

NORTH CAROLINA REGISTER

VOLUME 34 • ISSUE 18 • Pages 1705 – 1743

March 16, 2020

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PUBLISHED BY

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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116 West Jones Street

Raleigh, North Carolina 27603-8005

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

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NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

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545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
35:03	08/03/20	07/13/20	08/18/20	10/02/20	10/20/20	11/19/20	12/01/20	04/30/21
35:04	08/17/20	07/27/20	09/01/20	10/16/20	10/20/20	11/19/20	12/01/20	05/14/21
35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910 promulgated as of September 26, 2019, except as specifically described, and
- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulations*. Title 29, Part 1910—General Industry Standards does not automatically include subsequent amendments.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, CFR amendments to § 1910.134 – Respiratory Protection Standard (84 FR 50739, September 26, 2019) to include quantitative fit testing protocols.

The final rule, published in the Federal Register on September 26, 2019 (84 FR 50739), approved two modified condensation nuclei counting (CNC) QNFT protocols, which are being added to Appendix A of 29 CFR 1910.134 as alternatives to the four existing QNFT protocols: one for full-facepiece and half-mask elastomeric respirators, and the other for filtering facepiece respirators. OSHA's final rule was effective September 26, 2019.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Jill F. Cramer, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101



North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 and 13 NCAC 07F .0501, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 and 1915 promulgated as of September 30, 2019, except as specifically described, and
- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulations*, but Parts 1915 and 1926 are not included.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR amendments to § 1926 and 1915 – Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (84 FR 51377, September 30, 2019).

The final rule is published in the Federal Register on September 30, 2019 (84 FR 51377). Final rule delays compliance deadlines for almost all provisions of the beryllium standards for construction and shipyards to 9/30/2020. Compliance with the permissible exposure limit (PEL) and short-term exposure limit (STEL), which OSHA had been enforcing since 5/11/2018, remain in effect. In addition, OSHA is not revoking the ancillary provisions of these standards as previously proposed, but will publish a new proposed rule for shipyards and construction. OSHA's final rule was effective September 30, 2019.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Jill F. Cramer, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

CHAPTER 05 - PURCHASE AND CONTRACT

SUBCHAPTER 05B - PURCHASE PROCEDURES

SECTION .0500 - REJECTION OF OFFERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend the rule cited as 01 NCAC 05B .0503.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

Proposed Effective Date: August 1, 2020

Public Hearing:

Date: April 28, 2020

Time: 9:00 a.m.

Location: Conference Room, 424 N. Blount Street, Raleigh, North Carolina 27601

Reason for Proposed Action: This Rule is being amended to correct an issue arising after readoption.

Comments may be submitted to: Shanon M. Gerger, 424 N. Blount Street, Raleigh, NC 27601; phone (984) 236-0008; email adminrules@doa.nc.gov

Comment period ends: May 15, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☒ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

01 NCAC 05B .0503 NEGOTIATION

- (a) ~~If the Purchasing Agency does not receive a Responsive Offer to a Solicitation and determines that soliciting Offers again would not yield a different result, the~~ The Purchasing Agency may negotiate with one or more Responsive Vendors ~~Vendors in the Competitive Range~~ or reject all Offers under the provisions of Rule .0501 of this Section and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section.
- (b) Negotiations shall be conducted by the Purchasing Agency if the Solicitation is under its Bid Value Benchmark or General Delegation. A Purchasing Agency may request the participation of the Division in any Negotiation.
- (c) Negotiations shall be memorialized by a written agreement executed by the parties and issued by the Division.
- (d) All Negotiation results shall be documented in writing for public record.

Authority G.S. 143-52; 143-53; 143-60.

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Natural and Cultural Resources intends to readopt with substantive changes the rule cited as 07 NCAC 13B .1003.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncparks.gov/park-rules>

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: April 3, 2020

Time: 10:00 a.m.

Location: Nature Research Center, Room 4508, 121 W. Jones Street, Raleigh, NC 27603

Reason for Proposed Action: The existing rule pertaining to alcohol in state parks currently bans all persons from possessing and/or consuming alcohol on park premises at most parks. This limitation is inconsistent with all other State Parks across the southeastern United States. To serve more of the growing

population of North Carolina, the permission to change to a system with measured limitations pertaining to alcohol rather than almost a total abolition is requested. This requested rule change will increase revenue, increase occupancy rates, increase usage of all rental facilities and will enhance the experience for visitors to North Carolina State Parks.

