

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 32B .1002 - Response to Request for Technical Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, July 10, 2023 4:25 PM

To: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>

Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: 21 NCAC 32B .1002 - Response to Request for Technical Changes

Thank you for your email.

On the question of whether an agency can withdraw an adoption from RRC review and subsequently re-adopt the rule without having to republish, the law provides no definitive answer to the question, and I believe this particular set of facts would create a case of first impression for the RRC. Accordingly, I decline to opine on the question. However, it is clear to me that if the refiling were permissible, the other requirements of the APA remain. For example, the rule could not be substantially different than the proposed rule pursuant to GS 150B-21.2 and the time limitations of G.S. 150B-21.2(g) would need to be met.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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From: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>

Sent: Monday, July 10, 2023 2:52 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>

Subject: RE: [External] RE: 21 NCAC 32B .1002 - Response to Request for Technical Changes

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Bill,

Hi. It was a pleasure speaking with you this afternoon. Per our conversation, we discussed:

1. You will object to the rule as presently written on grounds of authority and ambiguity.

2. However, should the Board agree to make changes to the rule, and specifically, end the proposed rule adoption at .0104, then you would recommend approval. The rule, with changes, would read something like what appears below.
3. You would check to see if the Board can withdraw the rule before your written objection and then refile without republication.
4. If I may ask for a few days before you file your written objection so I can consult with others as to see whether it may be acceptable to end the rule at .0104.

21 NCAC 32B .1002 PHYSICIAN SUPERVISION OF NURSE MIDWIVES

~~(a) A physician wishing to serve as a supervising physician for a certified nurse midwife pursuant to 21 NCAC 33 .0101(b) shall exercise supervision of the nurse midwife in the following manner:~~

- ~~(1) Comply with the procedures for establishing physician supervision as set out in 21 NCAC 33 .0104.;~~
- ~~(2) Be accountable for the certified nurse midwife's activities and professional conduct.~~
- ~~(3) Assure that the certified nurse midwife is qualified by education, training, and competence to perform all medical acts.~~

~~(b) For purposes of this Rule, "supervision" shall mean the physician's function of overseeing the medical acts performed by the certified nurse midwife.~~

History Note: Authority G.S. 90-5.1(a)(3).

Again, thank you for all your time!!

Marcus

Marcus Jimison

Senior Board Attorney

P 919.277.1844 E marcus.jimison@ncmedboard.org

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, July 10, 2023 10:15 AM
To: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>
Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>
Subject: RE: [External] RE: 21 NCAC 32B .1002 - Response to Request for Technical Changes

Marcus,

Thank you for your email.

It is the policy of the OAH that email communication is preferred in the interests of transparency. We can, if necessary, have telephone conference however it must be memorialized.

I have read the responses provided by the Board. Rather than resolving the ambiguity in the rule by amendment, the Board has instead provided explanations for the ambiguity which themselves are ambiguous. I would add that the averment that the rule is "well understood by the regulated public" has not received much quarter from this Commission in my experience.

You also inquired about deferring the RRC's consideration of the until its August meeting. There is not a statutory path to delay consideration beyond the 70 days provided in G.S. 150B-21.10 and 21.13. However, the Board can withdraw the rule if it so choses.

I can be available at 2:00 pm for a telephone conference if necessary.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>
Sent: Monday, July 10, 2023 9:30 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>
Subject: [External] RE: 21 NCAC 32B .1002 - Response to Request for Technical Changes

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Bill,

Hi. I hope you had a great vacation.

I know you must be busy catching back up after a vacation, but do you have time today or tomorrow to discuss this rule and your questions? I appreciate any time you can provide. Just let me know a good time to call and I can initiate the call.

Thanks again!

Marcus

Marcus Jimison
Senior Board Attorney
P 919.277.1844 E marcus.jimison@ncmedboard.org

Burgos, Alexander N

From: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>
Sent: Friday, July 7, 2023 4:55 PM
To: Rules, Oah
Cc: Peaslee, William W; Burgos, Alexander N; Marcus B. Jimison
Subject: [External] 21 NCAC 32B .1002 - Response to Request for Technical Changes
Attachments: 21 NCAC 32B .1002 - Response to Technical Changes.07.07.2023.docx

Follow Up Flag: Follow up
Flag Status: Flagged

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Attached is the NC Medical Board's response to the request for technical changes for 21 NCAC 32B .1002.

Thank you.

