Chapter 86B.

Barber and Electrolysis Practice Act.

Article 1.

The North Carolina Board of Barber and Electrolysis Examiners.

§ 86B-1. North Carolina Board of Barber and Electrolysis Examiners; appointment and qualifications; term of office; removal.

(a) The North Carolina Board of Barber and Electrolysis Examiners is established to consist of nine members appointed as follows:

(1) Five licensed barbers, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom shall be appointed by the Governor.

(2) Two electrologists who have engaged in the practice of electrolysis for at least five years, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and one of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(3) One physician licensed under Article 1 of Chapter 90 of the General Statutes, and who shall be nominated by the North Carolina Medical Board and appointed by the Governor.

(4) One public member who is not licensed under this Chapter or Chapter 90 of the General Statutes who shall be appointed by the Governor.

(b) No member appointed to the Board shall serve more than three complete consecutive three-year terms, except that each member shall serve until the member's successor is appointed and qualifies.

No person who has been employed by the Board and has been removed for just cause shall be appointed within five years of the removal to serve as a Board member.

(c) The Governor may remove any member for good cause shown and may appoint members to fill unexpired terms. (1929, c. 119, s. 6; 1979, c. 695, s. 1; 1981, c. 457, s. 2; 1995 (Reg. Sess., 1996), c. 605, s. 2; 2001-486, s. 2.2; 2004-146, s. 1(a); recodified from N.C. Gen. Stat. 86A-4 by 2022-72, s. 1(b); 2022-72, s. 2.)

§ 86B-2. Powers and duties of the Board.

The Board shall have the powers and duties necessary to carry out and enforce the provisions of this Chapter. The Board may, in accordance with Chapter 150B of the General Statutes, adopt rules necessary to carry out and enforce the provisions of this Chapter. If the Board has reasonable cause to believe that a violation of a provision of this Chapter may have occurred, the Board may investigate, upon its own motion or upon receipt of a complaint from any individual, any licensee or establishment subject to the provisions of this Chapter to determine whether a violation has occurred. (1929, c. 119, ss. 10, 12, 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, ss. 5, 7; 1945, c. 830, s. 8; 1947, c. 1024; 1961, c. 577, ss. 2, 3, 5; 1973, c. 1331, s. 3; 1979, c. 695, s. 1; 1981, c. 457, ss. 3, 4; 2004-146, s. 2; recodified from N.C. Gen. Stat. 86A-5 by 2022-72, s. 1(c); 2022-72, s. 2.)

§ 86B-3. Office; seal; officers and executive director; funds.

The Board shall maintain a suitable office in Wake County, and shall adopt and use a common seal for the authentication of its orders and records. The Board shall annually elect its own officers, and in addition, may appoint a full-time executive director who shall not be a member of the Board, and whose salary shall be fixed by the Board. The executive director shall turn over to the State Treasurer to be credited to the North Carolina Board of Barber and Electrolysis Examiners all funds collected or received under this Chapter, the funds to be held and expended under the supervision of the Director of the Budget, exclusively for the enforcement and administration of the provisions of this Chapter. Nothing herein 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 fees collected under the provisions of this Chapter and received by the State Treasurer pursuant to the provisions of this section. (1929, c. 119, ss. 7, 14; 1937, c. 138, s. 4; 1941, c. 375, s. 4; 1943, c. 53, s. 1; 1945, c. 830, ss. 2, 4; 1951, c. 821, s. 1; 1957, c. 813, ss. 1, 3; 1965, c. 513; 1971, c. 826, ss. 1, 2; 1973, c. 1398; 1979, c. 695, s. 1; 1981, c. 884, s. 5; 1983, c. 717, s. 15; 1995 (Reg. Sess., 1996), c. 605, s. 3; 2004-146, s. 3; recodified from N.C. Gen. Stat. 86A-6 by 2022-72, s. 1(d); 2022-72, s. 2.)

§ 86B-4. Salary and expenses; employees.

(a) Each member of the North Carolina Board of Barber and Electrolysis Examiners shall be reimbursed for his or her actual expenses and shall receive compensation and travel allowance according to G.S. 93B-5 for the distance traveled in performance of his or her duties. The expenses, compensation and all other salaries and expenses in connection with the administration of this Chapter, shall be paid upon warrant drawn on the State Treasurer, solely from the funds derived from fees collected and received under this Chapter.

