

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1072

Short Title: Mental Health Practitioner Act.

(Public)

Sponsors: Senator Miller.

Referred to: Health Care.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MENTAL HEALTH PRACTITIONER LICENSING  
ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding a  
new Article to read:

"Article 31A.

"Mental Health Practitioner Act.

**"§ 90-490. Title; purpose.**

(a) This Article may be cited as the 'Mental Health Practitioner Licensing Act'.

(b) The practice of mental health practitioner services affects the public health, safety, and welfare. Licensure of the practice of mental health practitioner services is necessary to ensure minimum standards of competency and to provide the public with safe mental health practitioner services. It is the purpose of this Article to provide for the regulation of persons offering mental health practitioner services.

**"§ 90-490.1. Definitions.**

The following definitions apply in this Article:

(1) Board. – The North Carolina Mental Health Practitioner Licensing Board.

(2) License. – A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90-490.5 entitling the person to perform the functions and duties of a mental health practitioner.

(3) Mental health practitioner. – A person licensed under this Article to provide mental health practitioner services.

(4) Mental health practitioner services. – The provision of services to persons whose growth, adjustment, or functioning is actually impaired or may be at substantial risk of impairment. Mental health services

1 may be rendered to individuals, families, groups, and the public and  
2 includes preventive, assessment, or therapeutic intervention services.

3 **"§ 90-490.2. License required; prohibitions; exemptions.**

4 (a) No person shall practice or offer to practice as a mental health practitioner,  
5 perform activities of a mental health practitioner, or use any card, title, or abbreviation,  
6 including 'licensed mental health practitioner', to indicate that the person is a mental  
7 health practitioner unless that person is currently licensed as provided by this Article.

8 (b) Nothing in this Article shall be construed to allow a mental health practitioner  
9 licensed pursuant to this Article to engage in or represent himself or herself as engaging  
10 in any manner in all or any of the parts of the practice of medicine, optometry,  
11 psychology, licensed marital and family therapy, licensed clinical social work, licensed  
12 fee-based pastoral counseling, licensed professional counseling, or certified substance  
13 abuse counseling unless licensed to do so.

14 (c) Nothing in this Article shall be construed to prohibit or affect:

15 (1) The practice of a profession by persons who are licensed, certified, or  
16 registered under other laws of this State and who are performing  
17 services within their authorized scope of practice.

18 (2) The ministry, activities, or services of a minister called, elected, or  
19 otherwise authorized by a church, denomination, or faith group to  
20 perform the ordinary duties or functions of the clergy.

21 (3) Students enrolled in a Board-approved school while completing a  
22 clinical requirement for graduation that shall be performed under the  
23 supervision of a person licensed under this Article.

24 (4) Persons in an area facility, as defined in G.S. 122C-3(14)a., from  
25 providing mental health services if both of the following apply:

26 a. The services are provided by (i) a qualified professional as  
27 defined in G.S. 122C-3(31) and subject to the rules adopted by  
28 the Commission for Mental Health, Developmental Disabilities,  
29 and Substance Abuse Services, or (ii) an employee supervised  
30 by a qualified professional as defined in G.S. 122C-3(31).

31 b. The area facility has obtained written verification from the  
32 following boards that the employee has not had his or her  
33 license, registration, or certification revoked, rescinded, or  
34 suspended: the North Carolina Board of Licensed Professional  
35 Counselors, the North Carolina Psychology Board, the North  
36 Carolina Certification Board for Social Work, or the North  
37 Carolina Marital and Family Therapy Certification Board.

38 A person who claims to be exempt under this subdivision is prohibited  
39 from advertising or offering himself or herself as a 'licensed mental  
40 health practitioner'.

41 **"§ 90-490.3. Creation of the Board.**

42 (a) The North Carolina Mental Health Practitioner Licensing Board is created.  
43 The Board shall consist of seven members who shall serve staggered terms. The  
44 Governor shall appoint all members of the Board and each Board member shall be

1 appointed from a different congressional district. The initial Board members shall be  
2 appointed on or before January 1, 2002, as follows:

3 (1) Five members shall be mental health practitioners who have been  
4 licensed under this Article, three of whom shall serve terms of two  
5 years, and two of whom shall serve one-year terms.

6 (2) Two members shall be members of the general public who shall not be  
7 licensed under Chapter 90 of the General Statutes or the spouse of a  
8 person who is so licensed, one of whom shall serve a term of two  
9 years, and one of whom shall serve a one-year term.

10 Upon the expiration of the terms of the initial Board members, each member shall be  
11 appointed for a term of three years and shall serve until a successor is appointed. No  
12 member may serve more than three consecutive terms.

13 (b) The mental health practitioner members shall hold current licenses and shall  
14 reside or be employed in North Carolina. They shall have at least five years' experience  
15 in the mental health services field and two of those years of experience immediately  
16 preceding their appointment shall have been in this State.

17 (c) A vacancy shall be filled in the same manner as the original appointment.  
18 Appointees to fill vacancies shall serve the remainder of the unexpired term and until  
19 their successors have been duly appointed and qualified.