Leigh Anne Satterwhite, NCCP

Senior Paralegal

North Carolina Medical Board

P 919.326.1109 x395 **E** leigh.satterwhite@ncmedboard.org

F 919.326.1131 **A** 3127 Smoketree Court, Raleigh, NC 27604

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Board

RULE CITATION: 21 NCAC 32B .1002

DEADLINE FOR RECEIPT: July 7, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: Explain the Board's authority to adopt the Rule when G.S. 90-5.1, which is cited as authority, limits the Board's authority to rulemaking for Article 1 of Chapter 90 of the North Carolina General Statutes. Further, G.S. 90-178.4(b)(5) authorizes the "joint subcommittee" of G.S. 90-18.2 to adopt rules for "(5) The procedure for establishing physician supervision" required by Article 10A of Chapter 90, more specifically G.S. 90-178.3(b).

G.S. 90-5.1 allows the Board to adopt rules interpreting Article 1 of Chapter 90. G.S. 90-14(a)(6) requires physicians to adhere to "standards of acceptable and prevailing medical practice." The proposed rule adoption interprets and provides guidance to physicians as to what the standards of acceptable and prevailing medical practice are with regard to physician supervision of certified nurse midwives.

Conversely, G.S. 90-178.4(b)(5) authorizes the Midwifery Joint Committee (MJC) to adopt rules for the "procedure for establishing physician supervision." (emphasis added). However, the MJC may not adopt rules defining the *substance* of what supervision entails. Any attempt by the MJC to define the standards of acceptable and prevailing medical practice under G.S. 90-14(a)(6) would be outside of the authority of the MJC and *ultra vires*. Only the Medical Board can regulate physicians, and only the Medical Board can define the substance of what the standards of acceptable and prevailing medical practice are, including what the standards for supervision of certified nurse midwives. Therefore, the adoption of the proposed rule is not only within the authority of the Medical Board, but it is within the exclusive authority of the Medical Board.

In 2005, the N.C. Court of Appeals validated the Board's exclusive authority to regulate the practice of medicine and to establish and define the standard of care for physicians. To quote from the Court's opinion in *NC Medical Society v. NC Board of Nursing*, "the Medical Board cannot be forbidden from advising its licensees on the standard of care in medical practice in order to protect public interest. The Medical

William W. Peaslee
Commission Counsel

Date submitted to agency: May 3, 2023

Board, as an administrative board established pursuant to N.C. Gen. Stat. 90-2, cannot be estopped from exercising its duty to regulate the practice of medicine in the interest of the public." *NC Med. Society v. NC Board of Nursing*, 169 NC App 1, 610 S.E. 2d 722, 729 (2005).

Like the proposed rule adoption as to supervision of certified nurse midwives, the facts in *NC Med. Society* similarly involved the Medical Board speaking to and defining the standards of physician supervision certified nurse anesthetists or CRNAs. The principle enunciated by the Court of Appeals remains valid today as much as it did then, the Medical Board not only has the authority to establish standards of acceptable and prevailing medical practice, but it cannot be estopped from exercising that duty in the public interest.

In Paragraph (a)(2), "be accountable" is unclear and ambiguous.

"Be accountable" means to accept regulatory responsibility for overseeing the conduct of your supervisee. The accountability principle is well understood within the regulated population of the Board and is a bedrock principle as to the supervision of advanced practice providers, specifically physician assistants and nurse practitioners.

The "be accountable" language already exists in the certified nurse midwifery rules. Please see 21 NCAC 33 .0101(b)(1) and (2) (supervising and backup supervising physician "*shall be held accountable* for the ongoing supervision, consultation, collaboration, and evaluation of medical acts performed by the midwife.") (emphasis added).

The "be accountable" language also appears in other Board rules involving advanced practice providers. For example:

-- 21 NCAC 32S .0201(10)(a) and (b) supervising physicians of physician assistants are "accountable to the Board for the physician assistant's medical activities and professional conduct at all times;

-- Accountability expressed as "overseeing" and "accepting responsibility for" with regard to Anesthesiologist Assistants in 21 NCAC 32W .0101;

-- Accountability expressed as "overseeing medical acts" as to nurse practitioners in 21 NCAC 32M .0101(12);

-- Accountability expressed as the physician who "is held accountable for the ongoing supervision and evaluation" of drug therapy management provided by Clinical Pharmacist Practitioners in 21 NCAC 32T .0101.

-- Finally, in the certified nurse midwifery rules themselves, the principle of the supervising physician being held responsible for the medical acts of the supervisee is present. To quote from the relevant rule, "supervising physician *responsible* for the acts of said applicant for rendering health care services at the sites at which such services will be provided." 21 NCAC 33 .0103.