Comments may be submitted to: Carol Tingley, NC Division of Parks and Recreation, 1615 Mail Service Center, Raleigh, NC 27699-1615

Comment period ends: May 15, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**CHAPTER 13 - PARKS AND RECREATION AREA
RULES**

SUBCHAPTER 13B - PARKS AND RECREATION AREAS

**SECTION .1000 - DISORDERLY CONDUCT: PUBLIC
NUISANCE: ETC.**

**07 NCAC 13B .1003 ~~INTOXICATING LIQUORS:~~
~~ALCOHOLIC BEVERAGES AND CONTROLLED~~
~~SUBSTANCE OR BEVERAGES SUBSTANCES~~**

(a) A person shall not possess or consume any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, within any state park park, natural area or recreation area, ~~except at the Chimney Rock Attraction and Chimney Rock Restaurant at the Chimney Rock State Park except:~~

- (1) as permitted under a ~~long-term~~ long-term operating ~~agreement~~ agreement; and at the Summit Conference Center, Haw River State Park

- (2) in ~~designated~~ areas designated in accordance with Paragraph (h) of this Rule; and only or
- (3) after obtaining a Special Activity Permit ~~from~~ approved by the Director of the Division or his or her designee ~~under Paragraphs (d) through (i) of~~ in accordance with this Rule. A person shall not possess or consume any other alcoholic beverage, as defined by G.S. 18B-101, or controlled substance substance, as defined by G.S. 90-87(5) or intoxicating substance within any state ~~park park, natural area~~ or recreation area.

(b) A person shall not be or become ~~intoxicated~~ intoxicated, as defined by G.S. 14-443(2), while within any state ~~park park, natural area~~ or recreation area, including during events approved under a Special Activity Permit.

(c) A person shall not ~~sell sell or serve, or attempt to sell sell or serve~~ any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, within any state ~~park park, natural area~~ or recreation ~~area, area, except:~~

- (1) pursuant to the terms and conditions of a long-term operating ~~lease from~~ agreement with the ~~Division, Division;~~
- (2) in areas designated in accordance with Paragraph (h) of this Rule; or
- (3) after obtaining a Special Activity Permit approved by the Director of the Division or his or her designee in accordance with this Rule. A person shall not ~~sell sell or serve~~ or attempt to ~~sell sell or serve~~ any other alcoholic beverage, as defined by G.S. 18B-101, or controlled substance substance, as defined by G.S. 90-87(5) or intoxicating substance within any state ~~park park, natural area~~ or recreation area.

(d) ~~Applications~~ Requests for a Special Activity Permit authorizing the ~~possession or consumption~~ possession, consumption, sale or service of any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, shall be made by a Special Activity Permit request in writing to the Director of the Division or his or her designee, not less than 14 days prior to the date(s) of the intended use.

(e) The written request shall state the period of time and the area ~~from~~ for which the use is requested; the number of persons expected to be in attendance; the type of activity and the type and amounts of malt beverage, fortified wine, unfortified wine or spirituous liquor involved; documentation of any and all permitting required by the North Carolina Alcoholic Beverage Control Commission; and the name and address of the individual, organization or group seeking permission to use any portion of any state ~~park park, natural area~~ or recreational area for the ~~possession or consumption~~ possession, consumption, sale or service of any malt beverage, fortified wine, unfortified wine or spirituous liquor, listing liquor; and, for organizations and groups requesting permission, the name and address of the requestor or its president, vice president(s), secretary and treasurer or its principal chief executive officer or officers, its directors, if any, and such other pertinent information as may be required by the Director of the Division, or his or her designee, sufficient to identify the organization submitting the request and the

~~individuals principally engaged in the conduct of its affairs, authorized representative, such as the president or chief executive officer of the organization or group.~~

(f) The Special Activity Permit shall specify the hours of permitted use, type of malt beverage, fortified wine, unfortified wine or spirituous liquor, the total amounts to be brought into the ~~Park state park, natural area or recreation area, and~~ the maximum number of ~~attendees, attendees, and any additional conditions specified by the Director or his or her designee which are consistent with the purposes and management of the State Park System, as defined in G.S. 143B-135.42.~~

(g) If the Director of the Division or his or her designee concludes that the requested use will not hinder or impede any regularly established use of the ~~Haw River State Park and Chimney Rock State Park state park park, natural area or recreation area where the use is requested and will not adversely affect or threaten their care, protection or maintenance or create a nuisance by such use, is consistent with the protection of the natural resources, facilities, and public enjoyment of the State Park System, he or she shall grant permission to use the state park park, natural area or recreation area specified in the request or long-term long-term operating lease agreement submitted in accordance with this Rule. If the Director or his or her designee shall determine otherwise, he or she shall deny the request.~~

(h) The Director of the Division or his or her designee shall designate ~~appropriate areas and occasions in the designated parks under this Rule, suitable for possession or consumption where possession, consumption sale or service of malt beverages, fortified wine, unfortified wine or spirituous liquor liquor, as defined in G.S. 18B-101. G.S. 18B-101, is allowed. Such areas and occasions shall may be limited so as not to interfere, or cause user conflicts, conflicts with other organizations, groups or individuals also visiting the state park but not requesting the Special Activity Permit. Examples of appropriate areas include meeting rooms, restaurants, cafeterias, lodging rooms and other similar areas in which user conflicts are minimized. Examples of permitted occasions include receptions, weddings and retreats. park, natural area or recreation area.~~