(b) The Board shall employ such agents, assistants and attorneys as it deems necessary. (1929, c. 119, s. 8; 1943, c. 53, s. 2; 1945, c. 830, s. 3; 1957, c. 813, s. 2; 1979, c. 695, s. 1; 1981, c. 884, s. 6; 1983, c. 913, s. 8; recodified from N.C. Gen. Stat. 86A-7 by 2022-72, s. 1(e); 2022-72, s. 2.)

§ 86B-5. Board to keep record of proceedings; data on licensees.

The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of licenses issued by the Board. This record shall contain the name, place of business and residence of each licensed barber and licensed apprentice, and the date and number of the license. This record shall be open to public inspection at all reasonable times. (1929, c. 119, s. 22; 1979, c. 695, s. 1; recodified from N.C. Gen. Stat. 86A-21 by 2022-72, s. 1(f); 2022-72, s. 2.)

§ 86B-6. Expenses and fees.

All salaries, compensation, and expenses incurred or allowed for the purpose of carrying out the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its officers or employees may incur any expense, debt, or other financial obligation binding upon the State. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 2001-176, s. 1; 2007-489, s. 4; recodified from N.C. Gen. Stat. 88A-9(a) by 2022-72, s. 1(g); 2022-72, s. 2.)

§ 86B-7. Disciplinary authority of the Board.

(a) Grounds for disciplinary action shall include all of the following:

(1) Conviction of, or finding of guilt with respect to, a crime in this State or any other jurisdiction, regardless of adjudication, if any element of the crime directly relates to the practice of electrolysis.

(2) Obtaining, or attempting to obtain, a license to practice electrolysis by bribery or by fraudulent misrepresentation.

(3) Malpractice or the inability to practice electrolysis with reasonable skill and safety.

(4) Disseminating false, deceptive, or misleading advertising.

(5) Judicial determination of mental incompetency.

(6) The revocation, suspension, or denial of the person's license or certification to practice electrolysis in any other state or territory of the United States.

(7) A finding, upon investigation by the Board, that the applicant or licensee is guilty of unprofessional conduct. "Unprofessional conduct" includes any act which departs from, or fails to conform to, the minimum standards of acceptable and prevailing electrolysis practice.

(8) Assisting, aiding, abetting, or procuring the practice of a person who is not licensed under this Chapter.

(9) Violation of any provision of this Chapter, or any rule or regulation of the Board.

(b) In accordance with Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license or certification issued pursuant to this Chapter or deny any application for licensure or certification if the Board determines that the applicant or licensee has committed any of the acts listed in subsection (a).

(c) 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 electrology safely and properly. (1989 (Reg. Sess., 1990), c. 1033, s. 1; recodified from N.C. Gen. Stat. 88A-21 by 2022-72, s. 1(h); 2022-72, s. 2.)

§ 86B-8. Enjoining illegal practices.

(a) If the Board finds that any person is violating any of the provisions of this Chapter, it may apply in its own name to the superior court for an injunction or restraining order to prevent that person from further violation. The court is empowered to grant an injunction regardless of whether any other enforcement action has been or may be instituted. All actions by the Board shall be governed by the North Carolina Rules of Civil Procedure.

(b) The venue for actions brought under this Chapter shall be the superior court in the county where the illegal or unlawful acts are alleged to have been committed, in the county where the defendant resides, or in the county where the Board maintains its offices and records.

(c) The Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred. (1989 (Reg. Sess., 1990), c. 1033, s. 1; recodified from N.C. Gen. Stat. 86A-20.1, and from N.C. Gen. Stat. 88A-22, by 2022-72, s. 1(i), (j); 2022-72, s. 2.)

§ 86B-9. Reports and 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 Chapter, shall report the relevant facts to the Board. Upon the 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. (1989 (Reg. Sess., 1990), c. 1033, s. 1; 1995, c. 509, s. 36; recodified from N.C. Gen. Stat. 88A-23 by 2022-72, s. 1(k).)

§ 86B-10. Civil penalties; disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of five hundred dollars ($500.00) per offense for the violation of any section of this Chapter 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 Chapter and rules adopted by the Board.

(d) Costs. – The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought. (2004-146, s. 10; recodified from N.C. Gen. Stat. 86A-27 by 2022-72, s. 1(*l*).)