William W. Peaslee
Commission Counsel

Date submitted to agency: May 3, 2023

As can be seen from the above-cited rules pertaining to advanced practice providers all of whom, by law, must be supervised by a physician, the principle of a supervising physician being accountable to the Medical Board for the medical acts provided by their supervisees is a well-established term and principle throughout the administrative code, and is well understood by the Board's regulated public.

However, the Board would be agreeable to suggested changes, if RRC counsel believes the term needs more defining and fine-tuning.

In Paragraph (a)(3), the manner in which a physician is to “assure” the nurse midwife is qualified is unclear and ambiguous.

Assure means the measures undertaken by the supervising physician to become reasonably confident that the advanced practice provider, here the certified nurse midwife, can perform a medical act or task with reasonable skill and safety. This is a vital public safety function.

This important public safety principle is also expressed throughout the administrative code. It is also a term well understood by the Board's regulated public. Please see the following:

- 21 NCAC 32S .0101(10)(a) - physician assistants
- 21 NCAC 32M .0101(10)(a) - nurse practitioners
- 21 NCAC 32W .0101(6) - anesthesiologist assistants

However, the Board would be agreeable to suggested changes, if RRC counsel believes the term needs more defining and fine-tuning.

In Paragraph (a)(3), it is also unclear what educational and competency standards the physician is to assure. Consider a reference to clear and unambiguous qualifications contained in a statute or another rule would suffice.

"Education, training, and competence" mean the holistic preparation undertaken by the certified nurse midwife to provide quality healthcare to the North Carolina public. It refers to whether the certified nurse midwife has received appropriate didactic education, hands-on training to diagnose, treat, and manage patients. If a certified nurse midwife is deficient in any of those areas, then it is expected that the supervising physician would limit the certified nurse midwife's scope of practice to only those functions in which she is competent, and to only add additional functions until such time as the certified nurse midwife is competent to perform those specific functions.

However, the Board would be agreeable to suggested changes, if RRC counsel believes the term needs more defining and fine-tuning. To this end, the Board is willing to consider rewriting this subsection to read, "Assure that the certified nurse midwife is competent to perform all medical acts."

In Paragraph (a)(3) and Paragraph (b), it is unclear what the Board means by "medical acts". While the term is used in G.S. 90-178.2, this does not appear to be a defined term in either the Board's rules or the General Statutes.

The term "medical acts" appears in the current Administrative Code in the Midwifery Joint Committee subchapter at 21 NCAC 33 .0101(b)(1) and (2).

The term "medical acts" is well understood by the regulated public and refers to those acts that constitute the practice of medicine for which a license is required. The Legislature has defined the practice of medicine to include, among other things, as "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." G.S. 90-1.1(5)(c). Any act performed by an advanced practice practitioner, including a certified nurse midwife, acting within her scope of practice, which would constitute the practice of medicine is a "medical act." For example, a certified nurse midwife diagnosing a complication during labor, managing that complication, and her decision-making as to whether she should consult with her supervising physician or make refer the patient to a higher level of care, would all be medical acts. The supervising physician would be responsible for evaluating the certified nurse midwife's performance of these medical acts.

As stated above, the term "medical acts" is well understood by the Board's regulated public and appears in the following rules regarding other advanced practice providers as well as in Article 1 of Chapter 90.

- Certified Nurse Midwives at 21 NCAC 33 .0101.
- Physician Assistants at 21 NCAC 32S .0201, .0203, .0213, .and 0215.
- Nurse Practitioners at 21 NCAC 32M .0101, .0104, .0110, .0112, and .0116.
- In the Medical Practice Act, Article 1 of Chapter 90, at G.S. 90-1.1, 90-3, 90-8.2, 90-9.3, 90-12.4, 90-12.4B, 90-13.2, 90-18, 90-18.1, 90-18.2, and 90-18.4.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, July 3, 2023 12:49 PM
To: Marcus B. Jimison; Leigh Anne Satterwhite
Cc: Burgos, Alexander N
Subject: 21 NCAC 32B .1002

Good afternoon,

This is a reminder that the Rules Review Commission will consider the above captioned rule at its July 20, 2023 meeting. Any responses are due no later than July 7th.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: request for extension 21 NCAC 32B .1002

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, July 3, 2023 12:49 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: [External] Re: request for extension 21 NCAC 32B .1002

Hi Alex,

Apparently you were not include in this email stream. For that, I apologize. This should go on the webpage.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>
Sent: Wednesday, May 10, 2023 9:57 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Wanda Long <Wanda.Long@NCMEDBOARD.ORG>
Subject: RE: [External] Re: request for extension 21 NCAC 32B .1002

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Thanks, Bill. That's helpful and very much appreciated!!

