all other treatment options currently approved by the United States Food and Drug Administration.

c. Has received a recommendation from the treating physician for use of an investigational drug, biological product, or device for treatment of the terminal illness.

d. Has given informed consent in writing to use of the investigational drug, biological product, or device for treatment of the terminal illness or, if the individual is a minor or is otherwise incapable of providing informed consent, the parent or legal guardian has given informed consent in writing to use of the investigational drug, biological product, or device.

e. Has documentation from the treating physician that the individual meets all of the criteria for this definition. This documentation shall include an attestation from the treating physician that the treating physician was consulted in the creation of the written, informed consent required under this Part.

(2) Investigational drug, biological product, or device. – A drug, biological product, or device that has successfully completed Phase I of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(3) Terminal illness. – A progressive disease or medical or surgical condition that (i) entails significant functional impairment, (ii) is not considered by a treating physician to be reversible even with administration of available treatments approved by the United States Food and Drug Administration, and (iii) will soon result in death without life-sustaining procedures.

(4) Written, informed consent. – A written document that is signed by an eligible patient; or if the patient is a minor, by a parent or legal guardian; or if the patient is incapacitated, by a designated health care agent pursuant to a health care power of attorney, that at a minimum includes all of the following:

a. An explanation of the currently approved products and treatments for the eligible patient's terminal illness.

b. An attestation that the eligible patient concurs with the treating physician in believing that all currently approved treatments are unlikely to prolong the eligible patient's life.

c. Clear identification of the specific investigational drug, biological product, or device proposed for treatment of the eligible patient's terminal illness.

d. A description of the potentially best and worst outcomes resulting from use of the investigational drug, biological product, or device to treat the eligible patient's terminal illness, along with a realistic description of the most likely outcome. The description shall be based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's terminal illness and shall include a statement acknowledging that new, unanticipated, different, or worse symptoms might result from, and that death could be hastened by, the proposed treatment.

e. A statement that eligibility for hospice care may be withdrawn if the eligible patient begins treatment of the terminal illness with an investigational drug, biological product, or device and that hospice care may be reinstated if such treatment ends and the eligible patient meets hospice eligibility requirements.

f. A statement that the eligible patient's health benefit plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device, unless specifically required to do so by law or contract.

g. A statement that the eligible patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that this liability extends to the eligible patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.

h. A statement that the eligible patient or, for an eligible patient who is a minor or lacks capacity to provide informed consent, that the parent or legal guardian consents to the use of the investigational drug, biological product, or device for treatment of the terminal condition. (2015-137, s. 1; 2019-70, s. 1.)

§ 90-325.2. Authorized access to and use of investigational drugs, biological products, and devices.

(a) A manufacturer of an investigational drug, biological product, or device may make available to an eligible patient, and an eligible patient may request, the manufacturer's investigational drug, biological product, or device. However, nothing in this Part shall be construed to require a manufacturer of an investigational drug, biological product, or device to make such investigational drug, biological product, or device available to an eligible patient.

(b) A manufacturer of an investigational drug, biological product, or device may provide the investigational drug, biological product, or device to an eligible patient without receiving compensation or may require the eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device. (2015-137, s. 1; 2019-70, s. 1.)

§ 90-325.3. No liability to heirs for outstanding debt related to use of investigational drugs, biological products, or devices.

If an eligible patient dies while being treated with an investigational drug, biological product, or device, the eligible patient's heirs are not liable for any outstanding debt related to the treatment, including any costs attributed to lack of insurance coverage for the treatment. (2015-137, s. 1.)

§ 90-325.4. Sanctions against health care providers prohibited.

(a) A licensing board shall not revoke, fail to renew, suspend, or take any other disciplinary action against a health care provider licensed under this Chapter, based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

(b) An entity responsible for Medicare certification shall not take action against a health care provider's Medicare certification based solely on the health care provider's

recommendation that a patient have access to an investigational drug, biological product, or device. (2015-137, s. 1.)

§ 90-325.5. Prohibited conduct by State officials.

No official, employee, or agent of this State shall block or attempt to block an eligible patient's access to an investigational drug, biological product, or device. Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider does not constitute a violation of this section. (2015-137, s. 1.)

§ 90-325.6. No private right of action against manufacturers of investigational drugs, biological products, or devices.

No private right of action may be brought against a manufacturer of an investigational drug, biological product, or device, or against any other person or entity involved in the care of an eligible patient using an investigational drug, biological product, or device, for any harm caused to the eligible patient resulting from use of the investigational drug, biological product, or device as long as the manufacturer or other person or entity has made a good-faith effort to comply with the provisions of this Part and has exercised reasonable care in actions undertaken pursuant to this Part. (2015-137, s. 1; 2019-70, s. 1.)

§ 90-325.7. Insurance coverage of clinical trials.

Nothing in this Part shall be construed to affect a health benefit plan's obligation to provide coverage for an insured's participation in a clinical trial pursuant to G.S. 58-3-255. (2015-137, s. 1; 2019-70, s. 1.)

§ 90-325.8. Reserved for future codification purposes.

§ 90-325.9. Reserved for future codification purposes.

§ 90-325.10. Reserved for future codification purposes.

§ 90-325.11. Reserved for future codification purposes.

§ 90-325.12. Reserved for future codification purposes.

§ 90-325.13. Reserved for future codification purposes.

§ 90-325.14. Reserved for future codification purposes.

Part 2. Investigational Adult Stem Cell Treatments.

§ 90-325.15. Purpose.

The purpose of Part 2 of this Article is to authorize access to and use of certain investigational adult stem cell treatments for patients with certain severe chronic diseases or terminal illnesses; to regulate the possession, use, and transfer of adult stem cells; and

to create a criminal offense for the purchase and sale of adult stem cells for certain investigational treatments. (2019-70, s. 1.)

§ 90-325.16. Definitions.

The following definitions apply in this Part unless the context requires otherwise:

(1) Adult stem cell. – An undifferentiated cell that is (i) found in postnatal differentiated tissue and (ii) able to renew itself and differentiate to yield all or nearly all of the specialized cell types of the tissue from which the cell originated.

(2) Clinical trial. – A research study in which one or more human subjects are prospectively assigned to one or more interventions using adult stem cells administered under United States Food and Drug Administration protocols for Investigational New Drugs or Investigational Device Exemptions.

(3) Eligible patient. – An individual who meets all of the following criteria:

a. Has a severe chronic disease or terminal illness, attested to by a treating physician.

b. Has, in consultation with a treating physician, considered all other treatment options currently approved by the United States Food and Drug Administration.

c. Has received a recommendation from the treating physician for use of an investigational adult stem cell treatment for the severe chronic disease or terminal illness.

d. Has given informed consent in writing to use of the investigational adult stem cell treatment or, if the individual is a minor or is otherwise incapable of providing informed consent, the parent or legal guardian has given informed consent in writing to use of the investigational adult stem cell treatment.

e. Has documentation from the treating physician that the individual meets all of the criteria for this definition. This documentation shall include an attestation from the treating physician that the treating physician was consulted in the creation of the written, informed consent required under this Part.

(4) Investigational adult stem cell treatment. – Adult stem cell treatment that meets all of the following criteria:

a. Is under investigation in a clinical trial and being administered to human participants in that trial.

b. Has not yet been approved for general use by the United States Food and Drug Administration.

(5) Severe chronic disease. – A condition, injury, or illness that meets all of the following criteria:

a. May be treated.

b. Is never cured or eliminated.

c. Entails significant functional impairment or severe pain.

(6) Terminal illness. – As defined in G.S. 90-325.1(3).

(7) Written, informed consent. – A written document that is signed by an eligible patient; or if the patient is a minor, by a parent or legal guardian; or if the patient

is incapacitated, by a designated health care agent pursuant to a health care power of attorney, that at a minimum includes all of the following:

a. An explanation of the currently approved products and treatments for the eligible patient's severe chronic disease or terminal illness.

b. An attestation that the eligible patient concurs with the treating physician in believing that all currently approved treatments are unlikely to alleviate the significant impairment or severe pain associated with a severe chronic disease or unlikely to prolong the life of an eligible patient with a terminal illness.

c. Clear identification of the specific investigational adult stem cell treatment proposed for treatment of the eligible patient's severe chronic disease or terminal illness.

d. A description of the potentially best and worst outcomes resulting from use of the investigational adult stem cell treatment to treat the eligible patient's severe chronic disease or terminal illness, along with a realistic description of the most likely outcome. The description shall be based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's severe chronic disease or terminal illness and shall include a statement acknowledging that new, unanticipated, different, or worse symptoms might result from, and that death could be hastened by, the proposed treatment.

e. A statement that eligibility for hospice care may be withdrawn if the eligible patient begins treatment of the terminal illness with an investigational adult stem cell treatment and that hospice care may be reinstated if such treatment ends and the eligible patient meets hospice eligibility requirements.

f. A statement that the eligible patient's health benefit plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational adult stem cell treatment, unless specifically required to do so by law or contract.

g. A statement that the eligible patient understands that he or she is liable for all expenses consequent to the investigational adult stem cell treatment and that this liability extends to the eligible patient's estate, unless a contract between the patient and provider of the investigational stem cell treatment states otherwise.

h. A statement that the eligible patient or, for an eligible patient who is a minor or lacks capacity to provide informed consent, that the parent or legal guardian consents to the use of the investigational adult stem cell treatment for treatment of the severe chronic disease or terminal condition. (2019-70, s. 1.)

§ 90-325.17. Authorized treatments.

(a) An eligible patient is authorized to access and use an investigational adult stem cell treatment under this Part, if the investigational adult stem cell treatment meets all of the following requirements:

(1) Is administered directly by a physician certified by an institutional review board that meets the requirements of G.S. 90-325.18.
(2) Is overseen by an institutional review board that meets the requirements of G.S. 90-325.18.
(3) Is provided at an accredited medical school located in this State, an affiliated facility of an accredited medical school located in this State, or any other facility approved by the institutional review board overseeing the treatment.

(b) A physician administering an investigational adult stem cell treatment under this Part shall comply with all applicable rules of the North Carolina Medical Board.

(c) This Part does not affect or authorize a person to violate any applicable laws regulating the possession, use, or transfer of human organs, fetal tissue, fetal stem cells, adult stem cells, or embryonic stem cells or their derivatives. (2019-70, s. 1.)

§ 90-325.18. Institutional review boards; annual report; rules.

(a) An institutional review board that oversees investigational adult stem cell treatments administered under this Part is required to be affiliated with an accredited medical school located in this State, or an affiliated facility of an accredited medical school located in this State. An institutional review board that meets the requirements of this subsection may certify physicians to provide investigational adult stem cell treatment under this Part.

(b) An institutional review board overseeing an investigational adult stem cell treatment under this Part shall keep a record on each person to whom a physician administers the treatment and document in the record the provision of each treatment and the effects of the treatment on the person throughout the period the treatment is administered to the person.

(c) Each institutional review board overseeing an investigational adult stem cell treatment under this Part shall submit an annual report to the North Carolina Medical Board on the review board's findings based on records kept under subsection (b) of this section. The report shall not include any patient-identifying information and must be made available to the public in both written and electronic form.

(d) The North Carolina Medical Board may adopt rules concerning the role and function of institutional review boards under this Part. (2019-70, s. 1.)

§ 90-325.19. Prohibited purchase and sale of adult stem cells for certain investigational treatments.

(a) Except as allowed under subsection (c) and subsection (d) of this section, it is unlawful to knowingly offer to buy, offer to sell, acquire, receive, sell, or otherwise transfer any adult stem cells for valuable consideration for use in an investigational adult stem cell treatment.

(b) Subsection (a) of this section does not prohibit the following forms of valuable consideration for investigational adult stem cell treatment:

(1) A fee paid to a health care provider for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services.

(2) Reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the investigational adult stem cell treatment.

(3) Reimbursement of expenses for travel, housing, and lost wages incurred by the donor of adult stem cells in connection with the donation of the adult stem cells.

(c) It is an exception to the application of this section that the actor engaged in conduct authorized under G.S. 130A-412.31.

(d) It is an exception to the application of this section that the actor is a health care provider, medical researcher, or biosciences professional who is either (i) engaged in research, clinical trials, or investigational adult stem cell treatment that is being overseen and has been approved by an institutional review board that meets the requirements of G.S. 90-325.18 or (ii) otherwise engaged in legal research, clinical trials, or investigational adult stem cell treatment.

(e) A violation of this section is a Class A1 misdemeanor. (2019-70, s. 1.)

§ 90-325.20. Sanctions against physicians prohibited.

(a) A licensing board shall not revoke, fail to renew, suspend, or take any other disciplinary action against a physician licensed under this Chapter, based solely on the physician's recommendation that an eligible patient have access to an investigational adult stem cell treatment, or the physician's administration of an investigational adult stem cell treatment to the eligible patient, provided that the recommendation made or the care provided is consistent with the applicable standard of care and the requirements of this Part.

(b) An entity responsible for Medicare certification shall not take action against a physician's Medicare certification based solely on the physician's recommendation that a patient have access to an investigational adult stem cell treatment, or the physician's administration of an investigational adult stem cell treatment to the eligible patient, provided that the recommendation made or the care provided meets the applicable standard of care and the requirements of this Part. (2019-70, s. 1.)

§ 90-325.21. Prohibited conduct by government officials.

No official, employee, or agent of this State or any of its political subdivisions shall interfere with or attempt to interfere with an eligible patient's access to an investigational adult stem cell treatment authorized under this Part. Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider does not constitute a violation of this section. (2019-70, s. 1.)

§ 90-325.22. Insurance of clinical trials.

Nothing in this Part shall be construed to affect a health benefit plan's obligation to provide coverage for an insured's participation in a clinical trial pursuant to G.S. 58-3-255. (2019-70, s. 1.)

Article 24.

Licensed Professional Counselors Act.

§ 90-329. Declaration of policy.

It is declared to be the public policy of this State that the activities of persons who render counseling services to the public be regulated to insure the protection of the public health, safety, and welfare. (1983, c. 755, s. 1; 1993, c. 514, s. 1.)

§ 90-330. Definitions; practice of counseling.

(a) Definitions. – As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(2a) A "licensed professional counselor associate" is a person engaged in the supervised practice of counseling who holds a license as a licensed professional counselor associate issued under the provisions of this Article.

(2b) A "licensed professional counselor supervisor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor and is approved by the Board to provide clinical supervision under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. – Assisting individuals, groups, and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. – Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. – Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. – Identifying problems requiring referral to other specialists.

e. Research Activities. – Designing, conducting, and interpreting research with human subjects.

The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

(4) A "supervisor" means any licensed professional counselor supervisor or, when one is inaccessible, a licensed professional counselor or an equivalently and actively licensed mental health professional, as determined by the Board, who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No person licensed as a licensed professional counselor or licensed professional counselor associate under the provisions of this Article shall be allowed to hold himself or herself out to the public as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law. (1983, c. 755, s. 1; 1993, c. 514, s. 1; 1995, c. 157, s. 4; 1999-354, s. 3; 2001-487, s. 40(j); 2009-367, s. 1.)

§ 90-331. Prohibitions.

It shall be unlawful for any person who is not licensed under this Article to engage in the practice of counseling, use the title "Licensed Professional Counselor Associate," "Licensed Professional Counselor," or "Licensed Professional Counselor Supervisor," use the letters "LPCA," "LPC," or "LPCS," use any facsimile or combination of these words or letters, abbreviations, or insignia, or indicate or imply orally, in writing, or in any other way that the person is a licensed professional counselor. (1983, c. 755, s. 1; 1993, c. 514, s. 1; 2001-487, s. 40(k); 2009-367, s. 2.)

§ 90-332. Use of title by firm.

It shall be unlawful for any firm, partnership, corporation, association, or other business or professional entity to assume or use the title of licensed professional counselor unless each of the members of the firm, partnership, or association is licensed by the Board. (1983, c. 755, s. 1; 1993, c. 514, s. 1.)

§ 90-332.1. Exemptions from licensure.

(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

(1) Lawyers licensed under Chapter 84, doctors licensed under Chapter 90, and any other person registered, certified, or licensed by the State to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(2) Any school counselor certified by the State Board of Education while counseling within the scope of employment by a board of education or private school.

(3) Any student intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher learning or training institution, if the intern or trainee is a designated "counselor intern" and the activities and services constitute a part of the supervised course of study.

(4) Repealed by Session Laws 2009-367, s. 3, effective October 1, 2009.

(4a) Any person counseling within the scope of employment at: (i) a local community college as defined in G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) a nonprofit postsecondary educational institution as described in G.S. 116-280.

(4b) Repealed by Session Laws 2009-367, s. 3, effective October 1, 2009.

(5) Any ordained minister or other member of the clergy while acting in a ministerial capacity who does not charge a fee for the service, or any person invited by a religious organization to conduct, lead, or provide counseling to its members when the service is not performed for more than 30 days a year.

(6) Any nonresident temporarily employed in this State to render counseling services for not more than 30 days in a year, if the person holds a license or certificate required for counselors in another state.

(7) Any person employed by State, federal, county, or municipal government while counseling within the scope of employment.

(8) through (10) Repealed by Session Laws 2009-367, s. 3, effective October 1, 2009.

(b) Persons who claim to be exempt under subsection (a) of this section are prohibited from advertising or offering themselves as "licensed professional counselors".

(c) Persons licensed under this Article are exempt from rules pertaining to counseling adopted by other occupational licensing boards.

(d) Nothing in this Article shall prevent a person from performing substance abuse counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter. (1993, c. 514, s. 1; 1993 (Reg. Sess., 1994), c. 591, ss. 12, 16(a), 16(b); c. 685, s. 2; 1997-456, s. 27; 2001-487, s. 40(l); 2009-367, s. 3; 2011-145, s. 9.18(e).)

§ 90-333. North Carolina Board of Licensed Professional Counselors; appointments; terms; composition.

(a) For the purpose of carrying out the provisions of this Article, there is hereby created the North Carolina Board of Licensed Professional Counselors which shall consist of seven members appointed by the Governor in the manner hereinafter prescribed. Any State or nationally recognized professional association representing professional counselors may submit recommendations to the Governor for Board membership. The Governor may remove any member of the Board for neglect of duty or malfeasance or conviction of a felony or other crime of moral turpitude, but for no other reason.

(b) At least five members of the Board shall be licensed professional counselors except that initial appointees shall be persons who meet the educational and experience requirements for licensure as licensed professional counselors under the provisions of this Article; and two members shall be public-at-large members appointed from the general public. Composition of the Board as to the race and sex of its members shall reflect the population of the State and each member shall reside in a different congressional district.

(c) At all times the Board shall include at least one counselor primarily engaged in counselor education, at least one counselor primarily engaged in the public sector, at least one counselor primarily engaged in the private sector, and two licensed professional counselors at large.

(d) All members of the Board shall be residents of the State of North Carolina, and, with the exception of the public-at-large members, shall be licensed by the Board under the provisions of this Article. Professional members of the Board must be actively engaged in the practice of counseling or in the education and training of students in counseling, and have been for at least three years prior to their appointment to the Board. The engagement in this activity during the two years preceding the appointment shall have occurred primarily in this State.

(e) The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, three shall be appointed for terms of one year, two for terms of two years, and two for terms of three years. No member shall serve more than two consecutive three-year terms.

(f) Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term. Appointees to the Board shall continue to serve until a successor is appointed and qualified.

(g) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(h) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board. (1983, c. 755, s. 1; 1993, c. 514, s. 1; 2009-367, s. 4.)

§ 90-334. Functions and duties of the Board.

(a) The Board shall administer and enforce the provisions of this Article.

(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for licenses under this Article, and shall issue a license or renewal of license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Article from fees paid to the Board pursuant to this section. No State appropriations shall be subject to the administration of the Board.

(f) The Board shall establish and receive fees not to exceed two hundred dollars ($200.00) for initial or renewal application and not to exceed seventy-five dollars ($75.00) for late renewal, maintain Board accounts of all receipts, and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Article.

(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for licensure and license renewal, including but not limited to the power to adopt or use examination materials and accreditation standards of any recognized counselor accrediting agency and the power to establish reasonable standards for continuing counselor education.

(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purposes of this Article, including but not limited to the power to adopt ethical and disciplinary standards.

(i) The Board shall establish the criteria for determining the qualifications constituting "supervised professional practice".

(j) The Board may examine, approve, issue, deny, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Article, and conduct hearings in connection with these actions.

(k) The Board shall investigate, subpoena individuals and records, and take necessary appropriate action to properly discipline persons licensed under this Article and to enforce this Article. (1983, c. 755, s. 1; 1987, c. 827, s. 1; 1993, c. 514, s. 1; 2009-367, s. 5.)

§ 90-335. Board general provisions.

The Board shall be subject to the provisions of Chapter 93B of the General Statutes. (1983, c. 755, s. 1.)

§ 90-336. Title and qualifications for licensure.

(a) Each person desiring to be a licensed professional counselor associate, licensed professional counselor, or licensed professional counselor supervisor shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee.

(b) The Board shall issue a license as a "licensed professional counselor associate" to an applicant who applies on or before March 1, 2016, and meets all of the following criteria:

(1) Has earned a specified minimum of credit hours of graduate training as defined by the Board, including (i) a master's degree in counseling or a related field from an institution of higher education that is regionally accredited or accredited by an organization recognized by the Council for Higher Education Accreditation and (ii) the applicant meets one of the following criteria:

a. If the applicant enrolled in the master's program before July 1, 2009, a minimum of 48 semester hours or a minimum of 72 quarter credit hours.

b. If the applicant enrolled in the master's program before July 1, 2013, but after June 30, 2009, a minimum of 54 semester hours or 81 quarter credit hours.

c. If the applicant enrolled in the master's program after June 30, 2013, a minimum of 60 semester hours or 90 quarter credit hours.

(2) Repealed by Session Laws 2009-367, s. 6, effective October 1, 2009.

(3) Has passed an examination in accordance with rules adopted by the Board.

(b1) The Board shall issue a license as a "licensed professional counselor associate" to an applicant who applies after March 1, 2016, through June 30, 2022, and meets all of the following criteria:

(1) Has earned a specified minimum of credit hours of graduate training as defined by the Board, including (i) a master's degree in counseling or related field from an institution of higher education that is either regionally accredited or accredited by an organization both recognized by the Council for Higher Education Accreditation and accredited by the Council for Accreditation of Counseling and Related Educational Programs and (ii) the applicant meets one of the following criteria:

a. If the applicant enrolled in the master's program before July 1, 2009, a minimum of 48 semester hours or a minimum of 72 quarter credit hours.

b. If the applicant enrolled in the master's program before July 1, 2013, but after June 30, 2009, a minimum of 54 semester hours or 81 quarter credit hours.

c. If the applicant enrolled in the master's program after June 30, 2013, a minimum of 60 semester hours or 90 quarter credit hours.

(2) Has passed an examination in accordance with rules adopted by the Board.

(b2) The Board shall issue a license as a "licensed professional counselor associate" to an applicant who applies on or after July 1, 2022, and meets all of the following criteria:

(1) Has earned a minimum of 60 semester hours or 90 quarter hours of graduate training as defined by the Board, including a master's degree in counseling or related field from an institution of higher education that is accredited by the Council for Accreditation of Counseling and Related Educational Programs.

(2) Has passed an examination in accordance with rules adopted by the Board.

(c) The Board shall issue a license as a "licensed professional counselor" to an applicant who meets all of the following criteria:

(1) Has met all of the requirements under subsection (b), (b1), or (b2) of this section, as applicable.

(2) Has completed a minimum of 3,000 hours of supervised professional practice as determined by the Board.

(d) A licensed professional counselor may apply to the Board for recognition as a "licensed professional counselor supervisor" and receive the credential "licensed professional counselor supervisor" upon meeting all of the following criteria:

(1) Has met all of the requirements under subsection (c) of this section.

(2) Has one of the following:

a. At least five years of full-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact;

b. At least eight years of part-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact; or

c. A combination of full-time and part-time professional counseling experience, including a minimum of 2,500 hours of direct client contact as determined by the Board.

(3) Has completed minimum education requirements in clinical supervision as approved by the Board.

(4) Has an active license in good standing as a licensed professional counselor approved by the Board. (1983, c. 755, s. 1; 1993, c. 514, s. 1; 2009-367, s. 6; 2015-279, s. 1.)

§ 90-337. Persons credentialed in other states.

The Board may license any person who is currently licensed, certified, or registered by another state if the individual has met requirements determined by the Board to be substantially similar to or exceeding those established under this Article. (1983, c. 755, s. 1; 1993, c. 514, s. 1.)

§ 90-338. Exemptions.