(i) ~~The applicant for a Special Activity Permit shall comply with all state or local laws, rules or ordinances related to the possession or consumption of any malt beverage, fortified wine or unfortified wine, as defined in G.S. 18B-101. Violation of the terms and conditions of a Special Activity Permit issued in accordance with this Rule is prohibited and shall result in revocation of the permit by the Director of the Division or his or her designee.~~

Authority G.S. 143B-135.16.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the HHS - Division of Health Service Regulation intends to readopt with substantive changes the rules cited as 10A NCAC 14E .0105, .0312, and .0316.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://info.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: *February 1, 2021*

Public Hearing:

Date: *April 2, 2020*

Time: *10:00 a.m.*

Location: *Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603*

Reason for Proposed Action: *Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 14E, Certifications of Clinics for Abortion, these three proposed readoption rules were determined as "Necessary With Substantive Public Interest" requiring readoption. Substantive changes have been made to these rules to update construction documents and specifications approval time limits and flammable anesthetics use prohibition to industry standards, to clarify the requirements for medication administration in the clinic including medical record documentation, and to delete unnecessary redundant requirements in one rule because they are addressed in another rule in the Subchapter. In addition, clarifying technical changes have been made to these rules.*

Comments may be submitted to: *Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *May 15, 2020*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

**SUBCHAPTER 14E - CERTIFICATIONS OF CLINICS
FOR ABORTION**

SECTION .0100 - CERTIFICATION PROCEDURE

10A NCAC 14E .0105 APPROVAL

(a) Approval of construction documents and specifications shall be obtained from the Division of Health Service Regulation, the Division of Public Health Environmental Health, Health Section, and the Department of Insurance should be obtained before construction is commenced. Insurance, in accordance with the rules in Section .0200 of this Subchapter.

(b) Approval of construction documents and specifications shall expire one year after the date of approval unless a building permit for the construction has been obtained prior to the expiration date of the approval of construction documents and specifications.

Authority G.S. 14-45.1(a); 143B-10.

SECTION .0300 – GOVERNING AUTHORITY

**10A NCAC 14E .0312 MEDICATIONS AND
ANESTHESIA**

(a) ~~Medication~~ No medication or treatment shall be given except on written order of a physician.

- (1) ~~No medication or treatment shall be given except on written order of a physician.~~
- (2) ~~Medications must be administered in accordance with the Nurse Practice Act of the State of North Carolina, and must be recorded in the patient's permanent record.~~

(b) ~~Anesthesia~~ Any medications shall be administered by a Registered Nurse in accordance with G.S. 90-171.30 or G.S. 90.171.32 and must be recorded in the patient's permanent record.

- (1) ~~The anesthesia must be administered only under the direct supervision of a licensed physician.~~
- (2) ~~Flammable anesthetics shall be prohibited except when construction, storage and equipment meet the standards of the National Fire Protection Association (N.F.P.A.) incorporated in Bulletin No. 56, "Code for Use of Flammable Anesthetics."~~

(c) The anesthesia shall be administered only under the direct supervision of a licensed physician.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0316 FOOD SERVICE

(a) ~~Nourishments~~ Nourishments, such as crackers and soft drinks, shall be available and offered to all patients.

(b) ~~Sanitary conditions shall be maintained in accordance with regulations of the North Carolina Sanitation Code administered by the Division of Environmental Health.~~

Authority G.S. 14-45.1(a); 143B-10.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Code Officials Qualification Board intends to adopt the rule cited as 11 NCAC 08 .0734, and amend the rules cited as 11 NCAC 08 .0602 and .0702.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdoi.gov/insurance-industry/rules-and-rules-review>

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: April 28, 2020

Time: 1:00 p.m.

Location: 2nd Floor Training Room, Room 245 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The rules are being submitted to provide clarity, modifications, and guidance on existing and new regulations to industry, motor vehicle damage appraisers, consumers, and interested parties about the expectations for all parties involved in the claims process. This includes providing motor vehicle damage appraisers ethical standards they shall follow, provide industry, motor vehicle damage appraisers, consumers, and interested party's guidance on how to address motor vehicle repair estimates, handling of loss and claims payments, and managing total loss claims settlements. These rules are being amended and adopted to implement the Changeout Inspector certification that was created by the General Assembly in Session Law 2019-174.*

Comments may be submitted to: *Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email loretta.peace-bunch@ncdoi.gov*

Comment period ends: May 15, 2020

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected

- ☐ Substantial economic impact (>= \$1,000,000)
☐ Approved by OSBM
☒ No fiscal note required

