



**State of North Carolina**  
**BOARD OF BARBER AND ELECTROLYSIS EXAMINERS**  
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April 26, 2023

Members of the Rules Review Commission  
1711 New Hope Church Road  
Raleigh, NC 27609

**Sent only by email**

Dear Commissioners:

The purpose of this letter is to make Commissioners aware of the unintended implications of its objections to several rules amended under temporary procedures by the North Carolina Board of Barber and Electrolysis Examiners ("Board").

At its April 20, 2023 meeting, the Commission reviewed a set of rules that had received a staff opinion recommending objection. Many of these opinions were based on existing rather than new language. For instance, the Commission objected to the regulatory approach under which barber shops must identify a licensed barber who is responsible for ensuring the business complies with regulations.

During the Commission's deliberations, Commissioner Bryan raised the issue of whether the Commission had the authority to consider the entire rule or just the new language. By a vote of 6-4, the Commission decided that it would review all language in the temporary rule and not just new language. Part of the discussion that day was also what would happen to a rule that was amended under temporary procedures and that received an objection. The Commission Counsel stated that the permanent rule previously approved by the Commission would remain in place, and the temporary rule would fail. Based on a long understanding of the temporary rulemaking process, that was the Board's view, as well.

However, the Codifier of Rules now believes that by objecting to existing language in the temporary amendment, the Commission was thereby objecting to a permanent rule. Based on that, she has claimed authority to remove the permanent rules from the code, apparently with immediate effect. She argues that N.C. Gen. Stat. § 150B-21.12(d) allows her to remove rules because the Commission's objection was to language in a permanent rule.

The Board respectfully disagrees with this interpretation. The Board also believes the Commission should be aware of the *ad absurdum* effect of the Commission's understanding of the scope of review, especially since the Commission (like the Board) would not have understood the impact of this review.

Under the Codifier's interpretation, if the Commission were considering an amendment under temporary procedures that dealt with a crucial public-health matter, and if the Commission were to object to existing language, the entire rule would drop out of the code. That would be true, even if the Commission's objection were to a minor provision in the rule rather than the rule as a whole. There would be an immediate and deleterious effect on North Carolinians. In contrast, if the Commission were to object only to new language, the permanent rule would remain in the code. Similarly, suppose an agency's funding came exclusively from fees, and the agency attempted to amend a rule under temporary procedures that contained a schedule of fees. If the Commission were to object to one provision in the rule, the agency's entire revenue source could disappear immediately.

It is difficult to believe that the General Assembly—which established separate statutes dealing with objections to temporary rules and permanent rules—intended this outcome. The prospect of rules dropping out of the code precipitously, with no notice to the public and no opportunity for public comment on the impact of rule changes, is surely not consistent with the public policy that underlies the Administrative Procedures Act.

For these reasons, the Board would urge the Commission to reconsider its understanding of the scope of review for temporary rules and clarify that the impact of its adoption of Staff's objections to the temporary rules on April 20, 2023 is governed by N.C. Gen. Stat. 150B-21.1(b2) and not N.C. Gen. Stat. § 150B-21.12.

Sincerely,

*Dennis Seavers*

Dennis Seavers  
Executive Director



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April 20, 2023

Bill Peaslee  
Commission Counsel  
Rules Review Commission  
1711 New Hope Church Road  
Raleigh, NC 27609

**Sent only by email to [bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)**

Dear Mr. Peaslee:

Based on the Rules Review Commission's objection to various temporary rules at the April 20, 2023 meeting, the North Carolina Board of Barber and Electrolysis Examiners provides the following response under G.S. § 150B-21.1(b1).

**Revised rules**

Enclosed are revised versions of the following seven rules. The revisions should address the Commission's objections.

21 NCAC 06N .0102  
21 NCAC 06N .0104  
21 NCAC 06N .0116  
21 NCAC 06O .0105  
21 NCAC 06O .0112  
21 NCAC 06O .0114  
21 NCAC 06O .0119

**Request to return to agency**

The Board will not make additional changes to the following rules and requests that the Commission return them.

21 NCAC 06F .0102  
21 NCAC 06H .0101  
21 NCAC 06I .0105  
21 NCAC 06J .0101

21 NCAC 06L .0112  
21 NCAC 06L .0116  
21 NCAC 06L .0204  
21 NCAC 06N .0103  
21 NCAC 06O .0122  
21 NCAC 06O .0126  
21 NCAC 06R .0101

If you have any questions, please feel free to contact me at [dennis.seavers@nc.gov](mailto:dennis.seavers@nc.gov) or (919) 814-0641.

Sincerely,

*Dennis Seavers*

Dennis Seavers  
Executive Director

c: Sherod Holloway, Chairman, North Carolina Board of Barber and Electrolysis  
Examiners