Applicants holding certificates of registration as Registered Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of G.S. 90-336(c). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselor associates or

licensed professional counselors and shall be licensed upon passing the Board examination and meeting the experience requirements:

(1) An applicant who was engaged in the practice of counseling before July 1, 1993, and who applied to the Board prior to January 1, 1996.

(2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994. (1983, c. 755, s. 1; 1993, c. 514, s. 1; 1993 (Reg. Sess., 1994), c. 685, s. 3; c. 769, s. 25.19; 1995, c. 157, s. 3; 2009-367, s. 7.)

§ 90-339. Renewal of licenses.

(a) All licenses shall be effective upon the date of issuance by the Board, and shall expire on the second June 30 thereafter.

(b) All licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each license, the Board shall mail a notice for license renewal to the person licensed for the current licensure period. At least 10 days before the current license expires, the applicant must return the notice properly completed, together with a renewal fee established by the Board and evidence of continuing counselor education as approved by the Board, upon receipt of which the Board shall issue to the person to be licensed the renewed license for the period stated on the license.

(c) Any person licensed who allows the license to lapse for failure to apply for renewal within 45 days after notice shall be subject to the late renewal fee. Failure to apply for renewal of a license within one year after the license's expiration date will require that a license be reissued only upon application as for an original license. (1983, c. 755, s. 1; 1993, c. 514, s. 1.)

§ 90-340. Protection of the public.

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Article on one or more of the following grounds:

(1) Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling, or a misdemeanor charge reflecting the inability to practice professional counseling with due regard to the health and safety of clients or patients.

(3) Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of professional counseling, the offer of professional counseling services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of professional counseling.

(5) Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of professional counseling to the public, any individual, the Board, or any other organization.

(6) Has had a license or certification for the practice of professional counseling in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article.

(7) Has violated any provision of this Article or any rules adopted by the Board.

(8) Has aided or abetted the unlawful practice of professional counseling by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Counseling Association. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced professional counseling in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice professional counseling with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced professional counseling outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the licensed professional counselor associate, licensed professional counselor, or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(17) Has a finding listed on the Division of Health Service Regulation of the Department of Health and Human Services Health Care Personnel Registry.

(b) The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of professional counseling deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the professional counseling services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of professional counseling provided by the applicant or licensee with respect to the extent, nature, or location of the professional counseling services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this section.

In addition, the Board may impose conditions of probation or restrictions on continued practice of professional counseling at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing professional counseling with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as otherwise provided in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a

license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section. (1983, c. 755, s. 1; 1987, c. 827, s. 1; 1993, c. 514, s. 1; 2009-367, s. 8.)

§ 90-341. Violation a misdemeanor.

Any person violating any provision of this Article is guilty of a Class 1 misdemeanor. (1983, c. 755, s. 1; 1993, c. 539, s. 651; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-342. Injunction.

As an additional remedy, the Board may proceed in a superior court to enjoin and restrain any person from violating the prohibitions of this Article. The Board shall not be required to post bond in connection with such proceeding. (1983, c. 755, s. 1.)

§ 90-343. Disclosure.

Any individual, or employer of an individual, who is licensed under this Article may not charge a client or receive remuneration for professional counseling services unless, prior to the performance of those services, the client is furnished a copy of a Professional Disclosure Statement that includes the licensee's professional credentials, the services offered, the fee schedule, and other provisions required by the Board. (1993, c. 514, s. 1.)

§ 90-344. Third-party reimbursements.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. (1993, c. 514, s. 1.)

§ 90-345. Criminal history record checks of applicants for licensure as professional counselors.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a licensed professional counselor associate pursuant to G.S. 90-336(b), 90-336(b1), or 90-336(b2) or licensed professional counselor pursuant to G.S. 90-336(c).

(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North

Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety in accordance with G.S. 143B-957. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(c) If an applicant or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

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

If, after reviewing these factors, the Board determines that the applicant or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based

on information provided in the applicant or licensee's criminal history record check. (2009-367, s. 9; 2012-12, s. 2(ll); 2014-100, s. 17.1(ll); 2015-181, s. 47; 2015-279, s. 2.)

§ 90-346. Reserved for future codification purposes.

§ 90-347. Reserved for future codification purposes.

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Article 25.

Dietetics/Nutrition.

§ 90-350. Short title.

This Article shall be known as the Dietetics/Nutrition Practice Act. (1991, c. 668, s. 1.)

§ 90-351. Purpose.

It is the purpose of this Article to safeguard the public health, safety and welfare and to protect the public from being harmed by unqualified persons by providing for the licensure and regulation of persons engaged in the practice of dietetics or nutrition and by the establishment of educational standards for those persons. (1991, c. 668, s. 1; 2018-91, s. 1.)

§ 90-352. Definitions.

The following definitions apply in this Article, unless the context otherwise requires:

(1) ACEND. – The Accreditation Council for Education in Nutrition and Dietetics, which is the Academy of Nutrition and Dietetics accrediting agency for education programs preparing students for careers as Registered Dietitian Nutritionists or Nutrition and Dietetic Technicians, Registered.

(1a) Board. – The North Carolina Board of Dietetics/Nutrition.

(1b) Certified Nutrition Specialist. – An individual certified by the Board for Certification of Nutrition Specialists.

(2) Dietetics. – The integration and application of principles derived from the science of nutrition, biochemistry, physiology, food, and management and from behavioral and social sciences to achieve and maintain a healthy status. The primary function of dietetics is the provision of medical nutrition therapy.

(2a) Diplomate of the American Clinical Board of Nutrition. – An individual certified by the American Clinical Board of Nutrition.

(3) Licensed dietitian/nutritionist or licensed nutritionist. – An individual licensed in good standing to practice dietetics, nutrition, or both.

(3a) Medical nutrition therapy. – The provision of nutrition care services for the purpose of managing or treating a medical condition.

(3b) Nutrition. – The integration and application of principles derived from the science of nutrition, biochemistry, metabolism, and pathophysiology to achieve

and maintain a healthy status. The primary function of nutrition practice is the provision of medical nutrition therapy.

(4) Nutrition care services. – Any part or all of the following:

a. Assessing and evaluating the nutritional needs of individuals and groups, and determining resources and constraints in the practice setting, including ordering laboratory tests related to the practice of nutrition and dietetics.

b. Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints.

c. Providing nutrition counseling in health and disease.

d. Developing, implementing, and managing nutrition care systems.

e. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

f. Ordering therapeutic diets.

The term does not include the retail sale of food products or vitamins.

(5) Registered Dietitian Nutritionist. – An individual registered with the Commission on Dietetic Registration, the credentialing agency of the Academy of Nutrition and Dietetics.

(6) Telepractice. – The delivery of services under this Article by means other than in-person, including by telephone, e-mail, Internet, or other methods of electronic communication. (1991, c. 668, s. 1; 2018-91, s. 2.)

§ 90-353. Creation of Board.

(a) The North Carolina Board of Dietetics/Nutrition is created.

(a1) The Board shall consist of the following seven members:

(1) Three members shall be dietitian/nutritionists licensed under this Article.

(2) Two members shall be nutritionists licensed under this Article.

(3) One member shall be a physician licensed under Article 1 of this Chapter.

(4) One member shall not be licensed under this Article and shall represent the public at large.

(b) Licensed dietitian/nutritionist and licensed nutritionist members of the Board shall meet all of the following criteria:

(1) Be citizens of the United States and residents of this State.

(2) Have practiced in the field of dietetics or nutrition for at least three years.

(3) Be licensed under this Article, except that the first appointed licensed nutritionists are not required to be licensed under this Article or to have practiced for three years at the time of their appointment to a first term on the Board; provided, however, that each appointed licensed nutritionist must meet all of the following criteria:

a. Possess the qualifications necessary for licensure under this Article.

b. Apply for licensure under this Article within six months of its availability.

(b1) The licensed physician member of the Board shall be a citizen of the United States and a resident of this State.

(c) The member of the Board appointed from the public at large shall be a citizen of the United States and a resident of this State and shall not be any of the following:

(1) A dietician/nutritionist or nutritionist.
(2) An agent or employee of a person engaged in the profession of dietetics or nutrition.
(3) A licensed health care professional or enrolled in a program to become prepared to be a licensed health care professional.
(4) An agent or employee of a health care institution, a health care insurer, or a health care professional school.
(5) A member of any allied health profession or enrolled in a program to become prepared to be a member of an allied health profession.
(6) The spouse of an individual who is not eligible to serve as a public member of the Board. (1991, c. 668, s. 1; 2018-91, s. 3.)

§ 90-354. Appointments and removal of Board members, terms and compensation.

(a) The members of the Board shall be appointed as follows:
(1) The Governor shall appoint the following members:
a. One licensed dietitian/nutritionist as described in G.S. 90-353(a1)(1), who shall be an educator on the faculty of a college or university accredited at the time from the appropriate regional accrediting agency recognized by the Council on Higher Education Accreditation and the United States Department of Education, specializing in the field of dietetics or nutrition.
b. The licensed physician as described in G.S. 90-353(a1)(3).
c. The public member as described in G.S. 90-353(a1)(4).
(2) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint one licensed dietitian/nutritionist as described in G.S. 90-353(a1)(1) and one licensed nutritionist as described in G.S. 90-353(a1)(2), both in accordance with G.S. 120-121. One of these appointees shall be a dietician/nutritionist or a nutritionist whose primary practice is clinical dietetics or nutrition in a hospital or long-term care institution regulated under Article 5 or Part 1 of Article 6 of Chapter 131E of the General Statutes.
(3) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one licensed dietitian/nutritionist as described in G.S. 90-353(a1)(1) and one licensed nutritionist as described in G.S. 90-353(a1)(2), both in accordance with G.S. 120-121. One of these appointees shall be a dietician/nutritionist or a nutritionist whose primary practice is consulting in, or the private practice of, dietetics or nutrition.

(b) Members of the Board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified.

(c) No member shall serve on the Board for more than two consecutive terms.

(d) The Governor may remove members of the Board, after notice and opportunity for hearing, for any of the following reasons:
(1) Incompetence.
(2) Neglect of duty.
(3) Unprofessional conduct.

(4) Conviction of any felony.
(5) Failure to meet the qualifications of this Article.
(6) Committing any act prohibited by this Article.

(e) Any vacancy shall be filled by the appointing authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122.

(f) Members of the Board shall receive no compensation for their services, but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5. (1991, c. 668, s. 1; 1995, c. 490, s. 16; 2001-342, s. 1; 2018-91, s. 4(a).)

§ 90-355. Election of officers; meetings of Board.

(a) The Board shall elect a chairman and a vice-chairman who shall hold office according to rules adopted by the Board.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chairman or any two Board members. A majority of the Board membership shall constitute a quorum. (1991, c. 668, s. 1; 2001-342, s. 2.)

§ 90-356. Power and responsibility of Board.

The Board shall:

(1) Determine the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses.
(2) Adopt rules necessary to conduct its business, carry out its duties, and administer this Article; provided, however, that as of July 1, 2018, no rule making shall be performed by the Board until two licensed nutritionists have been appointed to the Board.
(3) Adopt and publish a code of ethics.
(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.
(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
(6) Employ professional, clerical, investigative or special personnel necessary to carry out the provisions of this Article, and purchase or rent office space, equipment and supplies.
(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes when a "contested case" as defined in G.S. 150B-2(2) arises under this Article.
(9) Establish reasonable fees for applications for examination; initial, provisional, and renewal licenses; and other services provided by the Board.
(10) Submit an annual report to the Governor and General Assembly of all its official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of dietetics or nutrition.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
(12) Request and receive the assistance of State educational institutions or other State agencies.
(13) Approve and evaluate continuing education requirements for persons seeking to renew licensure under this Article.
(14) Publish, and make available to the public, records of any Board action resulting in any disciplinary action taken by the Board or criminal action taken by the State for any violation of this Article.
(15) Request that the Department of Public Safety conduct criminal history record checks of applicants for licensure pursuant to G.S. 143B-966. (1991, c. 668, s. 1; 2001-342, ss. 3, 4; 2018-91, s. 5.)

§ 90-357: Repealed by Sessions Laws 2018-91, s. 6, effective July 1, 2018.

§ 90-357.1: Reserved for future codification purposes.

§ 90-357.2: Reserved for future codification purposes.

§ 90-357.3: Reserved for future codification purposes.

§ 90-357.4: Reserved for future codification purposes.

§ 90-357.5. License requirements.

(a) Each applicant for a license as a licensed dietitian/nutritionist shall submit a completed application as required by the Board, submit any fees as required by the Board, and meet one of the following criteria:

(1) The applicant shall submit proof of completion for the following educational, supervised practice experience and examination requirements:

a. The applicant has received a baccalaureate degree, master's, or doctoral degree or validated foreign equivalent with a major in human nutrition, foods and nutrition, dietetics, food systems management, community nutrition, public health nutrition, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study, from a college or university accredited at the time of graduation from the appropriate regional accrediting agency recognized by the Council on Higher Education Accreditation and the United States Department of Education and that, as approved by the Board, meets the competency requirements of an ACEND accredited didactic program in dietetics that shall, at a minimum, include the following courses:

1. Fifteen semester hours of clinical or life sciences. These hours must include human anatomy and physiology or the equivalent, microbiology or the equivalent, organic chemistry, and biochemistry.

2. Three semester hours of behavioral sciences, such as psychology, sociology, cultural anthropology, counseling, or educational psychology.
3. Twenty-four semester hours of food and nutrition. At least three semester hours must have been received in each of the following categories:
   I. Diet therapy, medical dietetics, clinical nutrition, or the equivalent.
   II. Nutrition through life cycle, applied human nutrition, advanced human nutrition, or the equivalent.
   III. Foods, food science, food composition and menu planning, food service management, or the equivalent.

b. The applicant has completed a Board-approved internship or documented, supervised practice experience that meets the competency requirements of an ACEND accredited, supervised practice experience and is not less than 1,000 hours under the supervision of a Certified Nutrition Specialist, a Diplomate of the American Clinical Board of Nutrition, a Registered Dietitian Nutritionist, a licensed dietitian/nutritionist, a licensed nutritionist, a State-licensed health care practitioner whose licensed scope of practice includes dietetics or nutrition, or an individual with a doctoral degree conferred by a United States regionally accredited college or university with a major course of study in human nutrition, foods and nutrition, dietetics, food systems management, community nutrition, public health nutrition, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study, with a reasonable threshold of academic credits in nutrition and nutrition sciences as described in sub-subdivision a. of this subdivision. Supervisors who obtained their doctoral degree outside of the United States and its territories must have their degrees validated by the Board as equivalent to the doctoral degree conferred by a United States regionally accredited college or university.

c. The applicant has successfully completed the registration examination for dietitian nutritionists administered by the Commission on Dietetic Registration.

(2) The applicant has a valid current registration with the Commission on Dietetic Registration that gives the applicant the right to use the term "Registered Dietitian Nutritionist" or "RDN."

(b) All persons licensed or who have submitted an application for licensure as a dietitian/nutritionist prior to July 1, 2018, shall remain licensed, eligible for reactivation, or eligible for licensure under the requirements in place at the time of licensure or application, so long as the applicant or licensee remains in good standing and maintains an active or inactive license if obtained or once it is obtained.

(c) Each applicant for a license as a licensed nutritionist shall submit a completed application as required by the Board, submit any fees as required by the Board, and shall

submit proof of the completion of all of the following educational, supervised practice experience, and examination requirements:

(1) The applicant has received any of the following from a college or university accredited at the time of graduation from the appropriate regional accrediting agency recognized by the Council on Higher Education or a validated foreign equivalent: a master's or doctoral nutrition degree with a major in human nutrition, foods and nutrition, dietetics, community nutrition, public health nutrition, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study or a master's or doctoral degree in a field of clinical health care. Regardless of the course of study, an applicant shall have completed coursework from a regionally accredited college or university in medical nutrition therapy that shall consist of the following courses:

a. Fifteen semester hours of clinical or life sciences, including such courses as chemistry, organic chemistry, biology, molecular biology, biotechnology, botany, genetics, genomics, neuroscience, experimental science, immunotherapy, pathology, pharmacology, toxicology, research methods, applied statistics, biostatistics, epidemiology, oxidative/reductive dynamics, energy production, molecular pathways, hormone and transmitter regulations and imbalance, biotransformation pathways and imbalances, and pathophysiologic basis of disease. At least three semester hours must be in human anatomy and physiology or the equivalent.

b. Fifteen semester hours of nutrition and metabolism, including such courses as nutrition assessment, developmental nutrition, nutritional aspects of disease, human nutrition, macronutrients, micronutrients, vitamins and minerals, functional medicine nutrition, molecular metabolism, clinical nutrition, nutritional biochemistry, nutrition and digestive health, and public health nutrition. At least six semester hours must be in biochemistry.

(2) The applicant must have completed a Board-approved internship or a documented, supervised practice experience in nutrition services of not less than 1,000 hours involving at least 200 hours of nutrition assessment, 200 hours of nutrition intervention, education, counseling, or management, and 200 hours of nutrition monitoring or evaluation under the supervision of a Certified Nutrition Specialist, a Diplomate of the American Clinical Board of Nutrition, a Registered Dietitian Nutritionist, a licensed dietitian/nutritionist, a licensed nutritionist, a State-licensed health care practitioner whose licensed scope of practice includes dietetics or nutrition, or an individual with a doctoral degree conferred by a United States regionally accredited college or university with a major course of study in human nutrition, foods and nutrition, dietetics, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study, with a reasonable threshold of academic credits in nutrition and

nutrition sciences as described in subdivision (1) of this subsection. Supervisors who obtained their doctoral degree outside of the United States and its territories must have their degrees validated by the Board as equivalent to the doctoral degree conferred by a United States regionally accredited college or university.

(3) The applicant meets one of the following criteria:

a. The applicant has successfully completed either the examination administered by the Board for Certification of Nutrition Specialists, the examination administered by the American Clinical Board of Nutrition, or another examination approved by the Board and meeting the requirements defined in G.S. 90-359.

b. The applicant has either a valid current certification with the Board for Certification of Nutrition Specialists that gives the applicant the right to use the term "Certified Nutrition Specialist" or "CNS" or a valid current certification with the American Clinical Board of Nutrition that gives the applicant the right to use the term "Diplomate, American Clinical Board of Nutrition" or "DACBN." (2018-91, s. 7.)

§ 90-357.6. Criminal history record checks of applicants for licensure.

(a) All applicants for licensure shall consent to a criminal history record check. The Board may request a criminal history record check of applicants returning to active status as a licensed dietitian/nutritionist or a licensed nutritionist. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of each applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, the fee required by the Department of Public Safety for providing this service, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

(b) The cost of the criminal history record check and the fingerprinting shall be borne by the applicant. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

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

(1) The level of seriousness of the crime.

(2) The date of the crime.

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

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

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

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

(7) Any subsequent commission of a crime by the applicant.

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-363 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2018-91, s. 7.)

§ 90-358. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence submitted, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection. (1991, c. 668, s. 1.)

§ 90-359. Examinations.

Competency examinations shall be administered at least twice each year to qualified applicants for licensing. The examinations may be administered by a national testing service. The examinations shall include the RDN Examination given by the Commission on Dietetic Registration, the CNS Examination given by the Board for Certification of Nutrition Specialists and the DACBN Examination given by the American Clinical Board of Nutrition. The Board may include other nutrition therapy-focused examinations accredited by the National Commission for Certifying Agencies for graduates with a baccalaureate degree or higher from a college or university accredited at the time from the appropriate regional accrediting agency recognized by the Council on Health Education Accreditation and the United States Department of Education that are approved by two-thirds vote of the entire Board. (1991, c. 668, s. 1; 2018-91, s. 8.)

§ 90-360. Granting license without examination.

The Board may grant, upon application and payment of proper fees, a license as a licensed dietitian/nutritionist or a licensed nutritionist to a person who has met the examination requirements under G.S. 90-359 at the time of application and holds a valid license or certification as a dietitian/nutritionist, dietitian, or nutritionist issued by another state or any political territory or jurisdiction acceptable to the Board if in the Board's opinion the requirements for that license or certification are substantially the same as the requirements of this Article. (1991, c. 668, s. 1; 2018-91, s. 9.)

§ 90-361. Provisional licenses.

The Board may grant a provisional license for a period not exceeding 12 months to any individual who has successfully completed the educational and clinical practice requirements and has made application to take one of the examinations required under G.S. 90-359. A provisional license shall allow the individual to practice as a dietitian/nutritionist or nutritionist under the supervision of a dietitian/nutritionist or nutritionist licensed in this State and shall be valid until revoked by the Board. (1991, c. 668, s. 1; 2018-91, s. 10.)

§ 90-362. License as constituting property of Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and must be surrendered to the Board on demand.

(b) The licensee shall display the license certificate in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be reissued by the Board annually upon payment of a renewal fee if the licensee is not in violation of this Article at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the Board.

(e) Each person licensed under this Article is responsible for renewing his license before the expiration date. The Board shall notify a licensee of pending license expiration at least 30 days in advance thereof.

(f) The Board may provide for the late renewal of a license upon the payment of a late fee, but no such late fee renewal may be granted more than five years after a license expires.

(g) Under procedures and conditions established by the Board, a licensee may request that his license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set by the Board shall be declared in active status. (1991, c. 668, s. 1.)

§ 90-363. Suspension, revocation and refusal to renew license.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the licensee or applicant for licensure has engaged in any of the following conduct:

(1) Employment of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license, or the renewal of a license.

(2) Committing an act or acts of malpractice, gross negligence or incompetence in the practice of dietetics or nutrition.

(3) Practicing as a licensed dietitian/nutritionist or a licensed nutritionist without a current license.

(4) Engaging in conduct that could result in harm or injury to the public.

(5) Conviction of or a plea of guilty or nolo contendere to any crime involving moral turpitude.

(6) Adjudication of insanity or incompetency, until proof of recovery from the condition can be established.

(7) Engaging in any act or practice in violation of any of the provisions of this Article or any rule adopted by the Board, or aiding, abetting or assisting any person in such a violation.

(b) Denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1991, c. 668, s. 1; 2018-91, s. 11.)

§ 90-364. Fees.

The Board shall establish fees in accordance with Chapter 150B of the General Statutes for the following purposes:

(1) For an initial application, a fee not to exceed one hundred dollars ($100.00).
(2) For examination or reexamination, a fee not to exceed two hundred dollars ($200.00).
(3) For issuance of a license, a fee not to exceed two hundred dollars ($200.00).
(4) For the renewal of a license, a fee not to exceed one hundred twenty-five dollars ($125.00).
(5) For the late renewal of a license, an additional late fee not to exceed one hundred dollars ($100.00).
(6) For a provisional license, a fee not to exceed one hundred dollars ($100.00).
(7) For copies of Board rules and licensure standards, charges not exceeding the actual cost of printing and mailing. (1991, c. 668, s. 1; 2001-342, s. 5.)

§ 90-365. Requirement of license.

(a) It shall be unlawful for any person who is not currently licensed under this Article to do any of the following:

(1) Repealed by Session Laws 2018-91, s. 12, effective October 1, 2018.
(1a) Provide medical nutrition therapy.
(2) Use the title "dietitian/nutritionist" or "nutritionist."
(3) Use the words "dietitian," "nutritionist," "licensed nutritionist," or "licensed dietitian/nutritionist" or hold oneself out as a dietitian or nutritionist unless licensed under this Article.
(4) Use the letters "LD," "LN," or "LDN," or any facsimile or combination in any words, letters, abbreviations, or insignia.
(5) To imply orally or in writing or indicate in any way that the person is a licensed dietitian/nutritionist or licensed nutritionist.

(b) Use of an earned, trademarked nutrition credential is not prohibited, but such use does not give the right to practice dietetics or nutrition or use the general titles of "dietitian/nutritionist" or "nutritionist" unless an individual is also licensed under this Article. Notwithstanding any law to the contrary, all of the following are permissible:

(1) An individual registered with the Commission on Dietetic Registration has the right to use the title "Registered Dietitian" and "Registered Dietitian Nutritionist" and the designation "RD" or "RDN."
(2) An individual certified by the Board of Certification of Nutrition Specialists has the right to use the title "Certified Nutrition Specialist" and the designation "CNS."

(3) An individual certified by the American Clinical Board of Nutrition has the right to use the title "Diplomate, American Clinical Board of Nutrition" and the designation "DACBN." (1991, c. 668, s. 1; 2018-91, s. 12.)

§ 90-365.1: Reserved for future codification purposes.

§ 90-365.2: Reserved for future codification purposes.

§ 90-365.3: Reserved for future codification purposes.