**CHAPTER 08 - ENGINEERING AND BUILDING CODES
DIVISION**

**SECTION .0600 - QUALIFICATION
BOARD-PROBATIONARY CERTIFICATE**

**11 NCAC 08 .0602 NATURE OF PROBATIONARY
CERTIFICATE**

(a) A probationary certificate may be issued as a building inspector, electrical inspector, mechanical inspector, plumbing inspector, or fire inspector as set forth in 11 NCAC 08 .0706, without ~~examination~~ examination, to any newly employed or newly promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for three years only and shall not be renewed. During the three-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate shall authorize the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate and meeting one of the following:

- (1) working under supervision sufficient, as determined by a supporting letter provided for in 11 NCAC 08 .0706(b), to protect the public health and safety;
- (2) possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) achieving a minimum score of 70 percent on the probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate as a residential changeout inspector set forth in 11 NCAC 08 .0734 may be issued to any employed code enforcement official, whose employment can be verified pursuant to 11 NCAC 08 .0734(d)(2), who lacks a standard certificate as a residential changeout inspector and who successfully completes a residential changeout inspections course set forth in 11 NCAC 08 .0734(d)(3). A probationary certificate shall be issued for three years only and shall not be renewed. During the three-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate as a residential changeout inspector shall authorize the official, during the effective period of the certificate, to hold the position set forth in 11 NCAC 08 .0734(a). The probationary certificate shall be

conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate and working under the direct supervision of a person who possesses, or persons who collectively possess, standard certificates as an electrical inspector III, mechanical inspector III, and plumbing inspector III or an individual holding a residential changeout inspector certificate and five years of code enforcement experience.

Authority G.S. 143-151.12(2); ~~143-151.13(d)~~; 143.151.13.

**SECTION .0700 - QUALIFICATION BOARD-STANDARD
CERTIFICATE**

**11 NCAC 08 .0702 NATURE OF STANDARD
CERTIFICATE**

(a) The Board shall issue one or more standard certificates to each code enforcement official demonstrating the qualifications set forth in ~~11 NCAC 08 .0706 and .0707~~. 11 NCAC 08 .0706, .0707, and .0734. Standard certificates are available for each of the following types of qualified code enforcement officials:

- (1) building inspector;
- (2) electrical inspector;
- (3) mechanical inspector;
- (4) plumbing inspector; ~~and~~
- (5) ~~fire inspector~~; fire inspector; and
- (6) residential changeout inspector.

(b) The holder of a standard certificate may practice code enforcement only within the inspection area and level described upon the certificate issued by the Board. A code enforcement official may qualify and hold ~~one or more certificates~~. more than one certificate. These certificates may be for different levels in different types of positions.

(c) A code enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may hold a position calling for that type of qualification anywhere in the ~~State of North Carolina~~. State. A standard certificate must be renewed annually in order to remain valid.

Authority G.S. 143-151.13; 143-151.16.

**11 NCAC 08 .0734 RESIDENTIAL CHANGEOUT
INSPECTOR**

(a) Qualifications and types:

- (1) A residential changeout inspector shall be authorized to inspect the replacement of a residential appliance as described in Subparagraph (2) of this Paragraph for one-and-two family dwellings, and individual residential units of condominiums and apartments provided the individual residential appliance serves only that residential dwelling unit.
- (2) The following types of inspections may be performed by those certified as a residential changeout inspector: The replacement of heating and air conditioning appliances and water heaters, provided that all of the following apply:
 - (A) the new appliance requires no alterations to the existing ducting, fuel

- type, venting, or piping systems other than that required for transitioning to the new appliance;
- (B) the new appliance does not require relocation, excluding minor adjustments in the same general vicinity;
- (C) the installation of the new appliance does not require the relocation or addition to the existing electrical system, except that the replacement of the appliance's branch circuit overcurrent device; or the replacement of the appliance's branch circuit where such circuit does not pass through a rated assembly shall be allowed;
- (D) the electrical branch circuit serving the appliance is single phase.
- (b) An inspection performance log shall be developed and provided by the North Carolina Department of Insurance, Office of State Fire Marshal and shall describe the types of systems and specify the level of supervision of each inspection required to be documented. The inspection performance log is available on the Office of State Fire Marshal website. The inspection performance log shall describe the criteria for authenticating the applicant and supervisors' qualifications, and the inspections performed. Inspections do not have to be performed on the same building.
- (c) Whenever a provision of the rules in this Section requires a high school education or other education and experience qualifications, the Board may approve equivalent qualifications.
- (d) Every applicant shall:
- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate;
 - (2) provide notarized certification by a city or county manager, clerk, or director of inspection department that the applicant will be performing "code enforcement", as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant will be performing "code enforcement", as defined in G.S. 143-151.8(a)(3), for a State department or agency;
 - (3) make a grade of at least 70 on courses developed by the Board. Successful completion is defined as attendance of a minimum of 80 percent of the hours taught and achieving a minimum score of 70 percent on the course exam. All applicants must successfully complete a law and administration course and a residential changeout inspections course. For the purpose of entry into the State examination, courses must be completed within five years of the exam in Subparagraph (4) of this Paragraph. These courses shall be administered and taught in the N.C. Community College System or

