

## Burgos, Alexander N

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**Subject:** FW: [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

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**From:** Dr. Joe Siragusa <dr.joe@ncchiroboard.com>

**Sent:** Friday, March 7, 2025 1:02 PM

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

**Cc:** Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Catherine Lee, Attorney <clee@hedrickgardner.com>

**Subject:** Re: [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

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Thank you!

Serving,

Dr. Joe Siragusa  
D.C., DIANM, M.Ed.  
Executive Director  
North Carolina State Board of Chiropractic Examiners

9121 Anson Way Suite 200 PMB #12  
Raleigh, NC 27615  
PH: (704) 793-1342 ext. 1004  
[www.ncchiroboard.com](http://www.ncchiroboard.com)



The North Carolina Board of Chiropractic Examiners was established May 5, 1917 by the NC General Assembly (G.S 90-139) to properly regulate doctors of chiropractic for the benefit and protection of the people of North Carolina. The North Carolina Board of Chiropractic Examiners also regulates and certifies Chiropractic Clinical Assistants (G.S. 90-143.4) and Diagnostic Imaging (X-Ray) Technicians (G.S. 90-143.2). The board is charged with establishing standards for licensing and practice; enforcing those standards; and administering licensing examinations. The Board is also charged with developing and enforcing ethical standards, investigating complaints, and disciplining individuals who violate ethical standards, Board rules or state licensing laws.

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On Mar 7, 2025, at 10:11 AM, Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)> wrote:

Good morning,

It is my intention to recommend approval of the attached rules as revised at the March RRC meeting.

As always if you have any questions please feel free to contact me.

**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](mailto:Bill.Peaslee@oah.nc.gov)

---

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**From:** Elizabeth A. Berger <[eberger@hedrickgardner.com](mailto:eberger@hedrickgardner.com)>  
**Sent:** Thursday, March 6, 2025 3:37 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Catherine E. Lee <[clee@hedrickgardner.com](mailto:clee@hedrickgardner.com)>; [dr.joe@ncchiroboard.com](mailto:dr.joe@ncchiroboard.com)  
**Subject:** [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

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Good afternoon Mr. Peaslee,

Please find attached a Response to Technical Changes and revised Rule 21 NCAC 10 .0302.

Thank you,

**Elizabeth A. Berger** | Paralegal  
Hedrick Gardner Kincheloe & Garofalo LLP  
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612  
Phone: 919-341-5147 | Fax: 919-832-9425  
[eberger@hedrickgardner.com](mailto:eberger@hedrickgardner.com) | [www.hedrickgardner.com](http://www.hedrickgardner.com)



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<21 NCAC 10 .0302 (Permanent) - Revised.docx>

## Burgos, Alexander N

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**From:** Peaslee, William W  
**Sent:** Friday, March 7, 2025 10:11 AM  
**To:** Rules, Oah  
**Cc:** Burgos, Alexander N; Catherine E. Lee; dr.joe@ncchiroboard.com  
**Subject:** FW: [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes  
**Attachments:** 21 NCAC 10 .0302 (Permanent) - Revised.docx

Good morning,

It is my intention to recommend approval of the attached rules as revised at the March RRC meeting.

As always if you have any questions please feel free to contact me.

**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](mailto:Bill.Peaslee@oah.nc.gov)

---

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---

**From:** Elizabeth A. Berger <eberger@hedrickgardner.com>  
**Sent:** Thursday, March 6, 2025 3:37 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Catherine E. Lee <clee@hedrickgardner.com>; dr.joe@ncchiroboard.com  
**Subject:** [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

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Good afternoon Mr. Peaslee,

Please find attached a Response to Technical Changes and revised Rule 21 NCAC 10 .0302.

Thank you,

**Elizabeth A. Berger** | Paralegal  
Hedrick Gardner Kincheloe & Garofalo LLP  
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612  
Phone: 919-341-5147 | Fax: 919-832-9425  
[eberger@hedrickgardner.com](mailto:eberger@hedrickgardner.com) | [www.hedrickgardner.com](http://www.hedrickgardner.com)



HEDRICK GARDNER  
KINCHELOE GAROFALO

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## **Burgos, Alexander N**

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**From:** Peaslee, William W  
**Sent:** Friday, February 28, 2025 10:17 AM  
**To:** Burgos, Alexander N  
**Subject:** FW: [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

**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](mailto:Bill.Peaslee@oah.nc.gov)

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**From:** Peaslee, William W  
**Sent:** Friday, February 28, 2025 9:53 AM  
**To:** Anna Baird Choi <achoi@hedrickgardner.com>  
**Cc:** Catherine E. Lee <clee@hedrickgardner.com>; dr.joe@ncchiroboard.com; Elizabeth A. Berger <eberger@hedrickgardner.com>  
**Subject:** RE: [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

Good morning Anna,

Thank you for your email.