§ 90-365.4: Reserved for future codification purposes.

§ 90-365.5. Telepractice.

Telepractice as defined in G.S. 90-352 is not prohibited under this Article so long as (i) it is appropriate for the individual receiving the services and (ii) the level of care provided meets the required level of care for that individual. An individual providing services regulated by this Article via telepractice shall comply with, and shall be subject to, all the licensing and disciplinary provisions of this Article. (2018-91, s. 13.)

§ 90-365.6. Enteral and parenteral nutrition therapy.

(a) Enteral and parenteral nutrition therapy shall consist of enteral feedings or specialized intravenous solutions and shall only be ordered by an individual licensed under this Article who meets one of the following criteria:

(1) The individual is a Registered Dietitian Nutritionist registered with the Commission on Dietetic Registration.

(2) The individual is a Certified Nutrition Support Clinician certified by the National Board of Nutrition Support Certification.

(3) The individual meets the requirements set forth in rules adopted by the Board.

(b) Nothing in this Article shall be construed to limit the ability of any other licensed health care practitioner in this State to order therapeutic diets, so long as the ordering of therapeutic diets falls within the scope of the license held by the health care practitioner. (2018-91, s. 13.)

§ 90-366. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense. (1991, c. 668, s. 1; 1993, c. 539, s. 652; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-367. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action. (1991, c. 668, s. 1.)

§ 90-368. Persons and practices not affected.

The requirements of this Article shall not apply to:

(1) A health care professional duly licensed in accordance with Chapter 90 of the General Statutes who is acting within the scope of the individual's licensed profession, provided that the individual does not use the titles licensed dietitian/nutritionist or licensed nutritionist.

(2) A student or trainee, working under the direct supervision of an individual who meets the criteria outlined in G.S. 90-357.5(a)(1)b. or G.S. 90-357.5(c)(2) while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure, for a limited period of time as determined by the Board.

(3) A dietitian/nutritionist or nutritionist serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person aiding the practice of dietetics or nutrition if the person works under the direct supervision of a licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition and the person performs only support activities that do not require formal academic training in the basic food, nutrition, chemical, biological, behavioral, and social sciences that are used in the practice of dietetics or nutrition.

(5) An employee of the State, a local political subdivision, or a local school administrative unit or a person that contracts with the State, a local political subdivision, or a local school administrative unit while engaged in the practice of dietetics or nutrition within the scope of that employment.

(6) A retailer who does not hold himself out to be a dietitian or nutritionist when that retailer furnishes nutrition information to customers on food, food materials, dietary supplements and other goods sold at his retail establishment in connection with the marketing and distribution of those goods at his retail establishment.

(7) A person who provides weight control services; provided the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval of one of the following individuals:

a. A North Carolina licensed dietitian/nutritionist, nutritionist, or other health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition.

b. A dietitian/nutritionist, nutritionist, or other health care practitioner licensed or certified in another state that has licensure or certification requirements that are at least as stringent as under this Article, and other relevant sections of this Chapter, and whose licensed or certified scope of practice includes the practice of dietetics or nutrition.

c. A dietitian/nutritionist or nutritionist registered by the Commission on Dietetic Registration, the Board for Certification of Nutrition Specialists, or the American Clinical Board of Nutrition.

(8) Repealed by Session Laws 2018-91, s. 14, effective July 1, 2018.

(9) A person who does not hold himself or herself out to be a dietitian or nutritionist when that person furnishes nutrition information on food, food materials, or

dietary supplements. This Article does not prohibit that person from making explanations to customers about foods or food products in connection with the marketing and distribution of these products.

(10) An herbalist or other person who does not hold himself or herself out to be a dietitian or nutritionist when the person furnishes nonfraudulent specific nutritional information and counseling about the reported or historical use of herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, or other foods.

(11) Any individual who provides nutrition services without remuneration to family members.

(12) Any individual who provides nutrition information, guidance, encouragement, individualized nutrition recommendations, or weight control services that do not constitute medical nutrition therapy as defined in G.S. 90-352, provided that the individual (i) does not hold himself or herself out as a licensed dietitian/nutritionist or a licensed nutritionist as prohibited under G.S. 90-365 and (ii) does not seek to provide medical nutrition therapy as defined in G.S. 90-352. (1991, c. 668, s. 1; 1995, c. 509, s. 135.2(s); 2018-91, s. 14.)

§ 90-369. Third party reimbursement; limitation on modifications.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. (1991, c. 668, s. 1; 2007-123, s. 1.)

§ 90-370. Costs.

The Board may assess the costs of disciplinary actions against a licensee or person found to be in violation of this Article or rules adopted by the Board. Costs recovered pursuant to this section shall be the property of the Board. (2009-271, s. 1.)

§ 90-371. Reserved for future codification purposes.

§ 90-372. Reserved for future codification purposes.

§ 90-373. Reserved for future codification purposes.

§ 90-374. Reserved for future codification purposes.

§ 90-375. Reserved for future codification purposes.

§ 90-376. Reserved for future codification purposes.

§ 90-377. Reserved for future codification purposes.

§ 90-378. Reserved for future codification purposes.

§ 90-379. Reserved for future codification purposes.

Article 26.

Fee-Based Practicing Pastoral Counselors.

§ 90-380. Title.

This Article shall be known as the "Fee-Based Practicing Pastoral Counselor Certification Act." (1991, c. 670.)

§ 90-381. Purpose.

It is the purpose of this Article to protect the public safety and welfare by providing for the certification and regulation of persons engaged in the practice of fee-based pastoral counseling and pastoral psychotherapy. (1991, c. 670.)

§ 90-382. Definitions.

The following definitions apply in this Article:

(1) Accredited educational institution. – A college, university, or theological seminary chartered by the State and accredited by the appropriate regional association of colleges and secondary schools or by the appropriate association of theological schools and seminaries.

(2) Board. – The North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.

(3) Fee-based pastoral counseling associate. – An individual, certified under this Article, who renders or offers professional pastoral counseling services only under qualified supervision in accordance with rules adopted by the Board.

(4) Fee-based pastoral counselor. – A minister who receives fees from the practice of pastoral counseling.

(5) Fee-based practice of pastoral counseling. – To render or offer for a fee or other compensation professional pastoral counseling services, whether to the general public or to organizations, either public or private; to individuals, singly or in groups; to couples, married or in other relationships; and to families.

(6) Fee-based professional pastoral counseling services. – The application of pastoral care and pastoral counseling principles and procedures for a fee or other compensation with the purpose of understanding, anticipating, or influencing the behavior of individuals in order to assist in their attainment of maximum personal growth; optimal work, marital, family, church, school, social, and interpersonal relationships; and healthy personal adaptation. The application of pastoral care and pastoral psychotherapy principles and procedures includes sustaining, healing, shepherding, nurturing, guiding, and reconciling; interviewing, counseling, and using psychotherapy, diagnosing, preventing, and ameliorating difficulties in living; and resolving interpersonal and social conflict. Teaching, writing, the giving of public speeches or lectures, and research concerned with pastoral care and counseling principles are not included in professional pastoral counseling services within the meaning of this Article.

(7) Minister. – A person who has been called, elected, or otherwise authorized by a church, denomination, or faith group through ordination, consecration or equivalent means, to exercise within and on behalf of the denomination or faith group specific religious leadership and service that furthers its purpose and

mission and that differs from the religious service of the laity of the denomination or faith group.

(8) Pastoral counseling. – Used interchangeably with pastoral psychotherapy to mean a process in which a pastoral counselor utilizes insights and principles derived from the disciplines of theology and the behavioral sciences to help persons achieve wholeness and health.

(9) Pastoral psychotherapy. – The use of pastoral care and pastoral counseling methods in a professional relationship to assist a person in modifying feelings, attitudes, and behavior that are intellectually, socially, emotionally, or spiritually maladjustive, ineffectual, or that otherwise contribute to difficulties in living. (1991, c. 670.)

§ 90-383. Exemptions.

(a) Nothing in this Article shall be construed as limiting the ministry, activities, or services of a minister called, elected, or otherwise authorized by a church, denomination, or faith group to perform the ordinary duties or functions of the clergy.

(b) Nothing in this Article shall be construed as limiting the activities, services, or use of a title to designate a training status of a student, intern, or fellow preparing for the practice of pastoral care and counseling under qualified supervision in an accredited educational institution or service facility, provided that those activities and services constitute a part of the course of study.

(c) Nothing in this Article shall be construed to limit or restrict physicians, optometrists, or psychologists licensed to practice under the laws of North Carolina; or to restrict qualified members of other professional groups who render counseling and other helping services including counselors, social workers, and other similar professions; or to restrict qualified members of any other professional groups in the practice of their respective professions, provided they do not claim to the public by any title or description stating or implying that they are certified fee-based practicing pastoral counselors or certified fee-based pastoral counseling associates, or that they are certified to receive fees for the practice of pastoral counseling.

(d) Except as otherwise provided in this Article, if a person exempt from the provisions of this Article becomes certified under this Article, he or she shall be required to comply with the requirements of this Article and rules adopted by the Board. (1991, c. 670.)

§ 90-384. Temporary certificates.

The Board may issue a temporary pastoral counseling certificate to any person who is otherwise qualified under this Article until the next annual examination is given. (1991, c. 670.)

§ 90-385. Creation of Board; appointment and removal of members; terms and compensation; powers.

(a) The North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors is created. The Board shall consist of seven members as follows:

(1) Three members appointed by the Governor, two of whom shall be certified fee-based practicing pastoral counselors and one of whom shall be a certified fee-based pastoral counseling associate.

(2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a certified

fee-based practicing pastoral counselor and one of whom shall be a public member who has no direct affiliation with the practice of pastoral counseling.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a certified fee-based practicing pastoral counselor and one of whom shall be a public member who has no direct affiliation with the practice of pastoral counseling.

Initial appointees shall be persons who meet the education and experience requirements for certification under this Article and shall be deemed certified upon appointment. In making appointments, consideration shall be given to adequate representation from the various fields and areas of the practice of pastoral counseling. Legislative appointments shall be made in accordance with G.S. 120-121.

(b) Of the members initially appointed, three members, including one certified fee-based practicing pastoral counselor appointed by the Governor, one certified fee-based pastoral counseling associate appointed by the Governor, and one public member who has no direct affiliation with the practice of pastoral counseling appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall serve for a term of two years. Two members, including one certified fee-based practicing pastoral counselor appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and one public member who has no direct affiliation with the practice of pastoral counseling appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall serve for a term of three years. Two members, including the certified fee-based practicing pastoral counselor appointed by the Governor and the certified fee-based practicing pastoral counselor appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall serve for a term of four years.

(c) After the initial terms specified in this section, each member shall be appointed to serve a term of four years or until a successor is appointed and qualified. A vacancy shall be filled by the appointing authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. No person may be appointed more than once to fill an unexpired term nor to more than two consecutive terms.

(d) The Governor may remove any member of the Board for neglect of duty, malfeasance, conviction of a felony or conviction of a crime involving moral turpitude while in office, but for no other reason.

(e) Five Board members shall constitute a quorum. The Governor shall designate one Board member who is a certified fee-based practicing pastoral counselor to serve as chairperson during the term of his or her appointment to the Board. No person may serve as chairperson for more than four years. The Board shall specify the location of its principal office.

(f) The Board shall meet at least annually at a time set by the Board. The Board may hold additional meetings and conduct any proceeding or investigation necessary to its purposes and may empower its agents or counsel to conduct any investigation necessary to its purposes. The Board may order that any records concerning the provision of pastoral counseling services relevant to a complaint received by the Board or any inquiry or investigation conducted by or on behalf of the Board be produced for inspection and copying by representatives of the Board. The Board shall adopt an official seal, which shall be affixed to all certificates issued by the Board. The Board shall adopt rules necessary to conduct its business, carry out its duties, and administer this Article in accordance with Chapter 150B of the General Statutes.

(g) Board members shall receive no compensation for their services, but may be compensated for their expenses incurred in the performance of duties required by this Article, as provided in G.S. 138-6, from funds generated by examination fees or from contributions made to the Board. The Board may employ and compensate necessary personnel for the performance of its functions, within the limits of funds available to the Board. In no event shall the State be liable for expenses incurred by the Board in excess of the income derived from this Article. (1991, c. 670.)

§ 90-386. Annual report.

Within 90 days of the end of each fiscal year, beginning with fiscal year 1992-93, the Board shall submit to the Governor a report of the Board's activities since the preceding July 1, including the names of all fee-based practicing pastoral counselors and fee-based pastoral counseling associates to whom certificates have been granted under this Article during that fiscal year. (1991, c. 670.)

§ 90-387. Certification and examination.

(a) The Board shall issue a certificate to practice fee-based pastoral counseling to an applicant who:

(1) Pays an application fee of one hundred dollars ($100.00);

(2) Pays an examination fee set by the Board of not more than four hundred dollars ($400.00);

(3) Passes a Board examination in pastoral counseling;

(4) Submits evidence verified by oath and satisfactory to the Board that the applicant:

a. Is at least 21 years of age;

b. Is of good moral character;

c. Has received a masters of divinity or higher degree, or its equivalent, from an accredited educational institution;

d. Has received a masters or doctoral degree in pastoral counseling, or its equivalent, based on a planned and directed program of studies in pastoral counseling from an accredited educational institution; has completed satisfactorily one unit of full-time clinical pastoral education in a program accredited by the Association of Clinical Pastoral Education, or its equivalent; and has completed at least 1,375 hours of pastoral counseling while receiving a minimum of 250 hours of supervision during those hours of pastoral counseling;

e. Is a member of a recognized denomination or faith group that recognizes the applicant's status as a rabbi, priest, minister, or religious leader, as defined in the Federal Internal Revenue Code;

f. Has completed three years of full-time work as a rabbi, priest, minister, or religious leader, or its equivalent;

g. Has been ordained, or its equivalent as determined by the applicant's denomination or faith group, and has been endorsed to function as a pastoral counselor; and

h. Has not within the preceding six months failed an examination given by the Board.

(b) The Board shall issue a certificate to practice as a fee-based pastoral counseling associate to an applicant who:

(1) Pays an application fee of one hundred dollars ($100.00);

(2) Pays an examination fee set by the Board of not more than four hundred dollars ($400.00);

(3) Passes an examination in pastoral counseling satisfactory to the Board;

(4) Submits evidence verified by oath and satisfactory to the Board that the applicant:

a. Is at least 21 years of age;

b. Is of good moral character;

c. Has received a masters of divinity or higher degree, or its equivalent, from an accredited educational institution;

d. Is a member of a recognized denomination or faith group that recognizes the applicant's status as a rabbi, priest, minister, or religious leader;

e. Has completed three years of full-time work as a rabbi, priest, minister, or religious leader, or its equivalent;

f. Has been ordained, or its equivalent as determined by the applicant's denomination or faith group, and has been endorsed to function as a pastoral counselor;

g. Has not within the preceding six months failed an examination given by the Board; and

h. Has satisfactorily completed one unit of full-time clinical pastoral education in a program accredited by the American Association for Clinical Education, or its equivalent, and has completed at least 375 hours of pastoral counseling including a minimum of 125 hours of supervision of those pastoral counseling hours.

(c) A pastoral counseling associate may become a certified fee-based practicing pastoral counselor if the applicant complies with the requirements set forth in subsection (a) of this section and pays an examination fee set by the Board of not more than four hundred dollars ($400.00).

(d) The examinations required by subsections (a) and (b) of this section shall be in a form and content prescribed by the Board and shall be oral and written. The examinations shall be administered at least annually at a time and place to be determined by the Board. (1991, c. 670, c. 761, s. 12.4.)

§ 90-388. Equivalent certification and memberships recognized.

(a) The Board may grant a certificate as a fee-based practicing pastoral counselor to any person meeting the requirements of G.S. 90-387(a) who at the time of application is certified as a pastoral counselor by a board of another state whose standards, in the opinion of the Board, are at least equal to those required by this Article. This section applies only when the state grants similar privileges to residents of this State. To determine a candidate's qualifications, the Board may require a personal interview and any other documentation the Board deems necessary.

(b) The Board may grant a certificate as a practicing pastoral counselor to any person who has been certified as a Fellow or Diplomate by the American Association of Pastoral Counselors if application is made by December 31, 1991. To determine a candidate's qualifications the Board may require a personal interview and any other documentation the Board deems necessary.

(c) The Board may grant a certificate as a fee-based pastoral counseling associate to any person who has been certified as a member of the American Association of Pastoral Counselors if application is made by December 31, 1991. To determine a candidate's qualifications, the Board may require a personal interview and any other documentation the Board deems necessary. (1991, c. 670.)

§ 90-389. Renewal of certificate.

A certificate issued under this Article must be renewed annually on or before the first day of January of each year. Each application for renewal must be accompanied by a renewal fee set by the Board of not more than one hundred dollars ($100.00). If a certificate is not renewed on or before the first day of January of each year, an additional fee of not more than twenty-five dollars ($25.00) as set by the Board shall be charged for late renewal. The Board may establish requirements for continuing education for pastoral counselors and pastoral counseling associates certified in this State as an additional condition for renewal. (1991, c. 670.)

§ 90-390. Refusal, suspension, or revocation of a certificate.

(a) A certificate applied for or issued under this Article may be refused, suspended, revoked, or otherwise limited as provided in subsection (e) of this section by the Board upon proof that the applicant or person to whom a certificate was issued:

(1) Has been convicted of a felony;

(2) Has been convicted of a misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or an offense relevant to fitness to practice certified fee-based pastoral counseling;

(3) Has engaged in fraud or deceit in securing or attempting to secure a certificate or the renewal of a certificate or has willfully concealed from the Board material information in connection with application for or renewal of a certificate under this Article;

(4) Is a habitual drunkard or is addicted to deleterious habit-forming drugs;

(5) Has made fraudulent or misleading statements pertaining to his education, licensure, professional credentials, or related to his qualification or fitness for the practice of pastoral counseling;

(6) Has had a license for the practice of pastoral counseling in any other state or any other country suspended or revoked;

(7) Has been guilty of unprofessional conduct as defined by the relevant code of ethics published by the American Association of Pastoral Counselors; or

(8) Has violated any provision of this Article or the rules of the Board.

(b) A certificate issued under this Article shall be automatically suspended by the Board after failure to renew a certificate for a period of more than three months after the annual renewal date.

(c) Except as otherwise provided in this Article, the procedure for revocation, suspension, refusal, or other limitations of the certificate shall be in accordance with the provisions of Chapter 150B of the General Statutes. In any proceeding or record of any hearing before the Board, and in any complaint or notice of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate and in any decision rendered by the Board, the Board shall endeavor to withhold from public disclosure the identity of any counselees or clients who have not consented to the public disclosure of treatment by the certified fee-based pastoral counselor or

certified fee-based pastoral counseling associate. The Board may close a hearing to the public and receive in a closed session evidence concerning the treatment or delivery of pastoral counseling services to a counselee or a client who has not consented to public disclosure of treatment or services, as may be necessary for the protection of the counselee's or client's rights and the full presentation of relevant evidence. All records, papers, and documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with certification or disciplinary matters are not public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate, any notice to any certified fee-based pastoral counselor or certified fee-based pastoral counseling associate of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding is a public record within the meaning of Chapter 132 of the General Statutes, except that identifying information concerning the treatment or delivery of services to a counselee or client who has not consented to the public disclosure of such treatment or services may be deleted. Any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, that is received and admitted in evidence in any hearing before the Board shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment or delivery of pastoral counseling services to a counselee or client who has not consented to public disclosure of the treatment or services.

(d) The Board may reinstate a suspended certificate upon payment by an applicant of a fee of twenty dollars ($20.00), and may require that the applicant file a new application, submit to reexamination for reinstatement, and pay other authorized fees as required by the Board.

(e) Upon proof that a certified fee-based pastoral counselor or certified fee-based pastoral counseling associate certified under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of refusal, suspension, or revocation, do any one or more of the following:

(1) Issue a formal reprimand;

(2) Formally censure the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate;

(3) Place the certified fee-based pastoral counselor or certified fee-based pastoral counseling associate on probation with any conditions the Board may deem advisable; or

(4) Limit or circumscribe the professional pastoral counseling services provided by the certified fee-based pastoral counselor or the certified fee-based pastoral counseling associate as the Board deems advisable.

(f) The Board may impose conditions of probation or restrictions on continued practice at the conclusion of a period of suspension or as a condition for the restoration of a revoked or suspended certificate. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relating to the discipline, censure, proceeding costs, probation, or limitations on the practice of a certified fee-based pastoral counselor or certified fee-based pastoral counseling associate. (1991, c. 670, s. 1; 1993 (Reg. Sess., 1994), c. 570, s. 8.)

§ 90-391. Prohibited acts.

No person shall represent himself to be a certified fee-based practicing pastoral counselor or a certified fee-based pastoral counseling associate, or engage in or offer to engage in the practice of certified fee-based pastoral counseling, without a valid certificate issued under this Article. No person shall use these titles or descriptions, or any of their derivatives, in a manner that implies the person is certified under this Article. No called or elected pastor during his active full-time pastorate shall practice as a certified fee-based pastoral counselor even if certified under this Article. (1991, c. 670.)

§ 90-392. Disposition of fees.

The fees derived from the operation of this Article shall be used by the Board in carrying out its functions. The operations of the Board are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1991, c. 670.)

§ 90-393. Injunction for violations.

The Board may apply to superior court for an injunction to prevent violations of this Article or of any rules adopted by the Board, and the court has the authority to grant an injunction. (1991, c. 670.)

§ 90-394. Duplicate and replacement certificates.

A certified fee-based pastoral counselor may request that the Board issue a duplicate or replacement certificate for a fee set by the Board not to exceed fifty dollars ($50.00). Upon receipt of the request, a showing of good cause for the issuance of a duplicate or replacement certificate, and payment of the fee, the Board shall issue a duplicate or replacement certificate. (1991, c. 670, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 23.)

§ 90-395. Practice of medicine and psychology not authorized.

Nothing in this Article shall authorize the practice of medicine as defined in Article 1 of this Chapter or the practice of psychology as defined in Article 18A of this Chapter. (1991, c. 670.)

§ 90-396. Repealed by Session Laws 1999-186, s. 1.1.

§§ 90-397 through 90-399. Reserved for future codification purposes.

Article 27.

Referral Fees and Payment for Certain Solicitations Prohibited.

§ 90-400. Definition.

As used in this Article, a health care provider is a person holding any license issued under this Chapter. (1991 (Reg. Sess., 1992), c. 858, s. 1.)

§ 90-401. Referral fees and payment for certain solicitations prohibited.

A health care provider shall not financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider's employment by a patient, or as a reward for having made a recommendation resulting in the health care provider's employment by a patient. No health care provider who refers a patient of that health care provider to another health care provider shall receive financial or other compensation from the health care provider

receiving the referral as a payment solely or primarily for the referral. This section shall not be construed to prohibit a health care provider's purchase of advertising which does not entail direct personal contact or telephone contact of a potential patient. (1991 (Reg. Sess., 1992), c. 858, s. 1; 1993 (Reg. Sess., 1994), c. 689, s. 2.)

§ 90-401.1. Direct solicitation prohibited.

It shall be unlawful for a health care provider or the provider's employee or agent to initiate direct personal contact or telephone contact with any injured, diseased, or infirmed person, or with any other person residing in the injured, diseased, or infirmed person's household, for a period of 90 days following the injury or the onset of the disease or infirmity, if the purpose of initiating the contact, in whole or in part, is to attempt to induce or persuade the injured, diseased, or infirmed person to become a patient of the health care provider. This section shall not be construed to prohibit a health care provider's use of posted letters, brochures, or information packages to solicit injured, diseased, or infirmed persons, so long as such use does not entail direct personal contact with the person. (1993 (Reg. Sess., 1994), c. 689, s. 3.)

§ 90-402. Sanctions.

Violation of the provisions of this Article shall be grounds for the offending health care provider's licensing board to suspend or revoke the health care provider's license, to refuse to renew the health care provider's license, or to take any other disciplinary action authorized by law. (1991 (Reg. Sess., 1992), c. 858, s. 1; 1993 (Reg. Sess., 1994), c. 689, s. 4.)

§ 90-403. Reserved for future codification purposes.

§ 90-404. Reserved for future codification purposes.

Article 28.

Self-Referrals by Health Care Providers.

§ 90-405. Definitions.

As used in this Article, the term

(1) "Board" means any of the following boards created in Chapter 90 of this Article relating respectively to the professions of medicine, dentistry, optometry, osteopathy, chiropractic, nursing, podiatry, psychology, physical therapy, occupational therapy, speech and language pathology and audiology.