- other educational agencies accredited by a regional accrediting association. The North Carolina Department of Insurance, Office of State Fire Marshal may administer and teach certification courses for the purposes of development; and
- (4) achieve a passing grade of 70 percent on the written examination administered by the Board.
- (e) Residential Changeout Inspector. A standard certificate, residential changeout inspector, shall be issued to any applicant who possesses a probationary residential changeout inspection certificate pursuant to 11 NCAC 08 .0602, complies with Paragraphs (c) and (d) of this Rule, and one of the following education and experience qualifications:
- (1) possess any level standard certificate as an electrical inspector, mechanical inspector, or plumbing inspector; or
 - (2) all the following:
 - (A) at least six months of conducting residential changeout inspections with a probationary residential changeout inspection certificate;
 - (B) successful completion of an inspection performance log as administered by the North Carolina Department of Insurance, Office of State Fire Marshal; and
 - (C) successful completion of a law and administrative course.

Authority G.S. 143-151.12; 143-151.13.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited as 14B NCAC 17 .0201, .0204, and .0301.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: *August 1, 2020*

Public Hearing:

Date: *March 31, 2020*

Time: *2:00 p.m.*

Location: *Conference Room, ASLB Office, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609*

Reason for Proposed Action:

14B NCAC 17 .0201 - The amendment will allow applicants to submit required fingerprints via an online fingerprint scanning system.

14B NCAC 17 .0204 - The amendment addresses the process for a license holder to reinstate an expired license.

14B NCAC 17 .0301 - The amendment will allow applicants to submit required fingerprints via an online fingerprint scanning system.

Comments may be submitted to: Paul Sherwin, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Comment period ends: May 15, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall submit an online application on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on an F.B.I. fingerprint card provided by the Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of sufficient quality for identification, taken within six months prior to the online submission, and uploaded with the application submission;
- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months; and

- (4) the applicant's application fee, along with a four dollar (\$4.00) convenience fee charged by the third-party vendor and credit card transaction fee charged by the applicant's credit card provider and collected online.

(b) Each applicant shall upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board stating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter.

(d) Each applicant for a branch office license shall submit an online application ~~form~~ on the website provided by the Board. This ~~form~~ online application shall be accompanied by the branch office application fee.

Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7; 74D-8.

14B NCAC 17 .0204 **RENEWAL OR REINSTATEMENT OF LICENSE**

(a) Each applicant for a license renewal shall submit an online renewal application on the website provided by the Board. This online application shall be submitted not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) statements of the result of a local statewide criminal history records search by the reporting services service designated by the Board pursuant to G.S. 74D-2.1 for any state where the applicant has resided within the preceeding 24 months;
- (2) the applicant's renewal fee as set forth in .0203(a)(2); and
- (3) proof of liability insurance pursuant to G.S. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. No renewal shall be granted more than 90 days after the date of expiration of a license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and shall be submitted not later than 90 days after the expiration date of the license.

(d) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within one year of the expiration date by submitting an online reinstatement of an expired license application accompanied by the Subparagraphs (a)(1) through (3) of this Rule and the late fee required by Paragraph (c) of this Rule. The Board retains the right to discipline a licensee for activity during the period of lapse.

~~(d)(e)~~ The Director shall review and approve or recommend denial of an application for ~~renewal~~, renewal or reinstatement. All denials shall be submitted to the Board for a final Board decision.

~~(e)~~(f) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74D-2(a); 74D-5; 74D-7; 93B-15.

SECTION .0300 – PROVISIONS FOR REGISTRANTS

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit an online application for the registration of his or her employee on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on a standard F.B.I. fingerprint card mailed separately to the Board's office;
- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- (3) one head and shoulders digital photograph of the applicant of acceptable quality for identification, taken within six months prior to online submission, and uploaded with the application submission;
- (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months;
- (5) the registration fee required by Rule .0302 of this Section, along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration ~~fee~~ fee along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

Authority G.S. 74D-2.1; 74D-5; 74D-8.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14H .0401, .0403, .0404; 14T .0401, .0502, .0602-.0606 and .0615.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.nccosmeticarts.com/uploads/forms/rules22020.pdf

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: March 31, 2020

Time: 10:00 a.m.

