

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC (Rules - OAH Comm)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, November 7, 2022 4:48 PM
To: Dauna Bartley <dauna@brockerlawfirm.com>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC (Rules - OAH Comm)

Alex and Dana,

These are the final versions of the Dental Board's rules. Go ahead and post them.

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Monday, November 7, 2022 10:39 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC (Rules - OAH Comm)

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Brian,

Thank you again for your assistance with the technical changes. I am attaching our responses to your questions/change requests, along with the revised versions of 16B .0303 and 16C .0303. Please let me know if these responses and revisions are sufficient, or if we need to clarify anything else. Please also let me know what your recommendation to the Commission will be.

I am unable to attend the meeting on November 17 due to travel. Please send the evite to Doug Brocker. He is cc'ed on this email.

Thanks!

Dauna

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .0303

DEADLINE FOR RECEIPT: Tuesday, November 8, 2022.

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 paragraph (c), what is the statutory authority to require third party test development agencies to accept a member of the Dental Board on their boards of directors as a requirement for qualification?

Pursuant to GS 90-30, the Dental Board is authorized to ensure applicants undergo a satisfactory examination of proficiency and to approve third-party clinical examinations. This gives the Board the authority to condition approval of a third party exam on placement of a Dental Board member on the third party's board of directors for the limited purpose of ensuring the exam meets the requirements of NC law. Per our communication, we have modified Paragraph (c) to more clearly reflect the limited role required.

Also, in paragraph (c), please define what you mean by "input." Must the testing agency merely consider any suggestions made by the Dental Board member of their board, or must they actually implement them?

"Input" has the common meaning of any contribution of work, information, or material. The Dental Board member would provide input regarding NC laws or rules, or the standard of care, that would lead to a discussion of how our State-specific requirements impact test development or administration.

In (d)(3)(F), who shall conduct the "annual review"?

The testing agency. We have clarified (F) accordingly.

In (d)(3)(G), what is a "task analysis"? Who shall perform it?

The testing agency. We have clarified (G) accordingly. A task analysis is a common educational process of breaking down a goal into smaller component parts or steps that are performed to complete the target task so that those steps may be taught and tested.

In (d)(3)(G), line 33, remove the comma following "years".

Done.

Brian Liebman
Commission Counsel

Date submitted to agency: October 25, 2022

Part (d)(3)(I) reads as though it is an extension of (H), rather than its own individual idea. Consider adding language, such as “a system to ensure”, to mimic (H).

Done.

In paragraph (e), how must an applicant “arrange” for scores to be sent?

We have clarified this sentence. Please let us know if it requires further clarification.

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

Brian Liebman
Commission Counsel

Date submitted to agency: October 25, 2022

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16C .0303

DEADLINE FOR RECEIPT: Tuesday, November 8, 2022.

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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 paragraph (c), what is the statutory authority to require third party test development agencies to accept a member of the Dental Board on their boards of directors as a requirement for qualification?

Pursuant to GS 90-224, the Dental Board is authorized to ensure applicants undergo a satisfactory examination of proficiency and to approve third-party clinical examinations. This gives the Board the authority to condition approval of a third party exam on placement of a Dental Board member on the third party's board of directors for the limited purpose of ensuring the exam meets the requirements of NC law. Per our communication, we have modified Paragraph (c) to more clearly reflect the limited role required.

Also, in paragraph (c), please define what you mean by "input." Must the testing agency merely consider any suggestions made by the Dental Board member of their board, or must they actually implement them?

"Input" has the common meaning of any contribution of work, information, or material. The Dental Board member would provide input regarding NC laws or rules, or the standard of care, that would lead to a discussion of how our State-specific requirements impact test development or administration.

In (d)(3)(F), who shall conduct the "annual review"?

The testing agency. We have clarified (F) accordingly.

In (d)(3)(G), what is a "task analysis"? Who shall perform it?

The testing agency. We have clarified (G) accordingly. A task analysis is a common educational process of breaking down a goal into smaller component parts or steps that are performed to complete the target task so that those steps may be taught and tested.

In (d)(3)(G), line 33, remove the comma following "years".

There is no comma after "years" in 16C .0303(d)(3)(G).

Brian Liebman
Commission Counsel

Date submitted to agency: October 25, 2022

Part (d)(3)(I) reads as though it is an extension of (H), rather than its own individual idea. Consider adding language, such as “a system to ensure”, to mimic (H).

Done.

In paragraph (e), how must an applicant “arrange” for scores to be sent?

We have clarified this sentence. Please let us know if it requires further clarification.