(2) "Department" means the Department of Health and Human Services of the State of North Carolina.

(3) "Designated health care services" means, and includes for purposes of this section, any health care procedure and service provided by a health care provider that is covered by or insured under any health benefit plan regulated by Chapter 58 of the General Statutes, any employee welfare benefit plan regulated by the Employee Retirement Income Security Act of 1974, any federal or State employee insurance program, Medicare or Medicaid.

(4) "Entity" means any individual, partnership, firm, corporation, or other business that provides health care services.

(5) "Fair market value" means the value of the rental property for commercial purposes not adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business.

(6) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

a. In which each health care provider who is a member of the group provides services including consultation, diagnosis, or treatment, through the joint use of shared facilities, equipment, and personnel;

b. For which substantially all the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

c. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(7) "Health care provider" is any person who, pursuant to Chapter 90 of the General Statutes, is licensed, or is otherwise registered or certified to engage in the practice of any of the following: medicine, dentistry, optometry, osteopathy, chiropractic, nursing, podiatry, psychology, physical therapy, occupational therapy or speech and language pathology and audiology.

(8) "Immediate family member" means a health care provider's spouse or dependent minor child.

(9) "Investment interest" means an equity or debt security issued by an entity, or a lease or retained interest in real property held by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, leases, options or contracts related to real property or other equity interests or debt instruments. "Investment interest" and legal or beneficial interest shall not include any interest in:

a. Bonds or other debt instruments issued pursuant to the provisions of Chapter 159 of the General Statutes;

b. A written lease of real property entered into on or before January 1, 1990, for a term of five years or more or a written lease of real property for a term of one year or more, which fully describes the leased premises, the terms and conditions for the lease thereof, with the aggregate rental charge, set in advance, consistent with fair market value in arms-length transactions and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties to the lease;

c. An employee's stock purchase, savings, pension, profit sharing or other similar benefit plan in which the investor does not direct investments;

d. Investment interests (including shares of stock, bonds, debentures, notes or other debt instruments) in any corporation that is listed for trading on the New York Stock Exchange, the American Stock Exchange, or is a national market system security traded under automated interdealer quotation system operated by the National Association of Securities

Dealers and has, at the end of the corporation's most recent fiscal year, total assets exceeding fifty million dollars ($50,000,000), provided that one of the following requirements is satisfied:

1. The investment interests are purchased in a nonissuer transaction as permitted by G.S. 78A-17(3); or
2. The investment interests are issued in a transaction terminating a health care provider's legal, beneficial, or investment interest in a privately held entity which such health care provider acquired before April 1, 1993, provided that such transaction is completed before July 1, 1995, and the health care provider liquidates the investment interests by July 1, 1997.

(10) "Investor" means an individual or entity owning a legal or beneficial ownership or investment interest, directly or indirectly (including without limitation, through an immediate family member, trust, affiliate, or another entity related to the investor).

(11) "Referral" means any referral of a patient for designated health care services, including, without limitation:

a. The forwarding of a patient by one health care provider to another health care provider or to an entity that provides any designated health care service; or
b. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health care services.

"Referral" does not mean any designated health care service or any referral to an entity for a designated health care service which is provided by, or provided under the personal supervision of, a sole health care provider or by a member of a group practice to the patients of that health care provider or group practice. (1993, c. 482, s. 1; 1995, c. 509, s. 46; 1997-443, s. 11A.118(a).)

§ 90-406. Self-referrals prohibited.

(a) A health care provider shall not make any referral of any patient to any entity in which the health care provider or group practice or any member of the group practice is an investor.

(b) No invoice or claim for payment shall be presented by any entity or health care provider to any individual, third-party payer, or other entity for designated health care services furnished pursuant to a referral prohibited under this Article.

(c) If any entity collects any amount pursuant to an invoice or claim presented in violation of this section, the entity shall refund such amount to the payor or individual, whichever is applicable, within 10 working days of receipt.

(d) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement that the health care provider or entity knows or should know is intended to induce referrals of patients for designated health care services to a particular entity and that, if the health care provider directly made referrals to such entity, would constitute a prohibited referral under this section, shall be in violation of this section. (1993, c. 482, s. 1.)

§ 90-407. Disciplinary action and penalties.

(a) Any violation of this Article shall constitute grounds for disciplinary action to be taken by the applicable Board pursuant to Chapter 90 of the General Statutes.

(b) Any health care provider who refers a patient in violation of G.S. 90-406(a), or any health care provider or entity who

(1) Presents or causes to be presented a bill or claim for service that the health care provider or entity knows or should know is prohibited by G.S. 90-406(b), or

(2) Fails to make a refund as required by G.S. 90-406(c),

shall be subject to a civil penalty of not more than twenty thousand dollars ($20,000) for each such bill or claim, to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina.

(c) Any health care provider or other entity that enters into an arrangement or scheme, such as cross-referral arrangement, that the health care provider or entity knows or should know is intended to induce referrals or patients for designated health care services to a particular entity and that, if the health care provider directly made referrals to such entity, would violate G.S. 90-406(d), shall be subject to a civil penalty of not more than seventy-five thousand dollars ($75,000) for each such circumvention arrangement or scheme, to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina. No civil penalty shall be assessed hereunder for any arrangement fully disclosed to the Attorney General in writing which receives a favorable determination by the Attorney General that, in his opinion, such arrangement is not a violation of G.S. 90-406, until a contrary determination is made in a court of law.

(d) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1993, c. 482, s. 1; 1998-215, s. 74.)

§ 90-408. Exceptions for underserved areas.

(a) The provisions of G.S. 90-406 shall not apply to the referral by any health care provider to any entity in which such health care provider has a legal, beneficial, or investment interest upon receipt by such health care provider of a determination by the Department of Health and Human Services that:

(1) There is a demonstrated need in the county where the entity is located or is proposed to be located; and

(2) Alternative financing is not available on reasonable terms from other sources to develop such entity.

(b) The Department shall promulgate regulations governing the form and content of the applications to be filed by health care providers making application for exemption from G.S. 90-406, the business conduct of any such entity and the fair and reasonable access by all health care providers in such county to the entity. Any determination made by the Department under this section shall be applicable for a period of five years from the date of issuance.

(c) In all cases in which a health care provider refers a patient to a health care facility outside that health care provider's practice in which the health care provider has a legal, beneficial, or investment interest, the health care provider shall disclose to the patient the health care provider's investment interest. Patients shall be given a list of effective alternative facilities if any such facilities become reasonably available, informed that they have the option to use one of the alternative facilities, and assured that they will not be treated differently by the health care provider if they do not choose the health care provider's facility. (1993, c. 482, s. 1; 1997-443, s. 11A.118(a).)

§ 90-409. Reserved for future codification purposes.

Article 29.

Medical Records.

§ 90-410. Definitions.

As used in this Article:

(1) "Health care provider" means any person who is licensed or certified to practice a health profession or occupation under this Chapter or Chapters 90B or 90C of the General Statutes, a health care facility licensed under Chapters 131E or 122C of the General Statutes, and a representative or agent of a health care provider.

(2) "Medical records" means personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, excluding X rays and fetal monitor records. (1993, c. 529, s. 4.3.)

§ 90-411. Record copy fee.

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee for each request shall be seventy-five cents (75¢) per page for the first 25 pages, fifty cents (50¢) per page for pages 26 through 100, and twenty-five cents (25¢) for each page in excess of 100 pages, provided that the health care provider may impose a minimum fee of up to ten dollars ($10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. Charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. 97-26.1. This section shall not apply to Department of Health and Human Services Disability Determination Services requests for copies of medical records made on behalf of an applicant for Social Security or Supplemental Security Income disability. (1993, c. 529, s. 4.3; 1993 (Reg. Sess., 1994), c. 679, s. 5.5; 1995 (Reg. Sess., 1996), c. 742, s. 36; 1997-443, ss. 11.3, 11A.118(b); 2019-191, s. 42.)

§ 90-412. Electronic medical records.

(a) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may create and maintain medical records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the electronic medical record. A health care provider, facility, or governmental unit shall maintain electronic medical records in a legible and retrievable form, including adequate data backup.

(b) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may permit authorized individuals to authenticate orders and other medical record entries by

written signature, or by electronic or digital signature in lieu of a signature in ink. Medical record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authentication" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

(c) The legal rights and responsibilities of patients, health care providers, facilities, and governmental units shall apply to records created or maintained in electronic form to the same extent as those rights and responsibilities apply to medical records embodied in paper or other media. This subsection applies with respect to the security, confidentiality, accuracy, integrity, access to, and disclosure of medical records. (1999-247, s. 2; 2007-248, s. 3.)

§ 90-413: Reserved for future codification purposes.

Article 29A.

North Carolina Health Information Exchange Act.

§ 90-413.1: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.2: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.3: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.3A: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.4: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.5: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.6: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.7: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-413.8: Repealed by Session Laws 2015-241, s. 12A.5(f), effective April 18, 2016.

§ 90-414: Reserved for future codification purposes.

§ 90-415: Reserved for future codification purposes.

§ 90-416: Reserved for future codification purposes.

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§ 90-448: Reserved for future codification purposes.

§ 90-449: Reserved for future codification purposes.

Article 29B.

Statewide Health Information Exchange Act.

§ 90-414.1. Title.

This act shall be known and may be cited as the "Statewide Health Information Exchange Act." (2015-241, s. 12A.5(d).)

§ 90-414.2. Purpose.

This Article is intended to improve the quality of health care delivery within this State by facilitating and regulating the use of a voluntary, statewide health information exchange network for the secure electronic transmission of individually identifiable health information among health care providers, health plans, and health care clearinghouses in a manner that is consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and Security Rule, 45 C.F.R. §§ 160, 164. (2015-241, s. 12A.5(d).)

§ 90-414.3. Definitions.

The following definitions apply in this Article:

(1) Business associate. – As defined in 45 C.F.R. § 160.103.

(2) Business associate contract. – The documentation required by 45 C.F.R. § 164.502(e)(2) that meets the applicable requirements of 45 C.F.R. § 164.504(e).

(3) Covered entity. – Any entity described in 45 C.F.R. § 160.103 or any other facility or practitioner licensed by the State to provide health care services.

(4) Department. – North Carolina Department of Health and Human Services.

(5) Disclose or disclosure. – The release, transfer, provision of access to, or divulging in any other manner an individual's protected health information through the HIE Network.

(6) Repealed by Session Laws 2017-57, s. 11A.5(f), effective July 1, 2017.

(7) GDAC. – The North Carolina Government Data Analytics Center.

(8) HIE Network. – The voluntary, statewide health information exchange network overseen and administered by the Authority.

(9) HIPAA. – Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, and any federal regulations adopted to implement these sections, as amended.

(10) Individual. – As defined in 45 C.F.R. § 160.103.

(11) North Carolina Health Information Exchange Advisory Board or Advisory Board. – The Advisory Board established under G.S. 90-414.8.

(12) North Carolina Health Information Exchange Authority or Authority. – The entity established pursuant to G.S. 90-414.7.

(13) Opt out. – An individual's affirmative decision communicated to the Authority in writing to disallow his or her protected health information from being disclosed by the Authority to covered entities or other persons or entities through the HIE Network.

(14) Protected health information. – As defined in 45 C.F.R. § 160.103.

(15) Public health purposes. – The public health activities and purposes described in 45 C.F.R. § 164.512(b).

(16) Qualified organization. – An entity with which the Authority has contracted for the sole purpose of facilitating the exchange of data with or through the HIE Network.

(17) Research purposes. – Research purposes referenced in and subject to the standards described in 45 C.F.R. § 164.512(i).

(18) State CIO. – The State Chief Information Officer. (2015-241, s. 12A.5(d); 2015-264, s. 86.5(b); 2017-57, ss. 11A.5(c), (f).)

§ 90-414.4. Required participation in HIE Network for some providers.

(a) Findings. – The General Assembly makes the following findings:

(1) That controlling escalating health care costs of the Medicaid program and other State-funded health care services is of significant importance to the State, its taxpayers, its Medicaid recipients, and other recipients of State-funded health care services.

(2) That the State and covered entities in North Carolina need timely access to certain demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in order to assess performance, improve health care outcomes, pinpoint medical expense trends, identify beneficiary health risks, and evaluate how the State is spending money on Medicaid and other State-funded health care services.

(3) That making demographic and clinical information available to the State and covered entities in North Carolina by secure electronic means as set forth in subsection (b) of this section will improve care coordination within and across health systems, increase care quality for such beneficiaries, enable more effective population health management, reduce duplication of medical services, augment syndromic surveillance, allow more accurate measurement of care services and outcomes, increase strategic knowledge about the health of the population, and facilitate health care cost containment.

(a1) Mandatory Connection to HIE Network. – Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2, the following providers and entities shall be connected to the HIE Network and begin submitting data through the HIE Network pertaining to services rendered to Medicaid beneficiaries and to other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in accordance with the following time line:

(1) The following providers of Medicaid services licensed to operate in the State that have an electronic health record system shall begin submitting, at a minimum, demographic and clinical data by June 1, 2018:
   a. Hospitals as defined in G.S. 131E-176(13).
   b. Physicians licensed to practice under Article 1 of Chapter 90 of the General Statutes, except for licensed physicians whose primary area of practice is psychiatry.
   c. Physician assistants as defined in 21 NCAC 32S.0201.
   d. Nurse practitioners as defined in 21 NCAC 36.0801.

(2) Except as provided in subdivisions (3), (4), and (5) of this subsection, all other providers of Medicaid and State-funded health care services shall begin submitting demographic and clinical data by June 1, 2020.

(3) The following entities shall submit encounter and claims data, as appropriate, in accordance with the following time line:
   a. Prepaid Health Plans, as defined in G.S. 108D-1, by the commencement date of a capitated contract with the Division of Health Benefits for the delivery of Medicaid and NC Health Choice services as specified in Article 4 of Chapter 108D of the General Statutes.
   b. Local management entities/managed care organizations, as defined in G.S. 122C-3, by June 1, 2020.

(4) The following entities shall begin submitting demographic and clinical data by June 1, 2021:
   a. Ambulatory surgical centers as defined in G.S. 131E-146.
   b. Dentists licensed under Article 2 of Chapter 90 of the General Statutes.
   c. Licensed physicians whose primary area of practice is psychiatry.
   d. The State Laboratory of Public Health operated by the Department of Health and Human Services.

(5) The following entities shall begin submitting claims data by June 1, 2021:
   a. Pharmacies registered with the North Carolina Board of Pharmacy under Article 4A of Chapter 90 of the General Statutes.
   b. State health care facilities operated under the jurisdiction of the Secretary of the Department of Health and Human Services, including State psychiatric hospitals, developmental centers, alcohol and drug treatment centers, neuro-medical treatment centers, and residential programs for children such as the Wright School and the Whitaker Psychiatric Residential Treatment Facility.

(a2) Extensions of Time for Establishing Connection to the HIE Network. – The Department of Information Technology, in consultation with the Department of Health and Human Services and the State Health Plan for Teachers and State Employees, may establish a process to grant limited extensions of the time for providers and entities to

connect to the HIE Network and begin submitting data as required by this section upon the request of a provider or entity that demonstrates an ongoing good-faith effort to take necessary steps to establish such connection and begin data submission as required by this section. The process for granting an extension of time must include a presentation by the provider or entity to the Department of Information Technology, the Department of Health and Human Services, and the State Health Plan for Teachers and State Employees on the expected time line for connecting to the HIE Network and commencing data submission as required by this section. Neither the Department of Information Technology, the Department of Health and Human Services, nor the State Health Plan for Teachers and State Employees shall grant an extension of time (i) to any provider or entity that fails to provide this information to both Departments, and the State Health Plan for Teachers and State Employees, (ii) that would result in the provider or entity connecting to the HIE Network and commencing data submission as required by this section later than June 1, 2020, or (iii) that would result in any provider or entity specified in subdivisions (4) and (5) of subsection (a1) of this section connecting to the HIE Network and commencing data submission as required by this section later than June 1, 2022. The Department of Information Technology shall consult with the Department of Health and Human Services and the State Health Plan for Teachers and State Employees to review and decide upon a request for an extension of time under this section within 30 days after receiving a request for an extension.

(a3) Exemptions from Connecting to the HIE Network. – The Secretary of Health and Human Services, or the Secretary's designee, shall have the authority to grant exemptions to classes of providers of Medicaid and other State-funded health care services for whom acquiring and implementing an electronic health record system and connecting to the HIE Network as required by this section would constitute an undue hardship. The Secretary, or the Secretary's designee, shall promptly notify the Department of Information Technology of classes of providers granted hardship exemptions under this subsection. Neither the Secretary nor the Secretary's designee shall grant any hardship exemption that would result in any class of provider connecting to the HIE Network and submitting data later than December 31, 2022.

(b) Mandatory Submission of Demographic and Clinical Data. – Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2 and, except as otherwise provided in subsection (c) of this section, as a condition of receiving State funds, including Medicaid funds, the following entities shall submit at least twice daily, through the HIE network, demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds, solely for the purposes set forth in subsection (a) of this section:

(1) Each hospital, as defined in G.S. 131E-176(13) that has an electronic health record system.
(2) Each Medicaid provider.
(3) Each provider that receives State funds for the provision of health services.

(4) Each local management entity/managed care organization, as defined in G.S. 122C-3.

(c) Exemption for Certain Records. – Providers with patient records that are subject to the disclosure restrictions of 42 C.F.R. § 2 are exempt from the requirements of subsection (b) of this section but only with respect to the patient records subject to these disclosure restrictions. Providers shall comply with the requirements of subsection (b) of this section with respect to all other patient records. A pharmacy shall only be required to submit claims data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds.

(c1) Exemption from Twice Daily Submission. – A pharmacy shall only be required to submit claims data once daily through the HIE Network using pharmacy industry standardized formats.

(d) Method of Data Submissions. – The data submissions required under this section shall be by connection to the HIE Network periodic asynchronous secure structured file transfer or any other secure electronic means commonly used in the industry and consistent with document exchange and data submission standards established by the Office of the National Coordinator for Information Technology within the U.S. Department of Health and Human Services.

(e) Voluntary Connection for Certain Providers. – Notwithstanding the mandatory connection and data submission requirements in subsections (a1) and (b) of this section, the following providers of Medicaid services or other State-funded health care services are not required to connect to the HIE Network or submit data but may connect to the HIE Network and submit data voluntarily:

(1) Community-based long-term services and supports providers, including personal care services, private duty nursing, home health, and hospice care providers.
(2) Intellectual and developmental disability services and supports providers, such as day supports and supported living providers.
(3) Community Alternatives Program waiver services (including CAP/DA, CAP/C, and Innovations) providers.
(4) Eye and vision services providers.
(5) Speech, language, and hearing services providers.
(6) Occupational and physical therapy providers.
(7) Durable medical equipment providers.
(8) Nonemergency medical transportation service providers.
(9) Ambulance (emergency medical transportation service) providers.
(10) Local education agencies and school-based health providers.

(f) Confidentiality of Data. – All data submitted to or through the HIE Network containing protected health information, personally identifying information, or a combination of these, that are in the possession of the Department of Information Technology or any other agency of the State are confidential and shall not be defined as public records under G.S. 132-1. This subsection shall not be construed to prohibit the

disclosure of any such data as otherwise permitted under federal law. (2015-241, s. 12A.5(d); 2017-57, s. 11A.5(b); 2018-41, s. 9(a); 2019-23, s. 1; 2019-81, s. 2.)

§ 90-414.5. State agency and legislative access to HIE Network data.

(a) The Authority shall provide the Department and the State Health Plan for Teachers and State Employees secure, real-time access to data and information disclosed through the HIE Network, solely for the purposes set forth in G.S. 90-414.4(a) and in G.S. 90-414.2. The Authority shall limit access granted to the State Health Plan for Teachers and State Employees pursuant to this section to data and information disclosed through the HIE Network that pertains to services (i) rendered to teachers and State employees and (ii) paid for by the State Health Plan.

(b) At the written request of the Director of the Fiscal Research, Legislative Drafting, Legislative Analysis, or Program Evaluation Division of the General Assembly for an aggregate analysis of the data and information disclosed through the HIE Network, the Authority shall provide the professional staff of these Divisions with the aggregated analysis responsive to the Director's request. Prior to providing the Director or General Assembly's staff with any aggregate data or information submitted through the HIE Network or with any analysis of this aggregate data or information, the Authority shall redact any personal identifying information in a manner consistent with the standards specified for de-identification of health information under the HIPAA Privacy Rule, 45 C.F.R. § 164.514, as amended. (2015-241, s. 12A.5(d); 2017-102, s. 39(a); 2018-142, s. 4(b).)

§ 90-414.6. State ownership of HIE Network data.

Any data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries submitted through and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article shall be and will remain the sole property of the State. Any data or product derived from the aggregated, de-identified data submitted to and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article, shall be and will remain the sole property of the State. The Authority shall not allow data it receives pursuant to G.S. 90-414.4 or any other provision of this Article to be used or disclosed by or to any person or entity for commercial purposes or for any other purpose other than those set forth in G.S. 90-414.4(a) or G.S. 90-414.2. (2015-241, s. 12A.5(d).)

§ 90-414.7. North Carolina Health Information Exchange Authority.

(a) Creation. – There is hereby established the North Carolina Health Information Exchange Authority to oversee and administer the HIE Network in accordance with this Article. The Authority shall be located within the Department of Information Technology and shall be under the supervision, direction, and control of the State CIO. The State CIO shall employ an Authority Director and may delegate to the Authority Director all powers and duties associated with the daily operation of the Authority, its staff, and the performance of the powers and duties set forth in subsection (b) of this section. In making

this delegation, however, the State CIO maintains the responsibility for the performance of these powers and duties.

(b) Powers and Duties. – The Authority has the following powers and duties:

(1) Oversee and administer the HIE Network in a manner that ensures all of the following:

a. Compliance with this Article.

b. Compliance with HIPAA and any rules adopted under HIPAA, including the Privacy Rule and Security Rule.

c. Compliance with the terms of any participation agreement, business associate agreement, or other agreement the Authority or qualified organization or other person or entity enters into with a covered entity participating in submission of data through or accessing the HIE Network.

d. Notice to the patient by the healthcare provider or other person or entity about the HIE Network, including information and education about the right of individuals on a continuing basis to opt out or rescind a decision to opt out.

e. Opportunity for all individuals whose data has been submitted to the HIE Network to exercise on a continuing basis the right to opt out or rescind a decision to opt out.

f. Nondiscriminatory treatment by covered entities of individuals who exercise the right to opt out.

g. Facilitation of HIE Network interoperability with electronic health record systems of all covered entities listed in G.S. 90-414.4(b).

h. Minimization of the amount of data required to be submitted under G.S. 90-414.4(b) and any use or disclosure of such data to what is determined by the Authority to be required in order to advance the purposes set forth in G.S. 90-414.2 and G.S. 90-414.4(a).

(2) In consultation with the Advisory Board, set guiding principles for the development, implementation, and operation of the HIE Network.

(3) Employ staff necessary to carry out the provisions of this Article and determine the compensation, duties, and other terms and conditions of employment of hired staff.

(4) Enter into contracts pertaining to the oversight and administration of the HIE Network, including contracts of a consulting or advisory nature. G.S. 143-64.20 does not apply to this subdivision.

(5) Establish fees for participation in the HIE Network and report the established fees to the General Assembly, with an explanation of the fee determination process.

(6) Following consultation with the Advisory Board, develop, approve, and enter into, directly or through qualified organizations acting under the authority of the Authority, written participation agreements with persons or entities that participate in or are granted access or user rights to the HIE Network. The participation agreements shall set forth terms and conditions governing participation in, access to, or use of the HIE Network not less than those set forth in agreements already governing covered entities' participation in the

federal eHealth Exchange. The agreement shall also require compliance with policies developed by the Authority pursuant to this Article or pursuant to applicable laws of the state of residence for entities located outside of North Carolina.

(7) Receive, access, add, and remove data submitted through and stored by the HIE Network in accordance with this Article.

(8) Following consultation with the Advisory Board, enter into, directly or through qualified organizations acting under the authority of the Authority, a HIPAA compliant business associate agreement with each of the persons or entities participating in or granted access or user rights to the HIE Network.

(9) Following consultation with the Advisory Board, grant user rights to the HIE Network to business associates of covered entities participating in the HIE Network (i) at the request of the covered entities and (ii) at the discretion of and subject to contractual, policy, and other requirements of the Authority upon consideration of and consistent with the business associates' legitimate need for utilizing the HIE Network and privacy and security concerns.

(10) Facilitate and promote use of the HIE Network by covered entities.