Location: 1207 Front Street Suite 110 Raleigh, NC 27609

Reason for Proposed Action: *Infection control changes based on industry research and best practices. Changes to school rules to clarify topics of study within the disciplines of cosmetic art.*

Comments may be submitted to: Stefanie Kuzdrall, 1207 Front Street Suite 110, Raleigh, NC 27609; phone (919) 736-6123; email skuzdrall@nccosmeticarts.com

Comment period ends: May 15, 2020

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SUBCHAPTER 14H - SANITATION

**SECTION .0400 - INFECTION CONTROL PROCEDURES
AND PRACTICES**

21 NCAC 14H .0401 LICENSEES AND STUDENTS

(a) For purposes of this Section, sanitation, as described in G.S. 88B, is defined as "infection control."

(b) Notwithstanding Rule .0201 in this Subchapter, this Rule applies to licensees and students in practice in cosmetic art schools and shops. Each licensee and student shall wash his or her hands with soap and water immediately after using the restroom. Each licensee and student shall wash his or her hands with soap and water or use of a 62 percent to 70 percent ~~or greater~~ alcohol-based hand sanitizer immediately before and after serving each client.

(c) Each licensee and student shall wear clean garments and shoes while serving patrons.

(d) Licensees or students shall not use or possess in a cosmetic art school or shop any of the following:

- (1) Methyl Methacrylate Liquid Monomer, a.k.a. MMA;
- (2) razor-type callus shavers or blades designed and intended to cut skin and skin growths of skin including skin tags, corns, and calluses;
- (3) FDA rated Class III devices;
- (4) carbolic acid (phenol) over two percent strength;
- (5) animals including insects, fish, amphibians, reptiles, birds, or non-human mammals to perform any service; or
- (6) a variable speed electrical nail file unless it has been designed for use on a natural nail.

(e) A licensee or student shall not:

- (1) use any product, implement, or piece of equipment in any manner other than the product's, implement's, or equipment's intended use as described or detailed by the manufacturer;
- (2) treat any medical condition unless referred by a physician;
- (3) provide any service unless it falls within the license definition listed in G.S. 88B-2 and unless trained prior to performing the service;
- (4) perform services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) an inflamed, infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on;
- (5) alter or duplicate a license issued by the Board;
- (6) advertise or solicit clients in any form of communication in a manner that is false or misleading;

- (7) use any FDA rated Class II device without the documented supervision of a licensed physician;
- (8) use any product that will penetrate the dermis;
- (9) make any statement to a member of the public, either verbally or in writing, stating or implying any action is required or forbidden by Board rules when such action is not required or forbidden by Board rules. A violation of this prohibition is considered practicing or attempting to practice by fraudulent misrepresentation is set forth in 21 NCAC 14P .0108;
- (10) use or possess any product banned by the FDA. A list of banned products is available at www.fda.gov; or
- (11) use or possess any machine for a cosmetic art service that is not classified by the FDA.

(f) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Safety Data Sheet.

(g) Licensees may only perform services specifically designated within their licensure field as defined by G.S. 88B-2.

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-24.

21 NCAC 14H .0403 DISINFECTION PROCEDURES

(a) Infection Control rules that apply to towels and cloths are as follows:

- (1) Clean protective capes, drapes, linens, and towels shall be used for each patron;
- (2) After a protective cape has been in contact with a patron's neck it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer. Capes that cannot be laundered and dried in a heater dryer may be disinfected with a disinfectant that is bactericidal, virucidal and fungicidal and approved by the EPA for use in beauty salons, or salon used in accordance with the manufacturer directions; and
- (3) After a drape, linen, or towel has been in contact with a patron's skin it shall be placed in a clean, covered container until laundered with soap and hot water and dried in a heated dryer. A covered container may have an opening so soiled items may be dropped into the container.

(b) Any paper or nonwoven protective drape or covering shall be discarded after one use.

(c) There shall be a supply of clean protective drapes, linens and towels at all times. Wet towels used in services must be prepared fresh each day. Unused, prepared wet towels must be laundered daily.

(d) Clean drapes, capes, linens, towels and all other supplies shall be stored in a clean area.

(e) Bathroom facilities must be kept clean.