Thanks again,

Marcus

Marcus Jimison
Senior Board Attorney
P 919.277.1844 E marcus.jimison@ncmedboard.org

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, May 10, 2023 9:56 AM
To: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>

Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Wanda Long <Wanda.Long@NCMEDBOARD.ORG>

Subject: RE: [External] Re: request for extension 21 NCAC 32B .1002

It is certainly your option to be there however it is not a necessity. The RRC regularly grants extensions without agencies being represented and I will recommend that they so do.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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From: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>

Sent: Wednesday, May 10, 2023 9:52 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Wanda Long <Wanda.Long@NCMEDBOARD.ORG>

Subject: RE: [External] Re: request for extension 21 NCAC 32B .1002

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Bill,

Hi. Thanks. Should we be there in person for the request? The Medical Board meets that Thursday morning and the staff attorneys, including myself, are assigned interview rooms.

I trust that the extension will be granted, but I do feel a little stuck in that if we file a response to your questions, then the response may jeopardize the request for an extension. However, if the request is denied then the Board will not have had an opportunity to respond and the commission will decide the rule without our input.

Again, I'll trust that the extensions are routinely granted. Once the proposed legislation involving midwifery is settled, I'll be back in touch with you on how the Medical Board plans to move forward.

Thanks again,

Marcus

Marcus Jimison

Senior Board Attorney

P 919.277.1844 E marcus.jimison@ncmedboard.org

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, May 9, 2023 4:41 PM

To: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>

Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Wanda Long <Wanda.Long@NCMEDBOARD.ORG>
Subject: RE: [External] Re: request for extension 21 NCAC 32B .1002

Thank you for your email.

The request for an extension must go before the RRC at their next meeting. I cannot grant it.

As we discussed, I would be shocked if the request were denied.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Marcus B. Jimison <Marcus.Jimison@NCMEDBOARD.ORG>
Sent: Tuesday, May 9, 2023 4:24 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>; Wanda Long <Wanda.Long@NCMEDBOARD.ORG>
Subject: [External] Re: request for extension 21 NCAC 32B .1002

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Bill,

Hi. Just following up on the request for an extension. Any update you could provide would be much appreciated.

Thanks for everything.

Marcus

Sent from my iPhone

On May 8, 2023, at 4:11 PM, Marcus B. Jimison <Marcus.Jimison@ncmedboard.org> wrote:

Bill,

It was a pleasure speaking with you on the phone this afternoon. As we discussed, per recent legislative developments, the Medical Board requests an extension for Rule adoption 21 NCAC 32B .1002.

Should you require anything else, please let me know.

Thanks again,

Marcus Jimison

Senior Board Attorney

North Carolina Medical Board

P 919.277.1844 **E** marcus.jimison@ncmedboard.org

A 3127 Smoketree Ct., Raleigh, NC 27604

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Burgos, Alexander N

From: Leigh Anne Satterwhite <leigh.satterwhite@ncmedboard.org>
Sent: Thursday, May 11, 2023 9:57 PM
To: Rules, Oah
Cc: Peaslee, William W; Burgos, Alexander N; Marcus B. Jimison; mparris@ncbon.com
Subject: [External] 21 NCAC 32M .0107 - Technical Changes
Attachments: 05.2023 - Medical Board response to technical change request for 21 NCAC 32M .0107.5.11.23.docx; 21 NCAC 32M .0107 - Technical Changes.5.11.23.docx

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Attached is the NC Medical Board's response to the request for technical changes for 21 NCAC 32M .0107.

Thank you.

Leigh Anne Satterwhite, NCCP

Senior Paralegal

North Carolina Medical Board

P 919.326.1109 x395 E leigh.satterwhite@ncmedboard.org

F 919.326.1131 A 3127 Smoketree Court, Raleigh, NC 27604

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, May 3, 2023 3:13 PM
To: Leigh Anne Satterwhite
Cc: Burgos, Alexander N
Subject: 21 NCAC 32B .1002 and 32M .0107
Attachments: 05.2023 - Medical Care Commission 21 NCAC 32B .1002 & 32M .0107.docx

Good afternoon,

I am the attorney assigned to review the above captioned rules. Attached please find a request for changes. The Board should reply no later than May 12, 2023.