(11) Actively monitor compliance with this Article by the Department, covered entities, and any other persons or entities participating in or granted access or user rights to the HIE Network or any data submitted through or stored by the HIE Network.

(12) Collaborate with the State CIO to ensure that resources available through the GDAC are properly leveraged, assigned, or deployed to support the work of the Authority. The duty to collaborate under this subdivision includes collaboration on data hosting and development, implementation, operation, and maintenance of the HIE Network.

(13) Initiate or direct expansion of existing public-private partnerships within the GDAC as necessary to meet the requirements, duties, and obligations of the Authority. Notwithstanding any other provision of law and subject to the availability of funds, the State CIO, at the request of the Authority, shall assist and facilitate expansion of existing contracts related to the HIE Network, provided that such request is made in writing by the Authority to the State CIO with reference to specific requirements set forth in this Article.

(14) In consultation with the Advisory Board, develop a strategic plan for achieving statewide participation in the HIE Network by all hospitals and health care providers licensed in this State.

(15) In consultation with the Advisory Board, define the following with respect to operation of the HIE Network:

a. Business policy.

b. Protocols for data integrity, data sharing, data security, HIPAA compliance, and business intelligence as defined in G.S. 143B-1381. To the extent permitted by HIPAA, protocols for data sharing shall allow for the disclosure of data for academic research.

c. Qualitative and quantitative performance measures.

d. An operational budget and assumptions.

(16) Annually report to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Information Technology on the following:
  a. The operation of the HIE Network.
  b. Any efforts or progress in expanding participation in the HIE Network.
  c. Health care trends based on information disclosed through the HIE Network.
(17) Ensure that the HIE Network interfaces with the federal level HIE, the eHealth Exchange. (2015-241, s. 12A.5(d); 2017-102, s. 39(b).)

§ 90-414.8. North Carolina Health Information Exchange Advisory Board.

(a) Creation and Membership. – There is hereby established the North Carolina Health Information Exchange Advisory Board within the Department of Information Technology. The Advisory Board shall consist of the following 12 members:
(1) The following four members appointed by the President Pro Tempore of the Senate:
  a. A licensed physician in good standing and actively practicing in this State.
  b. A patient representative.
  c. An individual with technical expertise in health data analytics.
  d. A representative of a behavioral health provider.
(2) The following four members appointed by the Speaker of the House of Representatives:
  a. A representative of a critical access hospital.
  b. A representative of a federally qualified health center.
  c. An individual with technical expertise in health information technology.
  d. A representative of a health system or integrated delivery network.
(3) The following three ex officio, nonvoting members:
  a. The State Chief Information Officer or a designee.
  b. The Director of GDAC or a designee.
  c. The Secretary of Health and Human Services, or a designee.
(4) The following ex officio, voting member:
  a. The Executive Administrator of the State Health Plan for Teachers and State Employees, or a designee.

(b) Chairperson. – A chairperson shall be elected from among the members. The chairperson shall organize and direct the work of the Advisory Board.

(c) Administrative Support. – The Department of Information Technology shall provide necessary clerical and administrative support to the Advisory Board.

(d) Meetings. – The Advisory Board shall meet at least quarterly and at the call of the chairperson. A majority of the Advisory Board constitutes a quorum for the transaction of business.

(e) Terms. – In order to stagger terms, in making initial appointments, the President Pro Tempore of the Senate shall designate two of the members appointed under subdivision (1) of subsection (a) of this section to serve for a one-year period from the date of appointment and, the Speaker of the House of Representatives shall designate two members

appointed under subdivision (2) of subsection (a) of this section to serve for a one-year period from the date of appointment. The remaining appointed voting members shall serve two-year periods. Future appointees who are voting members shall serve terms of two years, with staggered terms based on this subsection. Appointed voting members may serve up to two consecutive terms, not including the abbreviated two-year terms that establish staggered terms or terms of less than two years that result from the filling of a vacancy. Ex officio, nonvoting and voting members are not subject to these term limits. A vacancy other than by expiration of a term shall be filled by the appointing authority.

(f) Expenses. – Members of the Advisory Board who are State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Advisory Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Advisory Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(g) Duties. – The Advisory Board shall provide consultation to the Authority with respect to the advancement, administration, and operation of the HIE Network and on matters pertaining to health information technology and exchange, generally. In carrying out its responsibilities, the Advisory Board may form committees of the Advisory Board to examine particular issues related to the advancement, administration, or operation of the HIE Network. (2015-241, s. 12A.5(d); 2018-84, s. 10.)

§ 90-414.9. Participation by covered entities.

(a) Each covered entity that participates in the HIE Network shall enter into a HIPAA compliant business associate agreement described in G.S. 90-414.7(b)(8) and a written participation agreement described in G.S. 90-414.7(b)(6) with the Authority or qualified organization prior to submitting data through or in the HIE Network.

(b) Each covered entity that participates in the HIE Network may authorize its business associates on behalf of the covered entity to submit data through, or access data stored in, the HIE Network in accordance with this Article and at the discretion of the Authority, as provided in G.S. 90-414.7(b)(8).

(c) Notwithstanding any federal or State law or regulation to the contrary, each covered entity that participates in the HIE Network may disclose an individual's protected health information through the HIE Network to other covered entities for any purpose permitted by HIPAA. (2015-241, s. 12A.5(d); 2015-264, s. 86.5(c); 2017-57, s. 11A.5(d).)

§ 90-414.10. Continuing right to opt out; effect of opt out.

(a) Each individual has the right on a continuing basis to opt out or rescind a decision to opt out.

(b) The Authority or its designee shall enforce an individual's decision to opt out or rescind an opt out prospectively from the date the Authority or its designee receives written notice of the individual's decision to opt out or rescind an opt out in the manner prescribed

by the Authority. An individual's decision to opt out or rescind an opt out does not affect any disclosures made by the Authority or covered entities through the HIE Network prior to receipt by the Authority or its designee of the individual's written notice to opt out or rescind an opt out.

(c) A covered entity shall not deny treatment, coverage, or benefits to an individual because of the individual's decision to opt out. However, nothing in this Article is intended to restrict a health care provider from otherwise appropriately terminating a relationship with an individual in accordance with applicable law and professional ethical standards.

(d) Except as otherwise permitted in G.S. 90-414.11(a)(3), or as required by law, the protected health information of an individual who has exercised the right to opt out may not be made accessible or disclosed to covered entities or any other person or entity through the HIE Network for any purpose.

(e) Repealed by Session Laws 2017-57, s. 11A.5(e), effective July 1, 2017. (2015-241, s. 12A.5(d); 2017-57, s. 11A.5(e); 2019-23, s. 2.)

§ 90-414.11. Construction and applicability.

(a) Nothing in this Article shall be construed to do any of the following:

(1) Impair any rights conferred upon an individual under HIPAA, including all of the following rights related to an individual's protected health information:

a. The right to receive a notice of privacy practices.

b. The right to request restriction of use and disclosure.

c. The right of access to inspect and obtain copies.

d. The right to request amendment.

e. The right to request confidential forms of communication.

f. The right to receive an accounting of disclosures.

(2) Authorize the disclosure of protected health information through the HIE Network to the extent that the disclosure is restricted by federal laws or regulations, including the federal drug and alcohol confidentiality regulations set forth in 42 C.F.R. Part 2.

(3) Restrict the disclosure of protected health information through the HIE Network for public health purposes or research purposes, so long as disclosure is permitted by both HIPAA and State law.

(4) Prohibit the Authority or any covered entity participating in the HIE Network from maintaining in the Authority's or qualified organization's computer system a copy of the protected health information of an individual who has exercised the right to opt out, as long as the Authority or the qualified organization does not access, use, or disclose the individual's protected health information for any purpose other than for necessary system maintenance or as required by federal or State law.

(b) This Article applies only to disclosures of protected health information made through the HIE Network, including disclosures made within qualified organizations. It does not apply to the use or disclosure of protected health information in any context outside of the HIE Network, including the redisclosure of protected health information obtained through the HIE Network. (2015-241, s. 12A.5(d).)

§ 90-414.12. Penalties and remedies; immunity for covered entities and business associates for good faith participation.

(a) Except as provided in subsection (b) of this section, a covered entity that discloses protected health information in violation of this Article is subject to the following:

(1) Any civil penalty or criminal penalty, or both, that may be imposed on the covered entity pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act, P.L. 111-5, Div. A, Title XIII, section 13001, as amended, and any regulations adopted under the HITECH Act.

(2) Any civil remedy under the HITECH Act or any regulations adopted under the HITECH Act that is available to the Attorney General or to an individual who has been harmed by a violation of this Article, including damages, penalties, attorneys' fees, and costs.

(3) Disciplinary action by the respective licensing board or regulatory agency with jurisdiction over the covered entity.

(4) Any penalty authorized under Article 2A of Chapter 75 of the General Statutes if the violation of this Article is also a violation of Article 2A of Chapter 75 of the General Statutes.

(5) Any other civil or administrative remedy available to a plaintiff by State or federal law or equity.

(b) To the extent permitted under or consistent with federal law, a covered entity or its business associate that in good faith submits data through, accesses, uses, discloses, or relies upon data submitted through the HIE Network shall not be subject to criminal prosecution or civil liability for damages caused by such submission, access, use, disclosure, or reliance. (2015-241, s. 12A.5(d).)

Article 30.

Practice of Acupuncture.

§ 90-450. Purpose.

It is the purpose of this Article to promote the health, safety, and welfare of the people of North Carolina by establishing an orderly system of acupuncture licensing and to provide a valid, effective means of establishing licensing requirements. (1993, c. 303, s. 1.)

§ 90-451. Definitions.

The following definitions apply in this Article:

(1) Acupuncture. – A form of health care developed from traditional and modern Chinese medical concepts that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

(2) Board. – The Acupuncture Licensing Board.

(3) Practice of acupuncture or practice acupuncture. – The insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon acupuncture diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include massage, mechanical,

thermal, electrical, and electromagnetic treatment and the recommendation of herbs, dietary guidelines, and therapeutic exercise. (1993, c. 303, s. 1.)

§ 90-452. Practice of acupuncture without license prohibited.

(a) Unlawful Acts. – It is unlawful to engage in the practice of acupuncture without a license issued pursuant to this Article. It is unlawful to advertise or otherwise represent oneself as qualified or authorized to engage in the practice of acupuncture without having the license required by this Article. A violation of this subsection is a Class 1 misdemeanor.

(b) Exemptions. – This section shall not apply to any of the following persons:

(1) A physician licensed under Article 1 of this Chapter.

(2) A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the Board.

(3) A chiropractor licensed under Article 8 of this Chapter. (1993, c. 303, s. 1; 1994, Ex. Sess., c. 14, s. 48.)

§ 90-453. Acupuncture Licensing Board.

(a) Membership. – The Acupuncture Licensing Board shall consist of nine members, three appointed by the Governor and six by the General Assembly. The six members appointed by the General Assembly shall be licensed to practice acupuncture in this State and shall not be licensed physicians under Article 1 of this Chapter. The persons initially appointed to those positions by the General Assembly need not be licensed at the time of selection but shall have met the qualifications under G.S. 90-455(a)(4) and (5). Of the Governor's three appointments, one shall be a layperson who is not employed in a health care profession; one shall be a physician licensed under Article 1 of this Chapter who has successfully completed 200 hours of Category I American Medical Association credit in medical acupuncture training as recommended by the American Academy of Medical Acupuncture; and one shall be licensed to practice acupuncture in this State. Of the members to be appointed by the General Assembly, three shall be appointed upon the recommendation of the Speaker of the House of Representatives, and three shall be appointed upon the recommendation of the President Pro Tempore of the Senate. The members appointed by the General Assembly must be appointed in accordance with G.S. 120-121.

Members serve at the pleasure of the appointing authority. Vacancies shall be filled by the original appointing authority and the term shall be for the balance of the unexpired term. A vacancy by a member appointed by the General Assembly must be filled in accordance with G.S. 120-122.

(b) Terms. – The members appointed initially by the Governor shall each serve a term ending on June 30, 1994. Of the General Assembly's initial appointments upon the recommendation of the Speaker of the House of Representatives, one shall serve a term ending June 30, 1995, and the other shall serve a term ending June 30, 1996. Of the General Assembly's initial appointments upon the recommendation of the President Pro Tempore of the Senate, one shall serve a term ending June 30, 1995, and the other shall serve a term ending June 30, 1996. After the initial appointments, all members shall be appointed for terms of three years beginning on July 1. No person may serve more than two consecutive full terms as a member of the Board.

(c) Meetings. – The Board shall meet at least once each year within 45 days after the appointment of the new members. At the Board's first meeting each year after the new members have been appointed, the members shall elect a chair of the Board and a secretary for the year. No person shall chair the Board for more than five consecutive years. The Board shall meet at other

times as needed to perform its duties. A majority of the Board shall constitute a quorum for the transaction of business.

(d) Compensation. – Members of the Board are entitled to compensation and to reimbursement for travel and subsistence as provided in G.S. 93B-5. (1993, c. 303, s. 1; 2007-472, s. 1.)

§ 90-454. Powers and duties of Board.

The Board may:

(1) Deny, issue, suspend, and revoke licenses in accordance with rules adopted by the Board, and may collect fees, investigate violations of this Article, and otherwise administer the provisions of this Article.

(2) Sponsor or authorize other entities to offer continuing education programs, and approve continuing education requirements for license renewal.

(3) Establish requirements for, collect fees from, and approve schools of acupuncture in this State. The requirements shall be at least as stringent as the core curricula standards of the Council of Colleges of Acupuncture and Oriental Medicine.

(4) Sue to enjoin violations of G.S. 90-452. The court may issue an injunction even though no person has yet been injured as a result of the unauthorized practice.

(5) Adopt and use a seal to authenticate official documents of the Board.

(6) Employ and fix the compensation of personnel and professional advisors, including legal counsel, as may be needed to carry out its functions, and purchase, lease, rent, sell, or otherwise dispose of personal and real property for the operations of the Board.

(7) Expend funds as necessary to carry out the provisions of this Article from revenues and interest generated by fees collected under this Article.

(8) Adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

(9) Establish practice parameters to become effective July 1, 1995. The practice parameters shall be applicable to general and specialty areas of practice. The Board shall review the parameters on a regular basis and shall require licensees to identify parameters being utilized, the plan of care, and treatment modalities utilized in accordance with the plan of care. (1993, c. 303, s. 1; 2005-379, s. 1.)

§ 90-455. Qualifications for license; renewal; inactive, suspended, expired, or lapsed license.

(a) Initial License. – To receive a license to practice acupuncture, a person shall meet all of the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Submit proof of successful completion of a licensing examination administered or approved by the Board.

(4) Provide documentary evidence of having met one of the following standards of education, training, or demonstrated experience:

a. Successful completion of a three-year postgraduate acupuncture college or training program approved by the Board.

b. Continuous licensure to practice acupuncture by an agency of another state or another state whose qualifications for licensure meet or exceed those of this State for at least 10 years before application for licensure in this State during which time no disciplinary actions were taken or are pending against the applicant and submitting proof to the Board that the applicant has fulfilled at least an average of 20 continuing education units in acupuncture or health care-related studies for each of the 10 years preceding application for licensure.

(5) Submit proof of successful completion of the Clean Needle Technique Course offered by the Council of Colleges of Acupuncture and Oriental Medicine.

(6) Be of good moral character.

(7) Is not currently or has not engaged in any practice or conduct that would constitute grounds for disciplinary action pursuant to G.S. 90-456.

(8) Submit a form signed by the applicant attesting to the intention of the applicant to adhere fully to the ethical standards adopted by the Board.

(b) Renewal of License. – The license to practice acupuncture shall be renewed every two years. Upon submitting all required declarations, documents, and fees required by the Board for renewal, the applicant's license shall remain in good standing for a period of up to 120 days during which time the Board shall meet to review and act upon the application for renewal. To renew a license, an applicant shall:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Upon request by the Board, submit proof of completion of 40 hours of Board-approved continuing education units within each renewal period.

(c) Inactive License. – A licensed acupuncturist who is not actively engaged in the practice of acupuncture in this State and who does not wish to renew the license may direct the Board to place the license on inactive status. A license may remain on inactive status for a period not to exceed eight years from the date the license was placed on inactive status. Upon an applicant's proof of completion of 40 hours of Board-approved continuing education units, payment of all fees, a determination by the Board that the applicant is not engaged in any prohibited activities that would constitute the basis for discipline as set forth in G.S. 90-456, and has not engaged in any of those prohibited activities during the period of time the license has been on inactive status, the Board may activate the license of the applicant.

(d) Suspended License. – A suspended license is subject to the renewal requirements of this section and may be renewed as provided in this section. This renewal does not entitle the licensed person to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended, until the license is reinstated. If a license revoked on disciplinary grounds is reinstated and requires renewal, the licensed person shall pay the renewal fee and any applicable late fee.

(e) Expired License. – A license that has expired as a result of failure to renew pursuant to subsection (b) of this section may be renewed no later than two years after its expiration. The date of renewal shall be the date the Board acts to approve the renewal. To apply for renewal of an expired license, the applicant shall:

(1) File an application for renewal on a form provided by the Board.

(2) Submit proof of completion of all continuing education requirements.

(3) Pay all accrued renewal fees, along with an expired license fee.

(f) Lapsed License. – A license that has lapsed as a result of not being renewed within two years after the license expired or not reactivated within eight years after the license lapsed is deemed inactive. A lapsed license may not be renewed, reactivated, or reinstated. A person with a lapsed license may apply to obtain a new license pursuant to subsection (a) of this section. (1993, c. 303, s. 1; 2005-379, s. 2.)

§ 90-456. Prohibited activities.

The Board may deny, suspend, or revoke a license, require remedial education, or issue a letter of reprimand, if a licensed acupuncturist or applicant:

(1) Engages in false or fraudulent conduct which demonstrates an unfitness to practice acupuncture, including any of the following activities:
   a. Misrepresentation in connection with an application for a license or an investigation by the Board.
   b. Attempting to collect fees for services which were not performed.
   c. False advertising, including guaranteeing that a cure will result from an acupuncture treatment.
   d. Dividing, or agreeing to divide, a fee for acupuncture services with anyone for referring a patient.

(2) Fails to exercise proper control over one's practice by any of the following activities:
   a. Aiding an unlicensed person in practicing acupuncture.
   b. Delegating professional responsibilities to a person the acupuncturist knows or should know is not qualified to perform.
   c. Failing to exercise proper control over unlicensed personnel working with the acupuncturist in the practice.

(3) Fails to maintain records in a proper manner by any of the following:
   a. Failing to keep written records describing the course of treatment for each patient.
   b. Refusing to provide to a patient upon request records that have been prepared for or paid for by the patient.
   c. Revealing personally identifiable information about a patient, without consent, unless otherwise allowed by law.

(4) Fails to exercise proper care for a patient, including either of the following:
   a. Abandoning or neglecting a patient without making reasonable arrangements for the continuation of care.
   b. Exercising, or attempting to exercise, undue influence within the acupuncturist/patient relationship by making sexual advances or requests for sexual activity or making submission to such conduct a condition of treatment.

(5) Displays habitual substance abuse or mental impairment so as to interfere with the ability to provide effective treatment.

(6) Is convicted of or pleads guilty or no contest to any crime which demonstrates an unfitness to practice acupuncture.

(7) Negligently fails to practice acupuncture with the level of skill recognized within the profession as acceptable under such circumstances.

(8) Willfully violates any provision of this Article or rule of the Board.

(9) Has had a license denied, suspended, or revoked in another jurisdiction for any reason which would be grounds for this action in this State. (1993, c. 303, s. 1.)

§ 90-457. Fees.

The Board may establish fees, not to exceed the following amounts:

(1) Application and an examination, one hundred dollars ($100.00).
(2) Issuance of a license, five hundred dollars ($500.00).
(3) Renewal of a license, three hundred dollars ($300.00).
(4) Renewal of a license, an additional late fee of two hundred dollars ($200.00).
(5) Duplicate license fee, twenty-five dollars ($25.00).
(6) Duplicate wall certificate fee, fifty dollars ($50.00).
(7) Labels for licensed acupuncturists, one hundred fifty dollars ($150.00).
(8) Returned check fee, forty dollars ($40.00).
(9) Licensure verification, forty dollars ($40.00).
(10) Name change, twenty-five dollars ($25.00).
(11) Continuing education program approval fee, fifty dollars ($50.00).
(12) Continuing education provider approval fee, two hundred dollars ($200.00).
(13) Initial school application fee, one thousand dollars ($1,000).
(14) Renewal school approval fee, seven hundred fifty dollars ($750.00).
(15) Inactive license renewal fee, fifty dollars ($50.00), payment due for each two-year extension. (1993, c. 303, s. 1; 2005-379, s. 3.)

§ 90-457.1. Continuing education.

(a) Applicants for license renewal shall complete all required continuing education units during the two calendar years immediately preceding the license renewal date.

(b) The Board shall set the minimum hours for study of specific subjects within the scope of practice of acupuncture. The Board shall set the maximum hours for subjects that have content relating to any health service and are relevant to the practice of acupuncture. In addition to formally organized courses, the Board may approve courses, such as personal training in nonaccredited programs and teaching diagnosis and treatment, as long as these courses have received prior approval by the Board.

(c) For purposes of this Article, one continuing education unit is defined as one contact hour or 50 minutes.

(d) The Board may choose to audit the records of any licensee who has reported and sworn compliance with the continuing education requirement. The audit of any licensee shall not take place more than every two years.

(e) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to expired status at the end of the renewal period.

(f) A licensee may apply to the Board for an extension of time to complete the portion of continuing education requirements that the licensee is unable to meet due to such unforeseeable events as military duty, family emergency, or prolonged illness. The Board may, at its discretion, grant an extension for a maximum of one licensing period. The Board shall receive the request no later than 30 days before the license renewal date. The applicant shall attest that the request is a complete and accurate statement, and the request shall contain the following:

(1) An explanation of the licensee's failure to complete the continuing education requirements.

(2) A list of continuing education courses and hours that the licensee has completed.

(3) The licensee's plan for satisfying the continuing education requirements. (2005-379, s. 4.)

§ 90-458. Use of titles and display of license.

The titles "Licensed Acupuncturist" or "Acupuncturist" shall be used only by persons licensed under this Article. Possession of a license under this Article does not by itself entitle a person to identify oneself as a doctor or physician. Each person licensed to practice acupuncture shall post the license in a conspicuous location at the person's place of practice. (1993, c. 303, s. 1.)

§ 90-459. Third-party reimbursements.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. (1993, c. 303, s. 1.)

§ 90-460: Reserved for future codification purposes.

§ 90-461: Reserved for future codification purposes.

§ 90-462: Reserved for future codification purposes.

§ 90-463: Reserved for future codification purposes.

§ 90-464: Reserved for future codification purposes.

§ 90-465: Reserved for future codification purposes.

§ 90-466: Reserved for future codification purposes.

§ 90-467: Reserved for future codification purposes.

§ 90-468: Reserved for future codification purposes.

§ 90-469: Reserved for future codification purposes.

Article 31.

Institute of Medicine.

§ 90-470. Institute of Medicine.

(a) The persons appointed under the provisions of this section are declared to be a body politic and corporate under the name and style of the North Carolina Institute of Medicine, and by that name may sue and be sued, make and use a corporate seal and alter the same at pleasure, contract and be contracted with, and shall have and enjoy all the rights and privileges necessary for the purposes of this section. The corporation shall have perpetual succession.

(b) The purposes for which the corporation is organized are to:

(1) Be concerned with the health of the people of North Carolina;

(2) Monitor and study health matters;

(3) Respond authoritatively when found advisable;

(4) Respond to requests from outside sources for analysis and advice when this will aid in forming a basis for health policy decisions.

(c) The North Carolina Institute of Medicine shall be governed by a Board of Directors. The Board of Directors is authorized to establish and amend bylaws, to procure facilities, employ a director and staff, to solicit, receive and administer funds in the name of the North Carolina Institute of Medicine, and carry out other activities necessary to fulfill the purposes of this section.

(d) The Board of Directors shall select additional members of the North Carolina Institute of Medicine, so that the total membership will not exceed a number determined by the Board of Directors in its bylaws. The membership should be distinguished and influential leaders from the major health professions, the hospital industry, the health insurance industry, State and county government and other political units, education, business and industry, the universities, and the university medical centers.

(e) The North Carolina Institute of Medicine may receive and administer funds from private sources, foundations, State and county governments, federal agencies, and professional organizations.

(f) The director and staff of the North Carolina Institute of Medicine should be chosen from those well established in the field of health promotion and medical care.