(f) All implements shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.
 - (2) They shall be disinfected with either:
 - (A) disinfectant that is bactericidal, virucidal and fungicidal and approved by the EPA for use in beauty salons, or salon settings that is mixed and used according to the manufacturer's directions. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or
 - (B) by UV-C, ultraviolet germicidal irradiation used in accordance with the manufacturer's directions.
 - (3) If the implement is shears, a razor, not immersible or is not disinfected by UV-C irradiation, it shall be cleaned by wiping it with a clean cloth moistened or sprayed with a disinfectant that is bactericidal, virucidal and fungicidal and approved by the EPA for use in beauty salons, or salon settings used in accordance with the manufacturer's directions.
- (g) All disinfected non-electrical implements shall be stored in a clean, closed cabinet or clean, closed container.
- (h) All disinfected electrical implements shall be stored in a clean area separate from other clean implements.
- (i) Disposable and porous implements and supplies must be discarded after use or upon completion of the service.
- (j) Product that comes into contact with the patron must be discarded upon completion of the service.
- (k) Containers with open faces may be covered or closed with plastic wrapping. Disinfected implements must not be stored with any implement or item that has not been disinfected.
- (l) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.
- (m) All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers, and must conform in all respects to the requirements of the Federal Food, Drug, and Cosmetic Act as set forth in PL 75-717.52 accessible at www.fda.gov. Any product apportioned for use and removed from original containers must be distributed in a sanitary manner that prevents contamination of product or container. Any product dispensed in portions into another container must be dispensed into a clean container and applied to patrons by means of a disinfected or disposable implement or other clean methods. Any product dispensed in portions not dispensed into another container must be used immediately and applied to patrons by means of a disinfected or disposable implement or other clean methods. No product dispensed in portions may be returned to the original container.
- (n) As used in this Rule whirlpool or footspa means any basin using circulating water.
- (o) After use by each patron each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) All water must be drained and all debris removed from the basin;
 - (2) The basin must be disinfected by filling the basin with water and ~~circulating~~:
 - (A) ~~Two tablespoons of automatic dishwashing powder and 1/4 cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or~~
 - (B) ~~Surfactant~~ circulating a surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;
 - (3) The basin must be drained and rinsed with clean water; and
 - (4) The basin must be wiped dry with a clean towel.
- (p) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) The screen must be removed and all debris trapped behind the screen removed;
 - (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
 - (3) Before replacing the screen ~~one of the following procedures must be performed~~:
 - (A) ~~The screen must be totally immersed in a household bleach solution of 1/4 cup of 5.25 percent household bleach to one gallon of water for 10 minutes; or~~
 - (B) ~~The screen~~ it must be totally immersed in an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions for 10 minutes;
 - (4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and
 - (5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.
- (q) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason, and name of the staff member who performed the cleaning. This record must be made for each whirlpool or footspa and must be kept and made available for at least 90 days upon request by either a patron or inspector.
- (r) The water in a vaporizer machine must be emptied daily and the unit disinfected daily after emptying.
- (s) The area where services are performed that come in contact with the patron's skin including treatment chairs, treatment tables, and beds shall be disinfected between patrons.
- (t) A manufacturers label for all disinfectant concentrate must be available at all times. If a concentrate bottle is emptied, it must remain available until a new bottle is available.

(u) When mixed disinfectant concentrate is placed in a secondary container such as a spray bottle, tub or jar, that container must be labeled to indicate what chemical is in the container. SDS sheets must be available for all disinfectants in use at all times.

(v) Disinfectants must be stored and disposed of in accordance with all local, State and federal requirements.

(w) The cabinet and supplies of a towel warmer machine must be emptied daily and the unit dried daily after emptying.

Authority G.S. 88B-2; 88B-4; 88B-14.

21 NCAC 14H .0404 FIRST AID

(a) Each cosmetic art shop and school shall have ~~antiseptics, individually packaged antibiotic ointment,~~ gloves or finger guards, sterile adhesive bandages, and other necessary supplies available to provide first aid.

(b) If the skin of the licensee or student is punctured, the licensee or student shall upon knowledge of the injury do the following in this order:

- (1) Wash and dry the punctured area with soap and running water and a disposable towel;
- (2) ~~Apply protective gloves to remove materials from first aid kit; If the cut is still bleeding apply pressure over the wound with a disposable towel;~~
- (3) ~~Remove materials from first aid kit; Cleanse injured area with antiseptic (e.g. alcohol, hand sanitizer);~~
- (4) Apply antibiotic ointment or a sterile adhesive bandage;
- (5) Disinfect any implement or work area exposed to blood per Rule .0403 in this Section;
- (6) Dispose of all contaminated supplies ~~and gloves in a zip lock bag then place~~ in the trash;
- (7) Wash hands with soap and running water; and
- (8) If the injured area is on the hands, fingers or thumb apply disposable, protective glove(s) or a finger guard.

(c) If the skin of the patron is punctured, the licensee or student shall upon knowledge of the injury do the following in this order:

- (1) Wash and dry hands with soap and running water and a disposable towel and ~~Apply protective gloves to remove materials from first aid kit;~~
- (2) Make first aid supplies available to the patron or assist the patron with:
 - (A) Cleansing injured area with soap and water antiseptic (e.g. alcohol, hand sanitizer)
 - (B) Applying antibiotic ointment or a sterile adhesive bandage;
- (3) Disinfect any implement or work area exposed to blood per Rule .0403 in this Section;
- (4) Dispose of all contaminated supplies ~~and gloves in a zip lock bag then place~~ in the trash;
- (5) Wash hands with soap and running water; and
- (6) Put on disposable, protective gloves.