20 (d) The Board may remove any of its members for neglect of duty,  
21 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings  
22 as a licensee shall be disqualified from participating in the official business of the Board  
23 until the charges have been resolved.

24 (e) Each member of the Board shall receive per diem and reimbursement for  
25 travel and subsistence as provided in G.S. 93B-5.

26 (f) The officers of the Board shall be a chair, a vice-chair, and other officers  
27 deemed necessary by the Board to carry out the purposes of this Article. All officers  
28 shall be elected annually by the Board for one-year terms and shall serve until their  
29 successors are elected and qualified.

30 (g) The Board shall hold at least two meetings each year to conduct business and  
31 to review the standards and rules for issuing licenses under this Article. The Board shall  
32 adopt rules governing the calling, holding, and conducting of regular and special  
33 meetings. A majority of Board members shall constitute a quorum.

34 **"§ 90-490.4. Powers of the Board.**

35 The Board shall have the power and duty to:

36 (1) Administer and enforce the provisions of this Article.

37 (2) Adopt rules as may be necessary to carry out the provisions of this  
38 Article.

39 (3) Examine and determine the qualifications and fitness of applicants for  
40 licensure and renewal of licensure.

41 (4) Issue, renew, deny, suspend, or revoke licenses and conduct any  
42 disciplinary actions authorized by this Article.

43 (5) Set fees for licensure, licensure renewal, and other services deemed  
44 necessary to carry out the provisions of this Article.

- 1           (6)   Establish and approve continuing education requirements for persons  
2           licensed under this Article.
- 3           (7)   Receive and investigate complaints from members of the public.
- 4           (8)   Conduct investigations for the purpose of determining whether  
5           violations of this Article or grounds for disciplining licensees exist.
- 6           (9)   Conduct administrative hearings in accordance with Article 3A of  
7           Chapter 150B of the General Statutes.
- 8           (10) Maintain a record of all proceedings conducted by the Board and make  
9           available to licensees and other concerned parties an annual report of  
10           all Board action.
- 11          (11) Maintain a list of the names and addresses of all persons licensed by  
12           the Board.
- 13          (12) Employ and fix the compensation of personnel that the Board  
14           determines is necessary to carry out the provisions of this Article and  
15           incur other expenses necessary to perform the duties of the Board.
- 16          (13) Adopt a seal containing the name of the Board for use on all licenses  
17           and official reports issued by the Board.

18 **"§ 90-490.5. Requirements for licensure.**

19       Upon application to the Board and the payment of the required fees, an applicant  
20 may be licensed as a mental health practitioner if the applicant meets all of the  
21 following qualifications:

- 22           (1)   Is 18 years of age or older.
- 23           (2)   Is of good moral character as determined by the Board.
- 24           (3)   Has received a masters degree in a course of study in a Board-  
25           approved program in accordance with rules adopted by the Board.
- 26           (4)   Submits any other documentation the Board deems necessary to  
27           determine the applicant's fitness for licensure under this Article.
- 28           (5)   Successfully completes an examination administered by the Board.

29 **"§ 90-490.6. Temporary license.**

30       The Board may issue a temporary license to practice mental health practitioner  
31 services to any person who is otherwise qualified under this Article until the next  
32 regular examination is given. The temporary license shall be issued pursuant to rules  
33 adopted by the Board.

34 **"§ 90-490.7. Reciprocity.**

35       A license may be issued to a qualified applicant holding a mental health practitioner  
36 license in another state if that state recognizes the license of this State in the same  
37 manner.

38 **"§ 90-490.8. Expenses and fees.**

39       (a)   All salaries, compensation, and expenses incurred or allowed for the purposes  
40 of this Article shall be paid by the Board exclusively out of the fees received by the  
41 Board as authorized by this Article or from funds received from other sources. In no  
42 case shall any salary, expense, or other obligations of the Board be charged against the  
43 General Fund.

44       (b)   The schedule of fees shall not exceed the following :

1	(1)	<u>Application for examination</u>	<u>\$200.00</u>
2	(2)	<u>Issuance of a license</u>	<u>100.00</u>
3	(3)	<u>License renewal</u>	<u>100.00</u>
4	(4)	<u>Reexamination</u>	<u>100.00</u>
5	(5)	<u>Late fee</u>	<u>25.00</u>
6	(6)	<u>Reinstatement fee</u>	<u>25.00</u>
7	(7)	<u>Temporary license</u>	<u>25.00</u>
8	(8)	<u>Duplicate license</u>	<u>25.00</u>
9	(9)	<u>Reasonable charges for duplication services and material.</u>	

10 **"§ 90-490.9. License renewal; continuing education.**

11 (a) Every license issued under this Article shall be renewed once every two years  
12 on or before October 1 on even-numbered years. On or before the date the current  
13 license expires, any person who desires to continue practice shall apply for a license  
14 renewal and shall submit the required fee pursuant to G.S. 90-490.8. Licenses that are  
15 not renewed shall automatically lapse 60 days after the renewal date. A license may be  
16 reinstated after the applicant pays the reinstatement fee, the late fee, and all unpaid  
17 license fees and complies with any other requirements established in rules adopted by  
18 the Board.