(g) The North Carolina Institute of Medicine is declared to be under the patronage and control of the State.

(h) The General Assembly reserves the right to alter, amend, or repeal this Article. (1983, c. 923, s. 197; 1995, c. 297, s. 1; 2007-25, s. 1; 2013-360, s. 12I.1(a); 2013-363, s. 4.1(a).)

§ 90-471. Board of Directors of the Institute of Medicine.

(a) The Board of Directors of the North Carolina Institute of Medicine shall be appointed as follows:

(1) Seven individuals appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives.

(2) Seven individuals appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate.

(3) Seven individuals appointed by the Governor.

(b) The members of the Board of Directors should be distinguished and influential leaders from the major health professions, the hospital industry, the health insurance industry, State and county government and other political units, education, business and industry, the universities, and the university medical centers.

(c) Terms on the Board of Directors shall be for four years, and no individual may serve more than two consecutive terms. (2013-360, s. 12I.1(b); 2013-363, s. 4.1(a).)

§ 90-472: Reserved for future codification purposes.

§ 90-473: Reserved for future codification purposes.

§ 90-474: Reserved for future codification purposes.

§ 90-475: Reserved for future codification purposes.

§ 90-476: Reserved for future codification purposes.

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§ 90-499: Reserved for future codification purposes.

Article 32.

Employee Assistance Professionals.

§ 90-500. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Board" means the Board of Employee Assistance Professionals.

(2) "Certified employee assistance professional" means an employee assistance professional who is certified by the Employee Assistance Certification Commission and who has the necessary professional qualifications to provide the employee assistance program services listed in subdivision (2) of this section, which services can be worksite based and are designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns.

(3) "Consultation" means the act of giving expert advice on the role of an employee assistance professional in assisting troubled employees.

(4) "Employee Assistance Certification Commission" means the national body with the authority to certify employee assistance professionals based on experience and the passing of a national examination.

(5) "Employee assistance professional" means a person who provides the following services to the public in a program designed to assist in the identification and resolution of job performance problems in the workplace:

a. Expert consultation and training of appropriate persons in the identification and resolution of job performance issues related to the employees' personal concerns.

b. The confidential, appropriate, and timely assessment of problems.

c. Short-term problem resolution for issues that do not require clinical counseling or treatment.

d. Referrals for appropriate diagnosis, treatment, and assistance to certified or licensed professionals when clinical counseling or treatment is required.

e. Establishment of linkages between workplace and community resources that provide such services.

f. Follow-up services for employees and dependents who use such services. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-501. Board of Employee Assistance Professionals; members.

(a) The Board of Employee Assistance Professionals is created.

(b) The Board consists of five members to be appointed by the Governor. Members shall serve for terms of five years. All members must be residents of North Carolina.

(c) The following requirements shall apply to appointments to the Board:

(1) Two members shall be licensed employee assistance professionals who are privately employed.

(2) One member shall not be directly or indirectly engaged in the employee assistance profession.

(3) Two members shall be licensed employee assistance professionals.

(d) The licensed employee assistance professionals appointed pursuant to subdivision (1) or (3) of subsection (c) of this section must have been engaged in the active practice of being an employee assistance professional for no less than five years.

(e) The North Carolina Chapter of the Employee Assistance Professionals Association shall submit a list of at least three nominees for each appointment. The Governor may make appointments from this list.

(f) Any member of the Board shall be removed from the Board upon certification by the Board to the Governor that the member no longer satisfies the employment requirements set forth in subsection (c) of this section for appointment to the Board. The Governor shall appoint a replacement from a list of nominees submitted by the North Carolina Chapter of the Employee Assistance Professionals Association within 60 days of the Governor's receiving the list of nominees.

(g) Members shall serve until their successors are appointed and duly qualified. Any vacancy occurring on the Board shall be filled by the Governor appointing a member for the balance of the unexpired term. A Board member who has served a five-year term shall not be eligible for reappointment during the one-year period following the appointment of that member's successor.

(h) In making appointments to the Board, the Governor shall strive to ensure that at least one member serving on the Board is 60 years of age or older and that at least one member serving on the Board is a member of a racial minority.

(i) For each day engaged in the business of the Board, members shall receive compensation of fifty dollars ($50.00) and shall receive reimbursement for actual expenses.

(j) Annually, the members of the Board shall elect a chair and a secretary.

(k) The Board shall meet as frequently as is reasonably necessary to implement the provisions of this Article. Three or more members of the Board shall constitute a quorum for the purpose of transacting business.

(l) For administrative purposes, the Board shall be an independent entity. The Department of Health and Human Services shall provide staff to the Board to assist the Board in transacting its business. (1995 (Reg. Sess., 1996), c. 720, s. 1; 1997-443, s. 11A.118(a).)

§ 90-502. Powers and duties of the Board.

The Board shall:

(1) Approve educational programs and establish and prescribe the curricula and minimum standards for training required to prepare persons for licensure and licensure renewal under this Article.

(2) Adopt rules governing the issuance, renewal, suspension, and revocation of licenses.
(3) Establish minimum standards governing the activities and operations of licensed employee assistance professionals.
(4) Issue licenses.
(5) Establish and collect fees.
(6) Assess civil penalties as provided in this Article. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-503. License requirements.

(a) An applicant must satisfy all of the following requirements to be eligible to be licensed under this Article:

(1) Have obtained a masters degree.
(2) Have obtained a degree in any field of human services at either the undergraduate degree level or the masters degree level.
(3) Be certified by the Employee Assistance Certification Commission.
(4) Maintain certification by being recertified by the Employee Assistance Certification Commission every three years by either passing an examination or by completing continuing education in accordance with rules adopted by the Board.

(b) Notwithstanding the requirements of subsection (a) of this section, a person who has received a certification as an employee assistance professional from the Employee Assistance Certification Commission may apply until January 1, 2000, to the Board for licensure and shall receive a license as an employee assistance professional upon proof of such certification and upon payment of a fee in an amount established by the Board.

(c) Licenses must be obtained by each individual employee assistance professional. A company or organization shall not be issued a license.

(d) Any person desiring to be licensed under this Article as an employee assistance professional shall apply to the Board on a form approved by the Board. The applicant shall submit with the application form a fee in an amount established by the Board. The applicant shall complete the application, submitting all information the Board deems necessary to evaluate the applicant.

(e) Each license shall be valid for a period of up to three years. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-504. License renewals.

(a) Renewal of any license issued under the provisions of this Article may be accomplished by paying a fee in an amount established by the Board, submitting a renewal application, and otherwise complying with rules adopted by the Board.

(b) Any person licensed as an employee assistance professional shall renew his or her license according to rules adopted by the Board.

(c) If any licensee fails to renew his or her license within 60 days after the date the application becomes due, the license of that person shall be revoked automatically without further notice or hearing, unless the licensee specifically requests an extension. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-505. Requirements for persons licensed out-of-state.

An applicant who is currently certified by the Employee Assistance Certification Commission or licensed in another state and who:

(1) Is in good standing in another state;
(2) Meets the licensure requirements approved by the Board;
(3) Resides in this State, or resides outside the State and is employed by a service operating in this State; and
(4) Submits an application with a fee in an amount established by the Board

is eligible to apply for a license under this Article. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-506. Violations; enforcement; penalties.

(a) Whenever the Board has reason to believe that a violation of this Article, any rule adopted by the Board, or any order of the Board is occurring or about to occur, the Board may initiate any of the following enforcement measures:

(1) Commence a civil action in any court of the county in which the alleged offender resides or does business. The Board may seek and the court may grant any form of relief, including injunctive relief.
(2) If the activity involved appears to be a criminal offense, refer the matter to the appropriate district attorney for prosecution.
(3) For any person who fails to be licensed as required by this Article, the Board may assess a civil penalty against that person in an amount not to exceed fifty dollars ($50.00) per day for each violation.

(b) In assessing a penalty under subdivision (3) of subsection (a) of this section, the Board shall consider all of the following:

(1) Whether the amount of the penalty imposed will be a substantial economic deterrent to the violator.
(2) The circumstances leading to the violation.
(3) The severity of the violation and the risk of harm to the employee.
(4) Any economic benefits gained by the violator as a result of the violation.

(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection (a) of this section are final 30 days after the date the assessment is served upon the alleged violation, unless the alleged violator seeks review by the Board within that time.

The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995 (Reg. Sess., 1996), c. 720, s. 1; 1998-215, s. 133.)

§ 90-507. Hearings.

Hearings before the Board on enforcement or disciplinary actions shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-508. Representation as licensed professional.

No person shall, by verbal claim, advertisement, letterhead, card, or in any other way, represent that he or she is a licensed employee assistance professional unless that person possesses a valid license pursuant to this Article. Nothing in this Article shall prohibit an unlicensed person from providing the services described in G.S. 90-500(3) if that person refrains from representing that he or she is a licensed employee assistance professional. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-509. Other prohibited activities.

The Board may deny, suspend, or revoke any license, or otherwise discipline an applicant or holder of a license who the Board finds engaged in one or more of the following activities:

(1) Willfully or repeatedly violating any provision of this Article or any rule of the Board adopted pursuant to this Article.

(2) Fraudulently or deceptively procuring or attempting to procure a license, presenting evidence of qualification to the Board, or processing the examination to secure a license.

(3) Willfully failing to display a license.

(4) Fraudulently or deceptively misrepresenting or engaging in dishonest or illegal practices in or connected with the practice of employee assistance.

(5) Circulating knowingly untrue, fraudulent, misleading, or deceptive advertising.

(6) Engaging in gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence, or incompetence in the course of the practice of employee assistance.

(7) Unprofessionally or unethically engaging in practices in connection with the practice of employee assistance, which activities are in violation of the standards of professional conduct prescribed by the Board.

(8) Engaging in conduct reflecting unfavorably upon the profession of employee assistance professionals.

(9) Willfully making any false statement as to material in any oath or affidavit when such statement is required by this Article.

(10) Being convicted of a felony five years prior to applying for a license or while licensed.

(11) Permitting or allowing another to use another person's license for the purpose of providing or offering employee assistance services.

(12) Engaging in practice under a false or assumed name, or impersonating another practitioner of a like, similar, or different name.

(13) Failing to inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.

(14) Referring a client to further obtain services from a source that would directly or indirectly financially profit the referring licensed employee assistance professional when these services are not in the best interest of the client.

(15) Denying a client's reasonable requests for access to any records concerning the client, or, when providing clients with access to records, failing to take due care to protect the confidences of other information contained in those records.

(16) Failing to obtain the informed consent of a client before taping, recording, or permitting third-party observation of the client's activities.

(17) Failing to clarify the nature and directions of an employee assistance professional's loyalties and responsibilities as mandated by law and as mandated by their contractual agreement with a company.

(18) Failing to fully inform consumers as to the purpose and nature of evaluative research, treatment, or educational training or failing to freely acknowledge that

a client, student, or participant in research has freedom of choice with regard to his or her participation.

(19) Failing to attempt to terminate a consulting relationship when it is reasonably clear that the relationship is not benefiting the consumer. An employee assistance professional who finds that his or her services are being used by employers beyond their contractual agreement, or beyond their licensed qualification, in a way that is not beneficial to the participants, shall make his or her observations known to the responsible persons and propose modification or termination of the engagement. Upon request, the Board shall advise and clarify in regard to such matters within a reasonable amount of time, and shall not revoke the employee assistance professional's license.

(20) Consenting through a contractual agreement to provide services such as prolonged therapy, that the employee assistance professional is not licensed to provide. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-510. Investigations; good faith reports of violations.

The Board may, on its own motion, investigate any report indicating that a licensee is or may be in violation of the provisions of this Article. Any person who in good faith reports to the Board any such information shall not be subject to suit for civil damages as a result of reporting this information. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-511. Employee assistance professional practice by members of other professional groups.

(a) Nothing in this Article shall be construed to prevent qualified members of other professional groups, as determined by the Board, including, but not limited to, licensed psychologists, licensed psychological associates, licensed clinical social workers, nurses, physicians, or members of the clergy, from doing or advertising that they perform the work of an employee assistance professional consistent with the accepted standards of their respective professions.

(b) Nothing in this Article shall be construed to prevent a staff member of a community mental health center from advertising, claiming, working, or in any other way representing that the member is an employee assistance professional consistent with the standards of a mental health center. (1995 (Reg. Sess., 1996), c. 720, s. 1.)

§ 90-512: Reserved for future codification purposes.

§ 90-513: Reserved for future codification purposes.

§ 90-514: Reserved for future codification purposes.

Article 33.

Industrial Hygiene.

§ 90-515. Definitions.

The following definitions apply in this Article:

(1) "American Board of Industrial Hygiene". – A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.

(2) "Certified Industrial Hygienist (CIH)". – A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).

(3) "Industrial Hygiene". – The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or significant discomfort and inefficiency among workers and the general public.

(4) "Industrial Hygienist". – A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these contaminants and stressors, or to reduce the level of human exposure to them.

(5) "Industrial Hygienist in Training (IHIT)". – A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT). (1997-195, s. 1.)

§ 90-516. Unlawful acts.

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this Article shall be punished as a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for injunctive relief to restrain a person who has violated this Article from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought under this subsection, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable harm.

(e) The venue for actions brought under this Article is the superior court of any county in which the illegal or unlawful acts are alleged to have been committed or in the county where the defendant resides.

(f) Nothing in this Article shall be construed as authorizing a person certified in accordance with this Article to engage in the practice of engineering, nor to restrict or otherwise affect the rights of any person licensed to practice engineering under Chapter 89C of the General Statutes; provided, however, that no person shall use the title "Certified Industrial Hygienist" unless the person has complied with the provisions of this Article. (1997-195, s. 1.)

§ 90-517: Reserved for future codification purposes.

§ 90-518: Reserved for future codification purposes.

§ 90-519: Reserved for future codification purposes.

§ 90-520: Reserved for future codification purposes.

§ 90-521: Reserved for future codification purposes.

Article 34.

Athletic Trainers.

§ 90-522. Title; purpose.

(a) This Article may be cited as the "Athletic Trainers Licensing Act".

(b) The practice of athletic trainer services affects the public health, safety, and welfare. Licensure of the practice of athletic trainer services is necessary to ensure minimum standards of competency and to provide the public with safe athletic trainer services. It is the purpose of this Article to provide for the regulation of persons offering athletic trainer services. (1997-387, s. 1.)

§ 90-523. Definitions.

The following definitions apply in this Article:

(1) Athletes.– Members of sports teams, including professional, amateur, and school teams; or participants in sports or recreational activities, including training and practice activities, that require strength, agility, flexibility, range of motion, speed, or stamina.

(2) Athletic trainer. – A person who, under a written protocol with a physician licensed under Article 1 of Chapter 90 of the General Statutes and filed with the North Carolina Medical Board, carries out the practice of care, prevention, and rehabilitation of injuries incurred by athletes, and who, in carrying out these functions, may use physical modalities, including heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment. A committee composed of two members of the North Carolina Medical Board and two members of the North Carolina Board of Athletic Trainer Examiners shall jointly define by rule the content, format, and minimum requirements for the written protocol required by this subdivision. The members shall be selected by

their respective boards. The decision of this committee shall be binding on both Boards unless changed by mutual agreement of both Boards.

(3) Board. – The North Carolina Board of Athletic Trainer Examiners as created by G.S. 90-524.

(4) License. – A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90-528 entitling the person to perform the functions and duties of an athletic trainer. (1997-387, s. 1.)

§ 90-524. Board of Examiners created.

(a) The North Carolina Board of Athletic Trainer Examiners is created.

(b) Composition and Terms. – The Board shall consist of seven members who shall serve staggered terms. Four members shall be athletic trainers certified by the National Athletic Trainers' Association Board of Certification, Inc. One member shall be a licensed orthopedic surgeon, one member shall be a licensed family practice physician or pediatrician, and one member shall represent the public at large.

The initial Board members shall be selected on or before August 1, 1997, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two certified athletic trainers and an orthopedic surgeon. The certified athletic trainers shall serve for terms of three years, and the orthopedic surgeon shall serve for a term of one year.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two certified athletic trainers and a family practice physician or pediatrician. The certified athletic trainers and the family practice physician or pediatrician shall serve for terms of two years.

(3) The Governor shall appoint for a three-year term a public member to the Board.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(c) Qualifications. – The athletic trainer members shall hold current licenses and shall reside or be employed in North Carolina. They shall have at least five years' experience as athletic trainers, including the three years immediately preceding appointment to the Board, and shall remain in active practice and in good standing with the Board as a licensee during their terms. The first athletic trainers appointed to the Board pursuant to this section shall be eligible for licensure under G.S. 90-529 and, upon appointment, shall immediately apply for a license.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. – The officers of the Board shall be a chair, who shall be a licensed athletic trainer, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. – The Board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving athletic training services. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum. (1997-387, s. 1.)

§ 90-525. Powers of the Board.

The Board shall have the power and duty to:

(1) Administer this Article.
(2) Issue interpretations of this Article.
(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
(4) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.
(5) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.
(6) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Article.
(7) In accordance with G.S. 90-534, set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this Article.
(8) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.
(9) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.
(10) Develop standards and adopt rules for the improvement of athletic training services in the State.
(11) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by it. (1997-387, s. 1.)

§ 90-526. Custody and use of funds; contributions.

(a) All fees payable to the Board shall be deposited in the name of the Board in financial institutions designated by the Board as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) The Board may accept grants, contributions, devises, and gifts that shall be kept in a separate fund and shall be used by it to enhance the practice of athletic trainers. (1997-387, s. 1; 2011-284, s. 65.)

§ 90-527. License required; exemptions from license requirement.

(a) On or after January 1, 1998, no person shall practice or offer to practice as an athletic trainer, perform activities of an athletic trainer, or use any card, title, or abbreviation to indicate that the person is an athletic trainer unless that person is currently licensed as provided by this Article.

(b) The provisions of this Article do not apply to:

(1) Licensed, registered, or certified professionals, such as nurses, physical therapists, and chiropractors if they do not hold themselves out to the public as athletic trainers.

(2) A physician licensed under Article 1 of Chapter 90 of the General Statutes.

(3) A person serving as a student-trainer or in a similar position under the supervision of a physician or licensed athletic trainer.

(4) An athletic trainer who is employed by, or under contract with, an organization, corporation, or educational institution located in another state and who is representing that organization, corporation, or educational institution at an event held in this State.

(5) Boxing trainers, if they do not hold themselves out to the public as athletic trainers. (1997-387, s. 1.)

§ 90-528. Application for license; qualifications; issuance.

(a) An applicant for a license under this Article shall make a written application to the Board on a form approved by the Board and shall submit to the Board an application fee along with evidence that demonstrates good moral character and graduation from an accredited four-year college or university in a course of study approved by the Board.

(b) The applicant shall also pass the examination administered by the National Athletic Trainers' Association Board of Certification, Inc.

(c) When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the applicant. A license is valid for a period of one year from the date of issuance and may be renewed subject to the requirements of this Article. (1997-387, s. 1.)

§ 90-529. Athletic trainers previously certified.

The Board shall issue a license to practice as an athletic trainer to a person who applies to the Board on or before August 1, 1998, and furnishes to the Board on a form approved by the Board proof of good moral character, graduation from an accredited four-year college or university in a course of study approved by the Board, and a current certificate from the National Athletic Trainers' Association Board of Certification, Inc. (1997-387, s. 1.)

§ 90-530. Athletic trainers not certified.

(a) A person who has been actively engaged as an athletic trainer since August 1, 1994, and who continues to practice up to the time of application, shall be eligible for licensure without examination by paying the required fee and by demonstrating the following:

(1) Proof of good moral character.

(2) Proof of practice in this State since August 1, 1994.

(3) Proof of graduation from an accredited four-year college or university in a course of study approved by the Board.

(4) Fulfillment of any other requirements set by the Board.

An application made pursuant to this section shall be filed with the Board on or before August 1, 1998.

(b) A person is "actively engaged" as an athletic trainer if the person is a salaried employee of, or has contracted with, an educational institution, an industry, a hospital, a rehabilitation clinic,

or a professional athletic organization or another bona fide athletic organization and the person performs the duties of an athletic trainer. (1997-387, s. 1.)

§ 90-531. Reciprocity with other states.

A license may be issued to a qualified applicant holding an athletic trainer license in another state if that state recognizes the license of this State in the same manner. (1997-387, s. 1.)

§ 90-532. License renewal.

Every license issued under this Article shall be renewed during the month of January. On or before the date the current license expires, any person who desires to continue practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall automatically lapse. In accordance with rules adopted by the Board, a license that has lapsed may be reissued within five years from the date it lapsed. A license that has been expired for more than five years may be reissued only in a manner prescribed by the Board. (1997-387, s. 1.)

§ 90-533. Continuing education.

(a) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. The Board shall determine the number of hours and subject matter of continuing education required as a condition of license renewal. The Board shall determine the qualifications of a provider of an educational program that satisfies the continuing education requirement.

(b) The Board shall grant approval to a continuing education program or course upon finding that the program or course offers an educational experience designed to enhance the practice of athletic trainer, including the continuing education program of the National Athletic Trainers' Association.

(c) If a continuing education program offers to teach licensees to perform advanced skills, the Board may grant approval for the program when it finds that the nature of the procedure taught in the program and the program facilities and faculty are such that a licensee fully completing the program can reasonably be expected to carry out those procedures safely and properly. (1997-387, s. 1.)

§ 90-534. Expenses and fees.

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

(b) The schedule of fees shall not exceed the following:

(1) Issuance of a license.....$ 200.00

(2) License renewal 75.00

(3) Reinstatement of lapsed license 100.00

(4) Reasonable charges for duplication services and material. (1997-387, s. 1; 2010-98, s. 1.)

§ 90-535. Hiring of athletic trainers by school units.

Local school administrative units may hire persons who are not licensed under this Article. The persons hired may perform the activities of athletic trainers in the scope of their employment but may not claim to be licensed under this Article. The persons hired may not perform the activities of athletic trainers outside the scope of this employment unless they are authorized to do so under G.S. 90-527(b). (1997-387, s. 1.)

§ 90-536. Disciplinary authority of the Board; administrative proceedings.

(a) Grounds for disciplinary action against a licensee shall include the following:

(1) Giving false information or withholding material information from the Board in procuring a license to practice as an athletic trainer.

(2) Having been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an athletic trainer or that indicates that the person has deceived or defrauded the public.

(3) Having a mental or physical disability or using a drug to a degree that interferes with the person's fitness to practice as an athletic trainer.

(4) Engaging in conduct that endangers the public health.

(5) Being unfit or incompetent to practice as an athletic trainer by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(6) Willfully violating any provision of this Article or rules adopted by the Board.

(7) Having been convicted of or pled guilty or no contest to an offense under State or federal narcotic or controlled substance laws.

(b) In accordance with Article 3A of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice as an athletic trainer in North Carolina or deny any application for licensure if the Board determines that the applicant or licensee has committed any of the above acts or is no longer qualified to practice as an athletic trainer. The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice as an athletic trainer safely and properly. (1997-387, s. 1.)

§ 90-537. Enjoining illegal practices.

If the Board finds that a person who does not have a license issued under this Article claims to be an athletic trainer or is engaging in practice as an athletic trainer in violation of this Article, the Board may apply in its own name to the Superior Court of Wake County for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation. (1997-387, s. 1.)

§ 90-538. Penalties.

A person who does not have a license issued under this Article who either claims to be an athletic trainer or engages in practice as an athletic trainer in violation of this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense. (1997-387, s. 1.)

§ 90-539. Reports; immunity from suit.

A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom. (1997-387, s. 1.)

§ 90-540. No third-party reimbursement required.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article. (1997-387, s. 1.)

§§ 90-541 through 90-599. Reserved for future codification purposes.

Article 35.

Accident-Trauma Victim Identification.

§ 90-600. Short title.

This Article shall be known and may be cited as the Carolyn Sonzogni Act. (1997-443, s. 20.12(b).)

§ 90-601. Purpose.

The identification of accident-trauma victims is crucial to the timely notification of the next of kin of accident-trauma victims and to the recovery of organs and tissues for organ transplants. In recognition of these facts, it is the policy of this State and the purpose of this act to provide for the timely identification of accident-trauma victims by law enforcement, fire, emergency, rescue, and hospital personnel. (1997-443, s. 20.12(b).)

§ 90-602. Routine search for donor information; notification of hospital; definitions as provided in the Revised Uniform Anatomical Gift Act.

(a) For the purposes of this section, the terms "anatomical gift," "document of gift," "donor," and "refusal" have the same meaning as in G.S. 130A-412.4.