The above captioned rules are on the Rules Review Commission's agenda for its May 18, 2023 meeting.

As always, if you have any questions, please do not hesitate to email me.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Board

RULE CITATION: 21 NCAC 32B .1002

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: Explain the Board's authority to adopt the Rule when G.S. 90-5.1, which is cited as authority, limits the Board's authority to rulemaking for Article 1 of Chapter 90 of the North Carolina General Statutes. Further, G.S. 90-178.4(b)(5) authorizes the "joint subcommittee" of G.S. 90-18.2 to adopt rules for "(5) The procedure for establishing physician supervision" required by Article 10A of Chapter 90, more specifically G.S. 90-178.3(b).

In Paragraph (a)(2), "be accountable" is unclear and ambiguous.

In Paragraph (a)(3), the manner in which a physician is to "assure" the nurse midwife is qualified is unclear and ambiguous.

In Paragraph (a)(3), it is also unclear what educational and competency standards the physician is to assure. Consider a reference to clear and unambiguous qualifications contained in a statute or another rule would suffice.

In Paragraph (a)(3) and Paragraph (b), it is unclear what the Board means by "medical acts". While the term is used in G.S. 90-178.2, this does not appear to be a defined term in either the Board's rules or the General Statutes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: May 3, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Medical Board

RULE CITATION: 21 NCAC 32M .0107

DEADLINE FOR RECEIPT: May 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In general, please explain the Medical Board's authority to amend the Rule in the absence of the approval of the North Carolina Board of Nursing pursuant to G.S. 90-8.2(a). North Carolina Medical Board has now filed mirror rules with the same technical changes as requested by RRC staff.

Page 1, Line 6: Is "continuing education" the same as "Continuing Education Activity" pursuant to 21 NCAC 36 .0120? If so, please use "continuing education activity" throughout the rule. If not, define "continuing education". Used continuing education activity throughout.

Page 1, Line 7-8: What is "advance practice nursing population focus on the NP role"? This is unclear. This refers to the NP specialty area of practice and is known to our regulated public. Please note that on Line 7-8 it stated "advance practice nursing population of the NP role".

Page 1, Line 8: As the ANCC is a national credentialing body as defined in 21 NCAC 36 .0801, consider removing its specific mention as it is redundant. Edited to change national credentialing body; however, practice-relevant courses are distinguishable.

Page 1, Lines 9-10: Define "relevant courses". How do "relevant courses" "approve" "hours"? The 20 hours may be approved by: ANCC, ACCME or another national credentialing provider. Or the 20 hours may be satisfied by nurse practice-relevant courses provided by an institute of higher learning.

William W. Peaslee
Commission Counsel

Date submitted to agency: May 3, 2023

Page 1, Line 11: Either define “controlled substances” or make reference to another rule. Eg. “Every nurse practitioner who prescribes controlled substances pursuant to Rule 21 NCAC 36 ___ shall...” Changed to reference the NCMB version of the rule, which is subchapter 32M as opposed to subchapter 36.

Page 1, (b), Lines 11-15: Is (b) notwithstanding (c)? In other words, if a NP has a national certification, do they still need the one hour of CE required in (b) to prescribe controlled substances? Changed to Continuing education activity hours. One hour is still required to prescribe.

Page 1, (b), Lines 11-15: If it meets the Boards’ intentions, consider:

“(b) Prior to prescribing controlled substances as the same are defined in _____, nurse practitioners shall have completed a minimum of one CE hour within the preceding 12 months on one or more of the following topics:

- (1) Controlled substances prescription practices;
- (2) Prescribing controlled substances for chronic pain management;
- (3) Recognizing signs of controlled substance abuse or misuse; or
- (4) Non-opioid treatment options as an alternative to controlled substances.

The one hour of CE required by this paragraph supplants and is not in addition to, the CE required by Paragraph (a).” *Reformatted and included reference to our Rule – 21 NCAC 32M .0109(b)(2).*

Page 1, (c), Lines 16-17: What is the Boards’ authority to replace CE hours with a national certification. Please see G.S. 90-14(a)(15)? This doesn’t replace CE hours. If an NP is nationally certified, they have completed the required CE hours.

Page 1, (c), Lines 16-17: Consider whether paragraph (c) should just be a part of (a). Changed and added the sentence from (c) to the end of (a). Since (a) references both, it seems to flow with this edit.

Page 1, (d), Lines 18-19: Consider: “Documentation of all CE completed within the previous five years shall be maintained by the NP and made available upon request.” Removed “calendar” and changed.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.