Please see my **comments** below.

I look forward to seeing a revised rule by March 6<sup>th</sup>.

As always if you have any questions or concerns please feel free to contact 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](mailto:Bill.Peaslee@oah.nc.gov)

**From:** Anna Baird Choi <[achoi@hedrickgardner.com](mailto:achoi@hedrickgardner.com)>  
**Sent:** Monday, February 24, 2025 11:33 AM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Catherine E. Lee <[clee@hedrickgardner.com](mailto:clee@hedrickgardner.com)>; [dr.joe@ncchiroboard.com](mailto:dr.joe@ncchiroboard.com); Elizabeth A. Berger <[eberger@hedrickgardner.com](mailto:eberger@hedrickgardner.com)>  
**Subject:** [External] 21 NCAC 10 .0302 - Response to Request for Technical Changes

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Good morning, Bill,

I have spoken with the Board's Executive Director and rulemaking coordinator Dr. Siragusa and the Board will be making edits per your request. However, I have a couple of questions/comments which are highlighted below:

*Generally, to the Rule: Consider titling this rule "Ethics of advertising and Publicity" to be sympathetic with G.S. 90-154.2(5).*

We will make this edit.

*Lines 4-9: Explain why this paragraph is necessary pursuant to G.S. 150B-21.9(a)(3). The language is permissive where there does not appear to be any restriction. Absent a restriction a chiropractor does not need the Board's permission to have stationery which otherwise complies with the law.*

Per your comment, we will delete the entirety of paragraph (a).

*Lines 10-11: Where does G.S. 90-154.2 address "false or misleading advertising?" Should it not be "unethical conduct" as referred to in G.S. 90-154.2?*

Let me know if this edit will satisfy your concerns " . . . false or misleading advertising in violation of which constitutes unethical conduct pursuant to G.S. 90-154.2."

That works.

*Line 13: Define "unacceptable care." This is undefined and only used in this rule. If the Board found that someone was advertising "acceptable care" what would be the basis, rule, or statute for the discipline as "unacceptable care" is not prohibited?*

G.S. 90-154.3(a) reads as follows: "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." As this statute does not require the Board to adopt a rule defining "acceptable care," the Board does not believe that it needs to be defined. What would constitute "acceptable care" for one patient could be vastly different than another. That being said, the Board would like to propose the following edits (from "unacceptable care" to "acceptable care") to tie the language more directly to GS 90-154.3(a):

(b)(2) Advertising that promotes a treatment, therapy, or service that ~~constitutes unacceptable care~~ does not constitute acceptable care or ~~the~~ is not within the chiropractor's scope of practice as set forth in G.S. 90-143(a) and G.S. 90-151.

I do not concur. The use of an undefined term in a statute does not create a safe harbor for an agency to use it in a rule. Agencies are supposed to fill in the interstitial language. The General Assembly does not need to specifically tell an agency to define a term an agency decides to use in its administrative rules. G.S. 150B-21.9(a)(2) requires agency rules to be clear and unambiguous.

*Lines 22-24: As written, the Board is prohibiting someone who holds multiple licenses under Chapter 90 from advertising that they have any other license. Is that correct? So, if I am a licensed medical physician, the Board is prohibiting me from advertising that I am a physician without being subject to discipline by the Board? Explain the Board's authority.*

*Lines 22-24: As written, it is only if a person "implies" that they have another license that they are falsely advertising but if they do so plainly, they are not. Was that the Board's intention?*

*Lines 22-24: Consider if it meets the Board's intentions: "Advertising which would lead a reasonable person to believe that the licensee holds any other license(s) authorized under Chapter 90 of the North Carolina General Statutes."*

The Board is okay with your proposed edit to resolve the issues in lines 22-24 except it would like to add the following phrase at the end, "... when the licensee does not hold such a license." The Board feels this is necessary to clarify that the concern is NOT that the licensee may hold other licenses . . . their concern is when a licensee implies that he/she holds other NC licenses when he/she does not. Please let me know if this edit to your proposed language is acceptable.

That works however you should be prepared to explain to the RRC why this is not a substantial change pursuant to G.S. 150B-21.2 from that which was published? It appears to me to be a reversion to the intentions of the Board in the existing rule, as opposed to the proposed rule, only well written.

Thank you.