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

Brian Liebman
Commission Counsel

Date submitted to agency: October 25, 2022

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC (Rules - OAH Comm)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Monday, November 7, 2022 3:39 PM

To: Dauna Bartley <dauna@brockerlawfirm.com>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>

Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC (Rules - OAH Comm)

Dauna,

Thanks for the edits. These look good to me, and I will recommend approval of these rules to the Commission next week. Unless you have any objections, I will send these on to Alex and Dana as the final version of the Rules.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Friday, November 4, 2022 12:35 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

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Hi Brian,

Thank you so much for the response. This is very helpful! I will send you our response to all the technical change requests no later than Tuesday, November 8.

Have a great weekend,
Dauna

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Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, November 4, 2022 10:40 AM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

Hi Dauna,

I reviewed the materials you sent me, and spoke with Ashley about the 2020 pre-review where this language came from, and I have a few thoughts.

In the correspondence with Ashley, it appears she raised concerns that largely tracked mine, namely that the Dental Board lacks statutory authority to condition approval of 3rd party testing agencies on the placement of a member of the Dental Board on the 3rd party's board of directors. It appears to me that the solution was to make it clear that the Dental Board member was to serve (quoting from language in the email exchange) "for the limited purpose of allowing Board input in examination development and administration." For whatever reason, that limiting language does not appear in the current iteration of the Rule, and I think that's the stumbling block here.

As I read your statutes, G.S. 90-30 gives the Board the power to ensure that applicants "undergo a satisfactory examination of proficiency", and gives the Board the power to approve third party clinical examinations. Thus, I read the statute to allow you to condition approval of a third party exam on the placement of a Dental Board member on the third party's board of directors, as long as that person is limited to ensuring that the exam meets the requirements of NC law. So, with the *current* language, I continue to have statutory authority concerns, because there is no explicit limitation on the role of this required board member.

What I would suggest is returning to the language that you developed during the pre-review back in 2020 (with a few tweaks for clarity):

"To qualify as an approved testing agency, a test-development agency shall allow a representative of the Dental Board to serve on the agency's Board of Directors and Examination Review Committee for the limited purpose of allowing Dental Board input into the development and administration of the examination."

I realize "the Board" means "Dental Board" but given the multiple references to a "board" here, I thought it best to be explicit.

I'm free to discuss this later today, if you think that's necessary. Otherwise, if the above language is OK with you, I am comfortable with it as well.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Tuesday, November 1, 2022 11:33 AM

To: Dauna Bartley <dauna@brockerlawfirm.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

Thanks, Dauna. I had the CLE Friday, and then got locked out of my email (again!) yesterday, so I will take a look later today and get back to you sometime this week.

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC
Attachments: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Thursday, October 27, 2022 4:24 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

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Brian,

Thank you for your time this afternoon. Per our call, I am attaching the email exchange I had with Ashley Snyder during pre-review of 16C .0303 in February/March 2020, in which we discussed the issue of statutory authority and worked out acceptable language. The Commission approved this language in August 2020.

Please let me know your thoughts after you have reviewed and conferred with Ashley regarding the background. I appreciate it!

Dauna

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Burgos, Alexander N

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Wednesday, March 4, 2020 2:29 PM
To: Dauna Bartley
Subject: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

Hi Dauna,

I am fine with any of the versions below and would not issue a staff opinion pending your response to my technical change requests. Of course, I think I know your answer, but please understand I would have to ask about it for our records.

My question would be similar to the following: "What is your intent here? Are you requiring testing agencies to provide Board representation on the Board of Directors for the purpose of providing input on examinations? Or are you requiring a Board representative to serve as a full member of the Board of Directors?"

I hope that helps!

Ashley Snyder

Commission Counsel, Rules Review Commission
Office of Administrative Hearings
(919) 431-3081

From: Dauna Bartley <dauna@brokerlawfirm.com>
Sent: Wednesday, March 4, 2020 10:02 AM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

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Hi Ashley!

I wanted to check my understanding of your wording below. Are you saying that we could use either of these options, and it would meet approval/would not generate a staff opinion?

"To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve on the Board of Directors and the Examination Review Committee of the agency and allow for the limited purpose of allowing Board input in the examination development and administration."

Alternative option of returning to current language: "To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve representation on the Board of Directors and the Examination Review Committee of the agency and allow Board input in the examination development and administration."

If we went with the latter approach, a final version (with a couple more edits) would be:

To qualify as an approved testing agency, the test-development agencies shall allow Board representation on the examination review committee and the board of directors of the agency and allow Board input in the examination development and administration.

Would that work?

Thanks!