(a1) The following persons may make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer,
(2) A firefighter,
(3) A paramedic, or
(4) Another official emergency rescuer finding the individual.

If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall send the document of gift or refusal to the hospital or cause it to be sent.

(a2) If no other source of information is immediately available, a hospital shall make a reasonable search of an individual who the hospital reasonably believes is dead or near death, as soon as practical after the individual arrives at the hospital, for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal.

(b) Any law enforcement officer or other person listed in subsection (a1) or (a2) of this section may conduct an administrative search of the accident-trauma victim's Division of Motor Vehicles driver record to ascertain whether the individual is a donor. If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall notify the hospital of the results or cause the hospital to be notified.

(c) A physical search pursuant to subsection (a1) or (a2) of this section shall be limited to those personal effects of the individual where a drivers license reasonably may be stored. Any information, document, tangible objects, or other items discovered during the search shall be used solely for the purpose of ascertaining the individual's identity, notifying the individual's next of kin, and determining whether the individual intends to make an anatomical gift, and in no event shall any such discovered material be admissible in any subsequent criminal or civil proceeding, unless obtained pursuant to a lawful search on other grounds.

(d) A hospital or other person with duties under this section is not subject to criminal or civil liability for failing to discharge those duties but may be subject to administrative sanctions.

(e) A person that acts under this section with due care, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. (1997-443, s. 20.12(b); 2008-153, s. 1.)

§ 90-603. Timely notification of next of kin.

A State or local law enforcement officer shall make a reasonable effort to notify the next of kin of an accident-trauma victim if the individual is hospitalized or dead. Whenever possible, the notification should be delivered in person and without delay after ensuring positive identification. If appropriate under the circumstances, the notification may be given by telephone in accordance with State and local law enforcement departmental policies. In addition to the notification of next of kin made by law enforcement personnel, other emergency rescue or hospital personnel may contact the next of kin, or the nearest organ procurement organization, in order to expedite decision making with regard to potential organ and tissue recovery. (1997-443, s. 20.12(b).)

§ 90-604. Use of body information tags.

(a) In order to provide the identifying information necessary to facilitate organ and tissue transplants, a body information tag shall be attached to or transmitted with the body of an accident-trauma victim by the following persons:

(1) A law enforcement officer, firefighter, paramedic, or other official emergency rescuer who believes the seriously injured individual to be near death; and

(2) Hospital personnel, after the individual has been pronounced dead.

(b) The body information tag shall include information identifying the accident-trauma victim, identifying whether the individual is an organ donor, and providing any information on the next of kin. The Division of Motor Vehicles shall be responsible for producing and distributing body information tags to all State and local law enforcement departments. In addition, the tags shall be distributed by the Division of Motor Vehicles to all State and local agencies employing firefighters, paramedics, and other emergency and rescue personnel. (1997-443, s. 20.12(b).)

§§ 90-605 through 90-619. Reserved for future codification purposes.

Article 36.

Massage and Bodywork Therapy Practice.

§ 90-620. Short title.

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

§ 90-621. Declaration of purpose.

The purpose of this Article is to ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services. This purpose is achieved by:

(1) Establishing education and testing standards that ensure competency in the practice of massage and bodywork therapy. Mandatory licensure of those engaged in the practice of massage and bodywork therapy assures the public that each individual has satisfactorily met the standards of the profession and continues to meet both the ethical and competency goals of the profession.

(2) Establishing standards for establishments that provide massage and bodywork therapy services. Mandatory licensure of those who own or operate massage and bodywork therapy establishments assures the public that these establishments provide legal, professional services and employ licensed massage and bodywork therapists who have satisfactorily met the standards of the profession and continue to meet both the ethical and competency goals of the profession. (1998-230, s. 10; 2008-224, s. 1; 2017-151, s. 3(a).)

§ 90-622. Definitions.

The following definitions apply in this Article:

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

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

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

(2a) Business name. – The name under which the owner applies for the establishment license to provide massage therapy, if different from the name of the owner.

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

(3) Massage and bodywork therapy. – Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.
b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(3a) Massage and bodywork therapy establishment. – Any duly licensed site or premises in which massage and bodywork therapy is practiced. This term does not include any of the following:
a. On-site massage performed at the location of the customer.
b. Stand-alone devices, such as chairs, that are operated by the customer.
c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
d. Massage and bodywork therapy provided by a sole practitioner.
e. A student clinic operated by a Board-approved school or a massage and bodywork therapy program offered by community colleges in North Carolina that are accredited by the Southern Association of Colleges and Schools or massage and bodywork therapy programs offered by a degree or diploma granting college or university accredited by any accrediting agency that is recognized by the United States Department of Education and licensed by the North Carolina Community College System or The University of North Carolina Board of Governors or exempt from such licensure pursuant to G.S. 116-15(c).
f. Chiropractic physician offices that provide massage and bodywork therapy only by massage and bodywork therapists currently licensed in North Carolina.

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

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

(4a) Owner. – The person, sole proprietor, partnership, limited partnership, or corporation that operates the massage and bodywork therapy establishment.

(5) Practice of massage and bodywork therapy. – The application of massage and bodywork therapy to any person for a fee or other consideration.

(6) Sole practitioner. – A single licensed massage and bodywork therapist offering massage or bodywork therapy services from a space the licensed massage and bodywork therapist controls and from which only the licensed massage and bodywork therapist offers and provides the services. (1998-230, s. 10; 2008-224, s. 2; 2014-100, s. 17.1(o); 2017-151, s. 3(b).)

§ 90-623. License to practice required.

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

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

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

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

(1) The diagnosis of illness or disease.

(2) Medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, or prescription of medicines.

(3) The use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

(4) Sexual activity, which shall mean any direct or indirect physical contact, by any person or between persons, which is intended to erotically stimulate either person, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. As used in this subdivision, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. Sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred. (1998-230, s. 10; 2008-224, s. 3; 2017-151, s. 3(c).)

§ 90-624. Activities not requiring a license to practice.

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

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

(8) A person employed by or contracting with a not-for-profit community service organization to perform massage and bodywork therapy on persons who are members of the not-for-profit community service organization and are of the same gender as the person giving the massage or bodywork therapy. (1998-230, s. 10; 2000-140, s. 93; 2017-151, s. 3(d).)

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

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

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. Consideration shall be given to geographical distribution, practice setting, clinical specialty, involvement in massage and bodywork therapy education, and other factors that will promote diversity of the profession on the Board. Two of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, two shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the Governor.

(2) One member shall be a physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes or a person once licensed as a physician whose license lapsed while the person was in good standing with the profession and eligible for licensure. The appointment shall be made by the Governor and may be made from a list provided by the North Carolina Medical Society.

(3) One member shall be a member of the general public who shall not be licensed under Chapter 90 of the General Statutes or the spouse of a person who is so licensed, or have any financial interest, directly or indirectly, in the profession regulated under this Article. The appointment shall be made by the Governor.

(4) One member shall be an individual who is currently licensed to operate a massage and bodywork therapy establishment under this Article. The appointment shall be made by the Governor.

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

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

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

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

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee or other professional credential shall be disqualified from participating in the official business of the Board until the charges have been resolved by a determination that the misconduct does not rise to the level of disciplinary action resulting in the suspension or revocation of the member's professional credential. (1998-230, s. 10; 2008-224, s. 4; 2019-114, s. 1.)

§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(5a) Approve and regulate massage and bodywork schools, not otherwise exempt from the requirements of Board approval, by formulating the criteria and standards for approval of massage and bodywork schools, investigating massage and bodywork schools applying for approval, issuing approvals to massage and bodywork schools that meet the standards established by the Board, providing periodic inspections of approved massage and bodywork schools, and requiring periodic reports of approved massage and bodywork schools.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Pursuant to the maximum amounts set by this Article and other specific authority authorizing fees, establish reasonable fees for applications for

examination, certificates of licensure and renewal, approval of massage and bodywork therapy schools, and other services provided by the Board.

(9) Adopt, amend, or repeal any of the following rules:

a. Rules necessary to carry out the purposes of this Article.

b. Rules necessary to carry out the duties and responsibilities of the Board, including the following:

1. Rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, and the practice of advanced techniques or specialties. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

2. Rules related to massage and bodywork therapy establishments.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Provide a system for grievances to be presented and resolved.

(14) Assess civil penalties pursuant to G.S. 90-634.1.

(15) Assess the costs of disciplinary actions pursuant to G.S. 90-634.1(d).

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. (1998-230, s. 10; 2003-348, s. 3; 2008-224, ss. 6, 7; 2017-151, s. 3(e).)

§ 90-627. Custody and use of funds.

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

§ 90-628. Expenses and fees.

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

(b) The Board may impose the following fees up to the amounts listed below for a license to practice massage and bodywork therapy:

(1) Application for license $20.00

(2) Initial license fee 150.00

(3) License renewal 100.00

(4) Late renewal penalty 75.00

(5) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008.

(6) Duplicate license 25.00

(7) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008. (1998-230, s. 10; 2008-224, s. 8; 2017-151, s. 3(f).)

§ 90-629. Requirements for licensure to practice.

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

(1) Has obtained a high school diploma or equivalent.
(2) Is 18 years of age or older.
(3) Is of good moral character as determined by the Board.
(4) Has successfully completed a training program consisting of a minimum of 500 in-class hours of supervised instruction at a Board-approved school.
(5) Has passed a competency assessment examination that meets generally accepted psychometric principles and standards and is approved by the Board.
(6) Has submitted fingerprint cards in a form acceptable to the Board at the time the license application is filed and consented to a criminal history record check by the North Carolina Department of Public Safety.
(7) Demonstrates satisfactory proof of proficiency in the English language. (1998-230, s. 10; 2008-224, s. 9; 2014-100, s. 17.1(o); 2017-151, s. 3(g).)

§ 90-629.1. Criminal history record checks of applicants for licensure to practice and for ownership or operation of an establishment.

(a) All applicants for licensure to practice massage and bodywork therapy or to operate a massage and bodywork therapy establishment shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

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

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

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

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

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

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2008-224, s. 10; 2014-100, s. 17.1(o); 2017-151, s. 3(h).)

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

§ 90-630.1. Licensure to practice by endorsement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Board shall maintain a list of jurisdictions whose regulatory standards for the practice of massage and bodywork therapy have been determined by the Board to be substantially equivalent to or to exceed the requirements for licensure under this Article. (2008-224, s. 12; 2017-151, s. 3(i).)

§ 90-630.5. Renewal of license to practice and license to operate massage and bodywork therapy establishment; continuing education.

(a) The license to practice and the license to operate a massage and bodywork therapy establishment under this Article shall be renewed every two years.

(b) The continuing education requirement for the renewal of an initial license to practice is as follows:

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

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

(c) For subsequent renewals of a license to practice, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the previous licensure renewal submission date in the practice of massage and bodywork therapy. (1998-230, s. 10; 2008-224, s. 16; 2017-151, s. 3(j).)

§ 90-631. Massage and bodywork therapy schools.

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

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

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

(a1) The Board shall have general supervision over massage and bodywork therapy schools, not otherwise exempt from the requirements of Board approval, in this State for the purpose of protecting the health, safety, and welfare of the public by requiring that massage and bodywork therapy schools carry out their advertised promises and contracts made with their students and patrons and by requiring that approved massage and bodywork therapy schools maintain:
(1) Adequate, safe, and sanitary facilities.
(2) Sufficient and qualified instructional and administrative staff.
(3) Satisfactory programs of operation and instructions.

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

(c) A massage and bodywork therapy program operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency that is recognized by the United States Department of Education and is licensed by the North Carolina Community College System or The University of North Carolina Board of Governors is exempt from the approval process, licensure process, or both, established by the Board. The college or university shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board. (1998-230, s. 10; 2005-276, s. 8.15(a); 2008-224, ss. 13, 14.)

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

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

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

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

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

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

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

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

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

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

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain approval of a massage and bodywork therapy school.

(2) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of the provisions of this Article or rules adopted by the Board.

(3) Failure to require that its students must complete the minimum standards in order to graduate.

(4) Operating a massage and bodywork therapy school without approval from this Board.

(5) Engaging in conduct that could result in harm or injury to the public.

(6) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(7) Falsely holding out a massage and bodywork therapy school as approved by this Board.

(8) Failure to allow authorized representatives of the Board to conduct inspections of the massage and bodywork therapy school or refusing to make available to the Board, following written notice to the massage and bodywork therapy school, the requested information pertaining to the requirements for approval set forth in this Article.

(9) Failure to notify the Board in writing within 30 days of any notification it receives from its accrediting agency or the United States Department of Education Office of Postsecondary Education of a show cause action, probation action, or denial of accreditation.

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

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

§ 90-632: Recodified as G.S. 90-630.5 by Session Laws 2017-151, s. 3(j), effective October 1, 2017.

§ 90-632.10. Massage and bodywork therapy establishment license required.

The Board shall license massage and bodywork therapy establishments in this State for the purpose of protecting the health, safety, and welfare of the public. Unless otherwise exempt from the Board licensure process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy establishment in this State unless it has first been licensed by the Board. The Board shall maintain a list of licensed massage and bodywork therapy establishments operating pursuant to this Article. (2017-151, s. 3(k).)

§ 90-632.11. Requirements for massage and bodywork therapy establishment licensure.

(a) Any person who wishes to operate a massage and bodywork therapy establishment shall obtain a license from the Board by submitting a massage and bodywork therapy establishment licensure application accompanied by all of the following:

(1) The applicable fee set forth in G.S. 90-632.14.

(2) Proof of property damage and bodily injury liability insurance coverage in the name of the owner or, if the establishment is operated under a business name, in the name of both the owner and the business.

(3) Prior licensure and disciplinary history, including verifications from all North Carolina licensing boards from which the owner holds or has held any health related professional license.

(4) Fingerprint cards submitted in accordance with G.S. 90-629.1 at the time the license application is filed and consented to a criminal history record check by the Department of Public Safety.

(5) Ownership information, including at least all of the following:

a. Type of ownership.

b. Name of owner.

c. Name of authorized representative.

d. Address of establishment.

e. Social Security number or federal tax identification number.

f. E-mail address.
g. Current phone number.
h. Hours of operation.

(6) Proof of good moral character as determined by the Board.
(7) Signature of all owners or authorized corporate representatives or both.
(8) A successfully completed self-evaluation inspection report demonstrating compliance with this section and any rules adopted pursuant to G.S. 90-632.13.
(9) Proof that the establishment employs, hires, or plans to employ or hire one or more massage and bodywork therapists who hold a current license from the Board.

(b) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a corporation, the application shall be submitted in the name of the corporation and shall be signed by a corporate representative. (2017-151, s. 3(k).)

§ 90-632.12. Operation of a massage and bodywork therapy establishment under a name different than the owner; advertisment.

(a) An owner may operate a licensed massage and bodywork therapy establishment under a name other than the name of the owner, provided such name is submitted to the Board on the application for licensure.

(b) Any advertisement by the massage and bodywork therapy establishment shall include the establishment's business name and shall comply with 21 NCAC 30.0404. (2017-151, s. 3(k).)

§ 90-632.13. Rules for massage and bodywork therapy establishment license.

The Board shall establish rules for the licensure of massage and bodywork therapy establishments. These rules shall include at least all of the following:

(1) Requirements for adequate, safe, and sanitary facilities.
(2) Requirements for compliance with local building code requirements, State fire safety codes, and State health inspection codes necessary to ensure the safe and effective practice of massage and bodywork therapy.
(3) Requirements for retention of client and ownership records.
(4) A description of the process used by the Board to approve massage and bodywork therapy establishment licenses.
(5) Requirements for initial and periodic inspections of massage and bodywork therapy establishments.
(6) Requirements for transfer of a massage and bodywork therapy establishment license. (2017-151, s. 3(k).)

§ 90-632.14. Fees for massage and bodywork therapy establishment license.

(a) The Board may impose the following fees up to the amounts listed below for massage and bodywork therapy establishment licensure:

(1) Application for license $20.00
(2) Initial license fee 150.00
(3) License renewal 100.00

(4) Late renewal penalty 75.00
(5) Duplicate license 25.00
(6) Inspection of establishment 150.00

(b) All fees listed in subsection (a) of this section shall be paid in the form of a cashier's check, certified check, or money order made payable to the North Carolina Board of Massage and Bodywork Therapy and shall be nonrefundable. (2017-151, s. 3(k).)

§ 90-632.15. Grounds for suspension, revocation, or refusal of a massage and bodywork therapy establishment license; notice and hearing; judicial review.

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

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a massage and bodywork therapy establishment license.
(2) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aiding, abetting, or assisting any other person in the violation of the provisions of this Article or rules adopted by the Board.
(3) Failure to require that its employees or independent contractors be currently licensed by the Board.
(4) Operating a massage and bodywork therapy establishment without a license from this Board.
(5) Engaging in conduct that could result in harm or injury to the public.
(6) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
(7) Falsely holding out a massage and bodywork therapy establishment as licensed by this Board.
(8) Failure to allow authorized representatives of the Board to conduct inspections of the massage and bodywork therapy establishment or refusing to make available to the Board, following written notice to the massage and bodywork therapy establishment, the requested information pertaining to the requirements for approval set forth in this Article.
(9) Failure to notify the Board in writing within 30 days of any notification it receives from any state, local, or federal court or agency of a show cause action, probation action, or denial of licensure or approval.
(10) The applicant for or holder of a massage and bodywork therapy establishment license has pleaded guilty, entered a plea of nolo contendere, or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(b) A refusal to issue, refusal to renew, or suspension or revocation of a massage and bodywork therapy establishment license under this section shall be made in accordance with Chapter 150B of the General Statutes. (2017-151, s. 3(k).)

§ 90-632.16. Unlicensed massage and bodywork therapy prohibited at massage and bodywork therapy establishments.

A massage and bodywork therapy establishment shall not employ or contract with any person in this State to provide massage and bodywork therapy unless that person holds a current license to practice massage and bodywork therapy issued pursuant to this Article. (2017-151, s. 3(k).)

§ 90-632.17. Sexual activity prohibited.

(a) Sexual activity or solicitation of sexual activity by any person or persons in any massage and bodywork therapy establishment is unlawful and prohibited.

(b) No owner shall engage in or permit any person or persons to engage in sexual activity in the owner's massage and bodywork therapy establishment. No owner shall engage in or permit any person or persons to use the owner's massage and bodywork therapy establishment to make arrangements to engage in sexual activity in any other place. (2017-151, s. 3(k).)

§ 90-632.18. Enforcement; injunctive relief against massage and bodywork therapy establishments.

The Board may utilize the enforcement and injunctive relief set forth in G.S. 90-634 and assess civil penalties and disciplinary costs as provided in G.S. 90-634.1 to address violations of G.S. 90-632.10 through G.S. 90-632.17, any rules adopted pursuant to G.S. 90-632.13, or any other laws or rules applicable to the operation of a massage and bodywork therapy establishment. (2017-151, s. 3(k).)

§ 90-632.19. Human trafficking public awareness sign.

The Board may require that a massage and bodywork therapy establishment prominently display on the premises in a place that is clearly conspicuous and visible to employees and the public a public awareness sign created and provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information. (2017-151, s. 3(k).)

§ 90-633. Disciplinary action.

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

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

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

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law.

(4) Conviction of a felony or other public offense involving moral turpitude.

(5) An adjudication of insanity or incompetency.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or

assisting any other person in the violation of these provisions or rules. For purposes of this subdivision, the phrase "aiding, abetting, or assisting any other person" does not include acts intended to inform the individual who is not in compliance with this Article of the steps necessary to comply with this Article or any rules adopted by the Board.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

(12) The application of systems of activity by a massage and bodywork therapist during the course of therapy with the intent of providing sexual stimulation or otherwise pursuing sexual contact.

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

§ 90-634. Enforcement; injunctive relief.

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

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

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

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

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

(b3) It is unlawful for a person, individual, association, partnership, corporation, or other entity to do any of the following:

(1) Employ, hire, engage, or otherwise contract with a person who is not licensed or exempted under this Article to provide massage and bodywork therapy services to the public.

(2) Aid and abet any person not licensed or exempted under this Article in the practice of massage and bodywork therapy.
(3) Advertise, represent, or hold out any person not licensed or exempted under this Article to others as a massage and bodywork therapist.
(4) Describe the practice of any person not licensed or exempted under this Article or use any title descriptive of any branch of massage and bodywork therapy to reference any such person in violation of G.S. 90-623.

(b4) A person who violates subsection (b3) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person, association, partnership, corporation, or other entity has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action. (1998-230, s. 10; 2008-224, s. 18; 2009-570, s. 12; 2017-151, s. 3(*l*).)

§ 90-634.1. Civil penalties; disciplinary costs.

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

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:
(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

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

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

§ 90-635. Third-party reimbursement.

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

§ 90-636. Regulation by county or municipality.

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

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

Article 37.

Health Care Practitioner Identification.

§ 90-640. Identification badges required.

(a) For purposes of this section, "health care practitioner" means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.

(b) When providing health care to a patient, a health care practitioner shall wear a badge or other form of identification displaying in readily visible type the individual's name and the license, certification, or registration held by the practitioner. If the identity of the individual's license, certification, or registration is commonly expressed by an abbreviation rather than by full title, that abbreviation may be used on the badge or other identification.

(c) The badge or other form of identification is not required to be worn if the patient is being seen in the health care practitioner's office and, the name and license of the practitioner can be readily determined by the patient from a posted license, a sign in the office, a brochure provided to patients, or otherwise.

(d) Each licensing board or other regulatory authority for health care practitioners may adopt rules for exemptions from wearing a badge or other form of identification, or for allowing use of the practitioner's first name only, when necessary for the health care practitioner's safety or for therapeutic concerns.

(e) Violation of this section is a ground for disciplinary action against the health care practitioner by the practitioner's licensing board or other regulatory authority. (1999-320, s. 1.)

§§ 90-641 through 90-645. Reserved for future codification purposes.

Article 38.

Respiratory Care Practice Act.

§ 90-646. Short title.

This Article may be cited as the "Respiratory Care Practice Act". (2000-162, s. 1.)

§ 90-647. Purpose.

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article. (2000-162, s. 1.)

§ 90-648. Definitions.

The following definitions apply in this Article:

(1) Board. – The North Carolina Respiratory Care Board.

(2) Diagnostic testing. – Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. – A human being.

(5) License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. – A person who has been issued a license under this Article.

(7) Medical director. – An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. – An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. – A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. – As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.

e. Hyperbaric oxygen therapy.

f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and

practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. – As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. – A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. – Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment. (2000-162, s. 1.)

§ 90-649. North Carolina Respiratory Care Board; creation.

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

(1) Two members shall be respiratory care practitioners.

(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

(3) One member shall represent the North Carolina Hospital Association.

(4) One member shall represent the North Carolina Association of Medical Equipment Services.

(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board. (2000-162, s. 1; 2003-384, s. 1.)

§ 90-650. Appointments and removal of Board members; terms and compensation.

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(7) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties. (2000-162, s. 1.)

§ 90-651. Election of officers; meetings of the Board.

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum. (2000-162, s. 1.)

§ 90-652. Powers and duties of the Board.

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure. The Board shall, in its discretion, investigate the background of an applicant to determine the applicant's qualifications with due regard given to the applicant's competency, honesty, truthfulness, and integrity. The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request,

the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article. (2000-162, s. 1; 2003-384, s. 2; 2004-89, s. 1; 2014-100, s. 17.1(o).)

§ 90-653. Licensure requirements; examination.

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs, or the Canadian Council on Accreditation for Respiratory Therapy Education.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association, the American Red Cross, or the American Safety and Health Institute.

(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article. (2000-162, s. 1; 2003-384, s. 3.)

§ 90-654. Temporary license.

Upon application and payment of the required fees, the Board may grant a temporary license to a person who, at the time of application, submits notarized copies of the items required in G.S. 90-653(a)(3) through (a)(5) while awaiting official copies of the items from the issuing agency. The temporary license shall be valid for a period not to exceed 90 days from the date of application. (2000-162, s. 1; 2003-384, s. 4.)

§ 90-655. Licensure by reciprocity.

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article. (2000-162, s. 1.)

§ 90-656. Provisional license.

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the direct supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. (2000-162, s. 1; 2003-384, s. 5.)

§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection. (2000-162, s. 1.)

§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status. (2000-162, s. 1.)

§ 90-659. Suspension, revocation, and refusal to renew a license.

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:

a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.

c. Practiced respiratory care without a license.

d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.

(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.

(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to

this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (2000-162, s. 1.)

§ 90-660. Expenses; fees.