19 (b) As a condition of license renewal, a licensee shall meet the continuing  
20 education requirements set by the Board. The Board shall determine the number of  
21 hours and subject matter of continuing education required as a condition of license  
22 renewal. The Board shall determine the qualifications of a provider of an educational  
23 program that satisfies the continuing education requirement.

24 **"§ 90-490.10. Disciplinary authority.**

25 The Board may deny, suspend, revoke, or refuse to issue or renew a license if the  
26 licensee or applicant:

- 27 (1) Engages in any act or practice in violation of any of the provisions of  
28 this Article or of any of the rules adopted by the Board, or aids, abets,  
29 or assists any other person in the violation of these provisions or rules.
- 30 (2) Gives false information to or withholds information from the Board in  
31 procuring or attempting to procure a license.
- 32 (3) Has been convicted of or pled guilty or no contest to a crime that  
33 indicates that the person is unfit or incompetent to practice as a mental  
34 health practitioner or that indicates the person has deceived or  
35 defrauded the public.
- 36 (4) Has been declared incompetent by a court of competent jurisdiction.
- 37 (5) Has a mental or physical disability or uses a drug to a degree that  
38 interferes with the person's fitness to practice as a mental health  
39 practitioner.
- 40 (6) Has demonstrated gross negligence, incompetency, or misconduct in  
41 the performance of mental health practitioner services.
- 42 (7) Engages in conduct that endangers the public health.
- 43 (8) Has willfully violated any of the provisions of this Article.

44 **"§ 90-490.11. Enforcement; injunctive relief.**

1       (a) It is unlawful for a person not licensed or exempted under this Article to  
2 engage in any of the following:

3           (1) Practice of mental health practitioner services.

4           (2) Advertise, represent, or hold out himself or herself to others to be a  
5 mental health practitioner.

6           (3) Use any title descriptive of mental health practitioner services to  
7 describe his or her practice.

8       (b) A person who violates subsection (a) of this section shall be guilty of a Class  
9 2 misdemeanor.

10       (c) The Board may make application to superior court for an order enjoining a  
11 violation of this Article. Upon a showing by the Board that a person has violated or is  
12 about to violate this Article, the court may grant an injunction, restraining order, or take  
13 other appropriate action. Each act of unlawful practice constitutes a distinct and separate  
14 offense.

15 **"§ 90-490.12. Civil penalties.**

16       (a) Authority to Assess Civil Penalties. – In addition to taking any of the actions  
17 permitted under G.S. 90-490.10, the Board may assess a civil penalty not in excess of  
18 one thousand dollars (\$1,000) for the violation of any section of this Article or the  
19 violation of any rules adopted by the Board. All civil penalties collected by the Board  
20 shall be remitted to the school fund of the county in which the violation occurred.

21       (b) Consideration Factors. – Before imposing and assessing a civil penalty and  
22 fixing the amount thereof, the Board shall, as a part of its deliberations, take into  
23 consideration the following factors:

24           (1) The nature, gravity, and persistence of the particular violation.

25           (2) The appropriateness of the imposition of a civil penalty when  
26 considered alone or in combination with other punishment.

27           (3) Whether the violation was willful and malicious.

28           (4) Any other factors that would tend to mitigate or aggravate the  
29 violations found to exist.

30       (c) Costs. – The Board may in a disciplinary proceeding charge costs, including  
31 reasonable attorneys' fees, to the licensee against whom the proceedings were brought.

32 **"§ 90-490.13. Reports; immunity from suit.**

33       A person who has reasonable cause to suspect misconduct or incapacity of a  
34 licensee, or who has reasonable cause to suspect that a person is in violation of this  
35 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its  
36 own initiative, the Board may give notice of an administrative hearing or may, after  
37 diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a  
38 report pursuant to this section shall be immune from any criminal prosecution or civil  
39 liability resulting there from."

40       **SECTION 2.** Notwithstanding G.S. 90-490.9, enacted by Section 1 of this  
41 act, the initial licensure period shall be from October 1, 2001, through September 30,  
42 2002, to implement even-numbered year license renewals, enacted by Section 1 of this  
43 act. After the initial license renewal period, licenses shall be renewed in accordance  
44 with G.S. 90-490.9, enacted by Section 1 of this act.

1           **SECTION 3.** On or before September 30, 2002, any person licensed under  
2 Article 18A of Chapter 90 of the General Statutes as a licensed psychological associate  
3 may make application to the Board on a form prescribed by the Board to obtain  
4 licensure as a mental health practitioner under this Article, enacted by Section 1 of this  
5 act, without having to satisfy the requirements of G.S. 90-490.5, enacted by Section 1 of  
6 this act. Any person who does not make application to the Board on or before  
7 September 30, 2002, shall be required to complete all requirements prescribed by the  
8 Board and to otherwise comply with provisions of Article 31A of Chapter 90, enacted  
9 by Section 1 of this act.