Anna

**Anna Baird Choi** | Partner

Hedrick Gardner Kincheloe & Garofalo LLP.

4131 Parklake Ave., Suite 300 | Raleigh, NC 27612

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**HEDRICK GARDNER**  
KINCHELOE GAROFALO

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

AGENCY: N.C. State Board of Chiropractic Examiners

RULE CITATION: 12 NCAC 10B .0408

**DEADLINE FOR RECEIPT: MARCH 6, 2025**

**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: Consider titling this rule "Ethics of advertising and Publicity" to be sympathetic with G.S. 90-154.2(5).*

*Lines 4-9: Explain why this paragraph is necessary pursuant to G.S. 150B-21.9(a)(3). The language is permissive where there does not appear to be any restriction. Absent a restriction a chiropractor does not need the Board's permission to have stationery which otherwise complies with the law.*

*Lines 10-11: Where does G.S. 90-154.2 address "false or misleading advertising?" Should it not be "unethical conduct" as referred to in G.S. 90-154.2?*

*Line 13: Define "unacceptable care." This is undefined and only used in this rule. If the Board found that someone was advertising "acceptable care" what would be the basis, rule, or statute for the discipline as "unacceptable care" is not prohibited?*

*Lines 22-24: As written, the Board is prohibiting someone who holds multiple licenses under Chapter 90 from advertising that they have any other license. Is that correct? So, if I am a licensed medical physician, the Board is prohibiting me from advertising that I am a physician without being subject to discipline by the Board? Explain the Board's authority.*

*Lines 22-24: As written, it is only if a person "implies" that they have another license that they are falsely advertising but if they do so plainly, they are not. Was that the Board's intention?*

*Lines 22-24: Consider if it meets the Board's intentions: "Advertising which would lead a reasonable person to believe that the licensee holds any other license(s) authorized under Chapter 90 of the North Carolina 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: February 18, 2025

21 NCAC 10 .0302 is proposed for amendment as follows:

**21 NCAC 10 .0302            ADVERTISING AND PUBLICITY**

(a) Methods of Professional Identification. Methods of professional identification that are compliant with G.S. 90-154.2(4) include:

(1) Signs. Signs may be placed on exterior doors, windows or walls of the licentiate's office or at entrances to the building in which his office is located.

(2) Stationery. A licentiate may identify himself on his stationery and mailing literature using the terms permitted by this Rule.

(b) Prohibited Advertising. The following shall constitute false or misleading advertising in violation of ~~G.S. 90-154(b)(1)~~G.S. 90-154.2:

(1) Advertising that purports to guarantee a beneficial result from chiropractic treatment.

(2) Advertising that promotes a treatment, therapy, or service that constitutes unacceptable care ~~or in~~ the scope of practice as set forth in G.S. 90-143(a) and G.S. 90-151.

(3) Advertising in which the licentiate is identified as a specialist, unless the licentiate has complied with the requirements of 21 NCAC 10 .0304, and any reference to the specialty is immediately preceded by the term "chiropractic." Illustrations are as follows:

(A) "Pediatrics" standing alone is deemed false or misleading; "chiropractic pediatrics" conforms to this Rule; and

(B) "Neurologist" standing alone is deemed false or misleading; "chiropractic neurologist" conforms to this Rule.

(4) Advertising that implies the licensee holds an additional license(s) in North Carolina ~~not so held~~, including but not limited to a medical physician, physical therapist, massage therapist, or acupuncturist.

*History Note: Authority G.S. 90-142; ~~90-154~~90-154.2;*

*Eff. February 1, 1976;*

*Readopted Eff. January 27, 1978;*

*Amended Eff. January 1, 1983; May 8, 1979;*

*Legislative Objection Lodged Eff. January 31, 1983;*

*Curative Amended Eff. February 28, 1983;*

*Curative Amended Eff. March 2, 1983;*

*Amended Eff. November 1, 2007; December 1, 1988;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;*

*Amended Eff. \_\_\_\_\_; January 1, 2020.*

## **Burgos, Alexander N**

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**From:** Peaslee, William W  
**Sent:** Tuesday, February 18, 2025 5:01 PM  
**To:** dr.joe@ncchiroboard.com  
**Cc:** Burgos, Alexander N  
**Subject:** 21 NCAC 10 .0302  
**Attachments:** 03.2025 Bd of Chiropractic Examiners 21 NCAC 10 .0302.docx

Good afternoon,

Attached please find the request for changes on the above captioned rule.

As always if you have any questions please feel free to contact 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](mailto:Bill.Peaslee@oah.nc.gov)

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