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

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed fifty dollars ($50.00).
(2) For examination or reexamination, a fee not to exceed two hundred dollars ($200.00).
(3) For issuance of any license, a fee not to exceed one hundred fifty dollars ($150.00).
(4) For the renewal of any license, a fee not to exceed seventy-five dollars ($75.00).
(5) For the late renewal of any license, an additional late fee not to exceed seventy-five dollars ($75.00).
(6) For a license with a provisional or temporary endorsement, a fee not to exceed fifty dollars ($50.00).
(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.
(8) For official verification of licensure status, a fee not to exceed twenty dollars ($20.00).
(9) For approval of continuing education programs, a fee not to exceed one hundred fifty dollars ($150.00). (2000-162, s. 1; 2001-455, s. 7; 2003-384, s. 6; 2007-418, s. 1.)

§ 90-661. Requirement of license.

It shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.
(2) Use the title "respiratory care practitioner".
(3) Use the letters "RCP", "RTT", "RT", or any facsimile or combination in any words, letters, abbreviations, or insignia.
(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.
(5) Employ or solicit for employment unlicensed persons to practice respiratory care. (2000-162, s. 1; 2003-384, s. 7.)

§ 90-662. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor. (2000-162, s. 1.)

§ 90-663. Injunctions.

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action. (2000-162, s. 1.)

§ 90-664. Persons and practices not affected.

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3) A respiratory care practitioner serving in the Armed Forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person who performs only support activities as defined in G.S. 90-648(13). (2000-162, s. 1; 2011-183, s. 67.)

§ 90-665. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article. (2000-162, s. 1.)

§ 90-666. Civil penalties.

(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 90-659, the Board may assess a civil penalty not to exceed one thousand dollars ($1,000) for the violation of any section of this Article or any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Article. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Article and for specified rules.

(d) Costs. – The Board may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Board. (2003-384, s. 8.)

§§ 90-667 through 90-670. Reserved for future codification purposes.

Article 39.

Safety Profession.

§ 90-671. Definitions.

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional. (2000-110, s. 1; 2000-140, s. 98.)

§ 90-672. Unlawful acts; injunctive relief; exclusion.

(a) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals and has duly authorized the Board to file with the office of the Secretary of State all information required by G.S. 90-674.

(b) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1, and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of the title. (2000-110, s. 1; 2000-140, s. 98.)

§ 90-673. Exemptions and limitations.

(a) This Article does not apply to:

(1) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an Associate Safety Professional or Certified Safety Professional.

(2) A person who practices within the scope of safety, injury, or illness prevention and does not use the title "Associate Safety Professional" or "Certified Safety Professional", the initials "ASP" or "CSP", or otherwise represents himself or herself to the public as an Associate Safety Professional or Certified Safety Professional.

(3) A person who is licensed as an architect under Chapter 83A of the General Statutes or any person working under the supervision of a licensed architect.

(4) A person who is licensed as a professional engineer under Chapter 89C of the General Statutes or any person working under the supervision of a licensed professional engineer.

(b) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

(c) Nothing in this Article shall permit the practice of architecture by persons not licensed under Chapter 83A of the General Statutes. (2000-110, s. 1; 2000-140, s. 98.)

§ 90-674. Certification registry.

The Board shall file with the Secretary of State the name, address, telephone number, and date of certification for all Associate Safety Professionals and Certified Safety Professionals. The Board shall remit a filing fee of thirty-five dollars ($35.00) to the Secretary of State with each certification filed. All fees paid to the Department shall be used to pay the costs incurred in administering and enforcing this Article. The Board may require this filing fee to be paid by the person whose certification is being filed. The Board shall promptly notify the Secretary of State when a person's certification is revoked or no longer in effect.

The Secretary of State shall maintain a registry of all current Associate Safety Professionals and Certified Safety Professionals as furnished by the Board. (2000-110, s. 1; 2000-140, s. 98.)

§§ 90-675 through 90-680. Reserved for future codification purposes.

Article 40.

Perfusionist Licensure Act.

§ 90-681. Legislative findings.

The General Assembly finds that the practice of perfusion is an area of health care that is continually evolving to include more sophisticated and demanding patient care activities. The General Assembly further finds that the practice of perfusion by unauthorized, unqualified, unprofessional, and incompetent persons is a threat to public health, safety, and welfare, and therefore it is necessary to establish minimum standards of education, training, and competency for persons engaged in the practice of perfusion. (2005-267, s. 1.)

§ 90-682. Definitions.

The following definitions apply in this Article:

(1) Certified clinical perfusionist. – A person who has successfully completed the examination process and has been issued a certificate by the American Board of Cardiovascular Perfusion or its successor organization.

(2) Committee. – The Perfusionist Advisory Committee of the North Carolina Medical Board.

(3) Extracorporeal circulation. – The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs.

(4) Licensee. – A person who has been issued a license to practice perfusion under this Article.

(5) Medical Board. – The North Carolina Medical Board, as established under Article 1 of this Chapter.

(6) Perfusion protocols. – Perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals.

(7) Practice of perfusion. – The performing of functions, under the supervision of a licensed physician, necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of those functions, and the ensuring of safe management of physiological function by monitoring and analyzing the parameters of the systems during any medical situation where it is necessary to support or replace the patient's cardiopulmonary or circulatory function. The term also includes the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies; counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; the use of techniques involving blood management, advanced life support, and other related functions; and, in the performance of the acts described in this subdivision, (i) the administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician; (ii) the performance and use of anticoagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematological monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, and hemodialysis in conjunction with perfusion service; and (iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures. (2005-267, s. 1; 2007-525, s. 5.)

§ 90-682.1. Medical Board approval required.

(a) The Committee shall report to the Medical Board all actions taken by the Committee pursuant to this Article, except for actions taken by the Committee pursuant to G.S. 90-684. No action by the Committee is effective unless the action is approved by the Medical Board. The Medical Board may also rescind or supersede, in whole or in part, any action taken by the Committee in carrying out the provisions of this Article, except for actions taken by the Committee pursuant to G.S. 90-684. In rescinding or superseding an action by the Committee, the Board may remand the matter back to the Committee with instructions to perform some act consistent with this Article or Article 1 of Chapter 90. Members of the Medical Board may be selected by the President of the Board to participate in the matter that is the subject of the Order remanding the matter back to the Committee.

(b) The Board may waive any requirements of this Article consistent with G.S. 90-12.5. (2005-267, s. 1; 2007-346, s. 7; 2007-525, s. 6.)

§ 90-683. License required; exemptions.

(a) On or after July 1, 2006, no person shall practice or offer to practice perfusion as defined in this Article, use the title "licensed perfusionist" or "provisional licensed perfusionist", use the letters "LP" or "PLP", or otherwise indicate or imply that the person is a licensed perfusionist or a provisionally licensed perfusionist unless that person is currently licensed as provided in this Article.

(b) The provisions of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to the practice of that profession or occupation and the person does not represent himself or herself as a licensed perfusionist or a provisionally licensed perfusionist.

(2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed perfusionist.

(3) A perfusionist employed by the United States government when performing duties associated with that employment.

(4) A person performing autotransfusion or blood conservation techniques under the direct supervision of a licensed physician. (2005-267, s. 1.)

§ 90-684. Perfusion Advisory Committee.

(a) Composition and Terms. – The North Carolina Perfusion Advisory Committee is created. The Committee shall consist of seven members who shall serve staggered terms. The initial Committee members shall be selected on or before October 1, 2005, as follows:

(1) The North Carolina Medical Board shall appoint three licensed perfusionists, two of whom shall serve a term of three years and one of whom shall serve a term of two years.

(2) The North Carolina Medical Board shall appoint one physician who is licensed under Article 1 of Chapter 90 of the General Statutes and is a cardiothoracic surgeon or a cardiovascular anesthesiologist, who shall serve a term of two years.

(3) The North Carolina Hospital Association shall appoint two hospital administrators, one of whom shall serve a term of two years and one of whom shall serve a one-year term.

(4) The Governor shall appoint one public member who shall serve a one-year term.

Upon the expiration of the terms of the initial Committee members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of this subsection for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(b) Qualifications. – Members of the Committee shall be citizens of the United States and residents of this State. The perfusionist members shall hold current licenses from the Committee and shall remain in good standing with the Committee during their terms. Public members of the Committee shall not be: (i) trained or experienced in the practice of perfusion, (ii) an agent or employee of a person engaged in the practice of perfusion, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional,

(iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Committee.

(c) Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Committee may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed perfusionist shall be disqualified from participating in the official business of the Committee until the charges have been resolved.

(e) Compensation. – Each member of the Committee shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) Officers. – The officers of the Committee shall be a chair, a vice-chair, and other officers deemed necessary by the Committee to carry out the purposes of this Article. All officers shall be elected annually by the Committee for two-year terms and shall serve until their successors are elected and qualified. The chair of the Committee shall be a licensed perfusionist.

(g) Meetings. – The Committee shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Committee. The Committee shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Committee members constitutes a quorum.

(h) Qualified Immunity. – The Committee and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law. A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, or providing an expert medical opinion to the Committee regarding the acts and omissions of a licensee or applicant that violates the provisions of G.S. 90-691(a) or any other provision of law relating to the fitness of a licensee or applicant to practice perfusion and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Committee in good faith and without fraud or malice in any proceeding involving a violation of G.S. 90-961(a) or any other law relating to the fitness of an applicant or licensee to practice perfusion, or for making a recommendation to the Committee in the nature of peer review, in good faith and without fraud and malice. (2005-267, s. 1; 2007-525, s. 7.)

§ 90-685. Powers of the Committee.

The Committee shall have the power and duty to:

(1) Administer this Article.
(2) Issue interpretations of this Article.
(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
(4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.

(4a) Establish the standards for qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.

(5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.

(6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.

(7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.

(8) Establish continuing education requirements for licensees.

(9) Establish a code of ethics for licensees.

(10) Maintain a current list of all persons who have been licensed under this Article.

(11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.

(12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.

(13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.

(14) Summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Committee.

(15) Order that any patient records, documents, or other material concerning any matter to be heard before or inquired into by the Committee shall be produced before the Committee or made available for inspection, notwithstanding any other provisions of law providing for the application of any physician-patient privilege with respect to such records, documents, or other material. The Committee shall withhold from public disclosure the identity of a patient, including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure.

(16) Order a licensee whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness to attend and successfully complete a treatment program as deemed necessary and appropriate. (2005-267, s. 1; 2007-525, s. 8.)

§ 90-685.1. Confidentiality of Committee investigative information.

(a) All records, papers, investigative files, investigative reports, other investigative information, and other documents containing information in the possession of or received or gathered by the Committee or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with a licensing, complaint, or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Committee, its employees, or agents involved in the application for license or discipline of a license holder, except as provided in subsection (b) of this section. For purposes of this subsection, investigative information includes information

relating to the identity of, and a report made by, a perfusionist, or other person performing an expert review for the Committee.

(b) The Committee shall provide the licensee or applicant with access to all information in its possession that the Committee intends to offer into evidence in presenting its case in chief at the contested hearing on the matter, subject to any privilege or restriction set forth by rule, statute, or legal precedent, upon written request from a licensee or applicant who is the subject of a complaint or investigation, or from the licensee's or applicant's counsel, unless good cause is shown for delay. The Committee is not required to provide any of the following:

(1) A Committee investigative report.
(2) The identity of a nontestifying complainant.
(3) Attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Rules of Civil Procedure or the Rules of Evidence. (2007-525, s. 9.)

§ 90-686. Qualifications for licensure.

(a) An applicant shall be licensed to practice perfusion if the applicant meets all of the following qualifications:

(1) Is at least 18 years old.
(2) Completes an application on a form provided by the Committee.
(3) Successfully completes a perfusion education program approved by the Committee.
(4) Pays the required fee under G.S. 90-689.
(5) Is a certified clinical perfusionist.

(b) All persons licensed under this section shall practice perfusion under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes. (2005-267, s. 1.)

§ 90-687. Reciprocity.

The Committee may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice perfusion in another state or territory of the United States whose standards of competency are substantially equivalent to those provided in this Article or holds a current certificate as a certified clinical perfusionist. (2005-267, s. 1.)

§ 90-688. Provisional license.

The Committee may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee under G.S. 90-689. A provisional license shall allow the individual to practice perfusion under the supervision and direction of a licensed perfusionist and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. Provisional licenses shall be renewed in accordance with the provisions of G.S. 90-690. (2005-267, s. 1.)

§ 90-689. Expenses; fees.

(a) All fees shall be payable to the Medical Board and deposited in the name of the Medical Board in financial institutions designated by the Medical Board as official depositories. These fees shall be used to carry out the purposes of this Article.

(b) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Medical Board exclusively out of the fees received by the Medical Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation authorized by this Article be charged against the State treasury.

(c) The Committee, upon the approval of the Medical Board, shall establish fees not exceeding the following amounts:

(1)	License application	$350.00
(2)	Biennial renewal of license	$350.00
(3)	Late renewal of license	$100.00
(4)	Provisional license	$175.00
(5)	Copies of rules	Cost.

(2005-267, s. 1.)

§ 90-690. Renewal of licenses.

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and accompanied by proof satisfactory to the Committee that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has current certification as defined by G.S. 90-682(1), has satisfied the continuing education requirements established by the Committee and has paid the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may apply for a new license by complying with the current requirements for licensure under this Article. (2005-267, s. 1; 2007-525, s. 10.)

§ 90-690.1. Maintenance of certification to maintain licensure.

(a) After December 31, 2007, all licensed perfusionists who are licensed under this Article shall maintain certification as defined in G.S. 90-682(1) in order to maintain licensure. If certification shall lapse at any time, the Committee may initiate disciplinary action under G.S. 90-691, or upon a finding consistent with G.S. 150B-3(c), may order the summary suspension of the perfusionist's license.

(b) The provisions of this section shall not apply to perfusionists who were licensed under Section 2 of S. L. 2005-267. (2007-525, s. 11.)

§ 90-691. Disciplinary authority.

(a) The Committee may place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, require satisfactory completion of treatment programs or remedial or educational training, deny, refuse to renew, suspend, or revoke an application or license if the applicant or licensee:

(1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.
(2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.
(3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.
(4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee. The Committee is empowered and authorized to require a licensee to submit to a mental or physical examination by persons designated by the Committee before or after charges may be presented against the licensee, and the results of the examination shall be admissible in evidence in a hearing before the Committee.
(5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article. The Committee may, upon reasonable grounds, require a licensee to submit to inquiries or examinations, written or oral, as the Committee deems necessary to determine the professional qualifications of the licensee.
(6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.
(7) Has willfully violated any provision of this Article or rules adopted by the Committee.
(8) Has allowed his or her certification to lapse.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner. (2005-267, s. 1; 2007-525, s. 12.)

§ 90-692. Enjoining illegal practices.

The Committee may apply to the superior court for an order enjoining violations of this Article. Upon a showing by the Committee that any person has violated this Article, the court may grant injunctive relief. (2005-267, s. 1.)

§ 90-693. Civil penalties; disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Committee may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Article or the violation of any rules adopted by the Committee. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

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

(d) Costs. – The Committee may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Committee. (2005-267, s. 1.)

§ 90-694. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article. (2005-267, s. 1.)

§ 90-695. Reserved for future codification purposes.

§ 90-696. Reserved for future codification purposes.

§ 90-697. Reserved for future codification purposes.

§ 90-698. Reserved for future codification purposes.

§ 90-699. Reserved for future codification purposes.

§ 90-700. Reserved for future codification purposes.

Article 41.

Pathology Services Billing.

§ 90-701. Billing of anatomic pathology services.

(a) It shall be unlawful for any person licensed to practice medicine, podiatry, or dentistry in this State to bill a patient, entity, or person for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the licensed practitioner discloses conspicuously on the itemized bill or statement, or in writing by a separate itemized disclosure statement:

(1) The amounts charged by the laboratory for the anatomic pathology service;
(2) Any other charge that has been included in the bill; and
(3) The name of the licensed practitioner performing or supervising the anatomic pathology service.

The disclosure required under this subsection shall be printed in a 10-point or higher font size.

(b) It shall be unlawful for any hospital licensed in this State to bill a patient, entity, or person for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the hospital discloses conspicuously on the itemized bill or statement, or in writing by a separate itemized disclosure statement:

(1) The amounts charged by the laboratory for the professional anatomic pathology services;

(2) Any other charge that has been included in the bill; and

(3) The name of the licensed practitioner performing or supervising the anatomic pathology service.

The disclosure required under this subsection shall be printed in a 10-point or higher font size.

(c) A bill for anatomic pathology services submitted to a patient, entity, or person for payment shall disclose the name and address of the laboratory performing the professional component of the service.

(d) The requirements of subsections (a) and (b) of this section shall not apply to:

(1) A licensed practitioner performing or supervising anatomic pathology services, or

(2) A hospital or physician group practice where a physician employee or physician under contract to a hospital or a physician group practice is providing or supervising anatomic pathology services and is compensated by the hospital or physician group practice for the services.

(e) As used in this section, the term "anatomic pathology services" means:

(1) Histopathology or surgical pathology meaning the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician;

(2) Cytopathology meaning the examination of cells from fluids, aspirates, washings, brushings, or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(3) Hematology meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician, and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by a pathologist;

(4) Subcellular pathology and molecular pathology; and

(5) Blood-banking services performed by pathologists.

(f) Nothing in this section shall be construed to require the disclosure of the terms or conditions of a contract for the provision of anatomic pathology services between a managed care organization and a hospital or between a managed care organization and a physician's practice.

(g) The requirements of subsections (a) and (b) of this section shall not apply to a referring laboratory providing anatomic pathology services for services performed by that laboratory in instances where one or more samples must be sent for a second medical opinion on a specimen.

(h) Nothing in this section shall be construed as a prohibition on a physician requesting the anatomic pathology services of more than one clinical laboratory for a second medical opinion on a specimen.

(i) Each intentional failure to disclose in violation of subsections (a), (b), or (c) of this section is a separate Class 3 misdemeanor offense punishable by a fine of two hundred fifty dollars ($250.00).

(j) The respective State licensing boards having jurisdiction over practitioners subject to this section may revoke, suspend, or deny renewal of the license of a practitioner who violates this section. Each State licensing board having jurisdiction may take disciplinary action on a finding by the board of intentional violation or an ongoing pattern of violations in the absence of a misdemeanor conviction.

(k) Not later than six months from the effective date of this section, the respective State licensing boards having jurisdiction, and the Division of Health Service Regulation, shall

communicate the requirements of this section to all licensed practitioners and licensed facilities subject to this section. (2005-415, ss. 1, 1.1; 2007-182, s. 1.)

§ 90-702: Reserved for future codification purposes.

§ 90-703: Reserved for future codification purposes.

§ 90-704: Reserved for future codification purposes.

§ 90-705: Reserved for future codification purposes.

§ 90-706: Reserved for future codification purposes.

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§ 90-718: Reserved for future codification purposes.

§ 90-719: Reserved for future codification purposes.

§ 90-720: Reserved for future codification purposes.

Article 42.

Polysomnography Practice Act.

§ 90-721. Definitions.

The following definitions apply in this Article:

(1) Board. – The Board of Registered Polysomnographic Technologists (BRPT), a member of the National Organization of Certification Associations and accredited by the National Commission for Certifying Agencies (NCCA), the accreditation body of the National Organization for Competency Assurance (NOCA).

(2) Direct supervision. – An act whereby a registered polysomnographic technologist who is providing supervision is present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

(3) General supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of polysomnography services whereby the physical presence of a licensed physician is not required during the performance of the polysomnographic procedure, but the licensed physician must be available for assistance, if needed.

(4) Licensed physician. – A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes.

(5) Medical Board. – The North Carolina Medical Board established under G.S. 90-2.

(6) Polysomnography. – The allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and wake disorders and other sleep disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep and wake cycles and activities.

(7) Registered polysomnographic technologist. – A person who is credentialed by the Board as a "Registered Polysomnographic Technologist" (RPSGT).

(8) Student. – A person who is enrolled in a polysomnography educational program approved by the Board as an acceptable pathway to meet eligibility requirements for credentialing. (2009-434, s. 1.)

§ 90-722. Practice of polysomnography.

(a) Practice. – The "practice of polysomnography" means the performance of any of the following tasks:

(1) Monitoring and recording physiological data during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying the following techniques, equipment, or procedures:

a. Positive airway pressure (PAP) devices, such as continuous positive airway pressure (CPAP), and bilevel and other approved devices, providing forms of pressure support used to treat sleep disordered breathing on patients using a mask or oral appliance; provided, the mask or oral appliance does not attach to an artificial airway or extend into the trachea.

b. Supplemental low flow oxygen therapy, up to eight liters per minute, utilizing nasal cannula or administered with continuous or bilevel positive airway pressure during a polysomnogram.

c. Capnography during a polysomnogram.
d. Cardiopulmonary resuscitation.
e. Pulse oximetry.
f. Gastroesophageal pH monitoring.
g. Esophageal pressure monitoring.
h. Sleep staging, including surface electroencephalography, surface electrooculagraphy, and surface submental or masseter electromyography.
i. Surface electromyography.
j. Electrocardiography.
k. Respiratory effort monitoring, including thoracic and abdominal movement.
l. Plethysmography blood flow monitoring.
m. Snore monitoring.
n. Audio and video monitoring.
o. Body movement.
p. Nocturnal penile tumescence monitoring.
q. Nasal and oral airflow monitoring.
r. Body temperature monitoring.
s. Actigraphy.

(2) Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted based on protocol and physician's order.

(3) Analyzing and scoring data collected during the monitoring described in subdivisions (1) and (2) of this subsection for the purpose of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders.

(4) Implementing a written or verbal order from a licensed physician that requires the practice of polysomnography.

(5) Educating a patient regarding polysomnography and sleep disorders.

(b) Limitations. – The practice of polysomnography shall be performed under the general supervision of a licensed physician. The practice of polysomnography shall take place in a hospital, a stand-alone sleep laboratory or sleep center, or a patient's home. However, the scoring of data and education of patients may take place in settings other than a hospital, stand-alone sleep laboratory or sleep center, or patient's home. (2009-434, s. 1.)

§ 90-723. Unlawful acts.

(a) Unlawful Act. – On or after January 1, 2012, it shall be unlawful for a person to do any of the following unless the person is listed with the Medical Board as provided in this Article:

(1) Practice polysomnography.

(2) Represent, orally or in writing, that the person is credentialed to practice polysomnography.

(3) Use the title "Registered Polysomnographic Technologist" or the initials "RPSGT."

(b) Violations. – A violation of this section is a Class 1 misdemeanor. Complaints and investigations of violations of this Article shall be directed to and conducted by the Board. The

court may issue injunctions or restraining orders to prevent further violations under this Article. (2009-434, s. 1.)

§ 90-724. Exemptions.

The provisions of this Article do not apply to any of the following:

(1) A person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to or within the scope of practice of that profession or occupation and the person does not represent himself or herself as a registered polysomnographic technologist.

(2) An individual employed by the United States government when performing duties associated with that employment.

(3) Research investigation that monitors physiological parameters during sleep or wakefulness, provided that the research investigation has been approved and deemed acceptable by an institutional review board, follows conventional safety measures required for the procedures, and the information is not obtained or used for the practice of clinical medicine.

(4) A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes or a physician assistant or nurse practitioner licensed to perform medical acts, tasks, and functions under Article 1 of Chapter 90 of the General Statutes.

(5) A student actively enrolled in a polysomnography education program if:

a. Polysomnographic services and post-training experience are performed by the student as an integral part of the student's course of study;

b. The polysomnographic services are performed under the direct supervision of a registered polysomnographic technologist; and

c. The student adheres to post-training examination guidelines established by the Board. (2009-434, s. 1.)

§ 90-725. Listing requirements.

(a) Annual Listing. – A person may not practice polysomnography under this Article unless the person is listed with the Medical Board. In order to be listed with the Medical Board, a person must annually submit on or before September 1 of each year all of the following information to the Medical Board in the manner prescribed by the Medical Board:

(1) The person's full legal name.

(2) The person's complete address and telephone number.

(3) Evidence that the person is currently credentialed in good standing by the Board as a Registered Polysomnographic Technologist (RPSGT).

(4) The date the person was credentialed by the Board to practice polysomnography.

(5) A nonrefundable listing fee of fifty dollars ($50.00).

(b) Listing. – The Medical Board must maintain a listing of polysomnographic technologists that have submitted proof of credentials under this section. The Board must promptly notify the Medical Board, by mail or electronic means, when a person's credential is revoked or

no longer in effect. Upon receipt of this notification, the Medical Board must remove the person's name from the list. (2009-434, s. 1.)