Dauna

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From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Friday, February 7, 2020 11:25 AM

To: Dauna Bartley <dauna@brockerlawfirm.com>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>

Subject: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

Hi Dauna,

After thinking about this, my real concern turns on serving on the Board as a full member of the Board of Directors. To me, this suggests the Board is requiring involvement in things beyond testing. In other words, they could be involved in financial decisions, decisions regarding employees and management, etc. I am concerned involvement in that broader decision making goes beyond your statutory authority. I do not, however, think you need to remove representation on the Board entirely. As I read the old language, the Dental Board was represented at Board of Directors meetings, but the rule did not require a full member of the Board of Directors. I would be comfortable with the following, which I think fall somewhere between your two suggestions.

Of course, please keep in mind these are my thoughts as staff counsel regarding whether or not you may receive a staff opinion. If you want to move forward with the proposed language, you can always do so and make your argument at an RRC meeting.

Dauna's suggested language with my thoughts:

"To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve on the Board of Directors and the Examination Review Committee of the agency ~~and allow~~ for the limited purpose of allowing Board input in the examination development and administration."

Alternative option of returning to current language: "To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve representation on the Board of Directors and the Examination Review Committee of the agency and allow Board input in the examination development and administration."

Ashley Snyder

Commission Counsel, Rules Review Commission

Office of Administrative Hearings

(919) 431-3081

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Thursday, February 6, 2020 4:36 PM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>

Subject: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

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Hi Ashley!

We are still working on edits and revisions in response to your notes. I have a question about your comment on 16C .0303:

- In (c), lines 11-13, where is your authority to require a testing agency to allow a representative of the Board to serve on their Board of Directors? I am concerned this goes beyond the Board's authority to establish rules over the form and type of the examination. If you look at the current text of the rule, the Board has "representation on the Board of Directors and the Examination Review Committee" to "allow Board input in the examination development and administration." I am also unsure whether serving on the Board of Directors would result in some financial gain and whether that is prohibited. To be clear, my concern here is that I do not see statutory authority to impose this requirement. If this is submitted as written, it may result in a staff opinion.

We want to correct this issue and I'm looking for options I can present to the Dental Board that would be acceptable from your perspective.

If we add that qualifying language back into the rule, would that be okay? It would read: "To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve on the Board of Directors and the Examination Review Committee of the agency and allow Board input in the examination development and administration." It seems like that brings it within the Board's authority.

If that won't work, do we need to remove "Board of Directors" entirely? This would read: "To qualify as an approved testing agency, the test-development agencies shall allow a representative of the Board to serve on the Examination Review Committee of the agency and allow Board input in the examination development and administration."

Please let me know your thoughts on these options.

Thank you for helping us to avoid issues!

Dauna

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From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Wednesday, January 29, 2020 2:46 PM

To: Dauna Bartley <dauna@brockerlawfirm.com>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File

<file@brockerlawfirm.com>

Subject: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

Hi Dauna,

My notes on the Dental Board's pre-review request are attached. Please let me know if you have any questions.

Thanks,

Ashley Snyder

Commission Counsel, Rules Review Commission
Office of Administrative Hearings
(919) 431-3081

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Wednesday, December 18, 2019 12:47 PM

To: May, Amber Cronk <amber.may@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>; File <file@brockerlawfirm.com>

Subject: [External] NC Dental Board - Request for pre-review (RRC COMM)

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Hi Amber and Ashley,

I hope you're enjoying the holiday season!

The Dental Board is requesting pre-review of the attached eleven proposed amended rules. At its meeting last Friday, December 13, 2019, the Board approved these rules for publication after your pre-review.

Please confirm receipt and let us know if you need anything else. As always, we appreciate your input before publication!

Best,
Dauna



THE Brocker Law Firm PA

Dauna Bartley

Attorney

The Brocker Law Firm, P.A.

5540 Centerview Drive, Suite 200 | Raleigh, NC 27606-3363

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Pre review attachment

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Request for Changes - November 2022 RRC
Attachments: RE: [External] NC Dental Board - Request for pre-review (RRC COMM)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, October 27, 2022 11:02 AM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

That's fine.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Thursday, October 27, 2022 11:01 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

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Great! How about 3:30 today?

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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, October 27, 2022 10:59 AM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board Request for Changes - November 2022 RRC

Hi Dauna,

I'm attending a CLE today. I should be free after 2:00 p.m.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Thursday, October 27, 2022 10:56 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: Dental Board Request for Changes - November 2022 RRC

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Brian,

Thank you for the information. The technical change request includes questions, so I am contacting you to discuss. Do you have time for a call today or tomorrow?

Thanks,
Dauna

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To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Dental Board Request for Changes - November 2022 RRC

Hi Dauna,

I'm the attorney who reviewed the Rules submitted by the Board for the November 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 17, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Tuesday, November 8, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

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