Authority G.S. 88B-2; 88B-4; 88B-14.

SUBCHAPTER 14T – COSMETIC ART SCHOOLS

SECTION .0400 - STUDENT EQUIPMENT

21 NCAC 14T .0401 COSMETOLOGY AND APPRENTICE STUDENT EQUIPMENT

Each cosmetology and apprentice cosmetology student shall be supplied with following equipment:

- (1) ~~Implements for a complete manicure;~~
- (2)(1) 12 combs;
- (3)(2) Two capes;
- (4)(3) Six brushes;
- (5) ~~Thirty-six~~ assorted clips;
- (6) ~~Assorted smooth rollers;~~
- (7)(4) Hard rubber or nonflammable comb for heat protection used in thermal styling;
- (8)(5) One electric marcel iron;
- (9)(6) One razor and one clipper;
- (10)(7) One thinning shears;
- (11)(8) One shaping shears;
- (12) ~~One eyebrow tweezer;~~
- (13) ~~One tint brush;~~
- (14)(9) One mannequin with hair; and
- (15)(10) One blow dryer.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0500 - RECORD KEEPING

21 NCAC 14T .0502 PERMANENT RECORDS, FORMS AND DOCUMENTATION

(a) Cosmetic art schools must maintain locked storage for the permanent files of all enrolled students and students who have withdrawn or graduated together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:

- (1) Board Enrollment Form;
- (2) Documentation of student receipt of school policies, school and student contract; the Board Infection Control rules as set forth in 21 NCAC 14H .0200, .0300, .0400, and .0500 and 21 NCAC 14I ~~.0401~~, .0401, and 21 NCAC 14T .0703.
- (3) All Board Withdrawal Forms;
- (4) Social security card for any individual who has a social security number or tax ID card or student visa information;
- (5) Government issued ID and proof of date of birth;
- (6) Grades for all examinations and evaluation plans along with documentation for pass performances;
- (7) Documentation for any leave of absence over 30 days;
- (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and

- (9) Graduation Form.
- (b) The school shall keep onsite, records of hours earned daily including field trip hours and documentation of field trip hours updated with a running grand total, as well as a total of the following through the prior week:
- ~~(1) A daily record shall be kept of the performances for each student, showing the actual date of the performance and the teacher who approved the performance;~~
 - ~~(1)(2)~~ A daily record shall be kept of the actual number of hours of attendance;
 - ~~(2)(3)~~ A daily record shall be kept of the actual number of hours and educational achievements completed via online; and
 - ~~(3)(4)~~ An updated Performance ~~Record~~. Record showing the actual date of the performance and the teacher who approved the performance.
- (c) When a student enrolled in a cosmetic art school withdraws from the school, the cosmetic art school shall report the withdrawal to the Board.
- (d) If a student withdraws from a cosmetic art discipline within the first five days, the school need not submit the enrollment to the Board. The unsubmitted enrollment must be maintained in the student file until reviewed by the Board or an agent of the Board after which, it may be removed.
- (e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form and shall indicate that the applicable requirement of this Chapter have been met. The cosmetic art school shall mail the graduation form to the Board at the Board's address set forth in Rule 14A .0104 or submit the graduation form via the Board's school documents portal at www.nccosmeticarts.com within 30 days of the student's graduation date.
- (f) All forms submitted to the Board must be sealed originals or a digital scan of sealed originals and a copy shall be maintained in the school permanent file storage. Except for student signatures, all forms submitted to the Board must be completed, by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal or graduation.
- (g) Changes or corrections made by the school to any Board form must be submitted to the Board with supporting documentation.
- (h) All cosmetic art schools must maintain on file at the school an original daily record of enrolled students' hours and performances. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.
- (i) All records kept by a cosmetic art school on a student who has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the Board examination or five years after the date the student first enrolled in the school, whichever occurs earlier. Forms reviewed by the Board or an agent of the Board may be removed from this room.
- (j) The record of all hours and performances must be documented in writing. Credit issued to students that cannot be verified may be eliminated from the student record by an agent of the Board.
- (k) Access to student records must be limited to agents of the Board, teachers and administrators of the school. Records cannot be altered offsite. Records that are altered must be altered onsite and must have documentation supporting the change attached. The format, school name and school code on Board forms cannot be altered.
- (l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, performing or practicing cosmetic art services must be enrolled in the school.
- (m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass or fail of student performances. Only on site teachers, on site school administrators or on site school staff shall record student hours and performances, grade examinations and determine completion and record credit of live model and mannequin performances.
- (n) Minimum scores required for examinations and the successful completion of live model and mannequin performances as determined through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Passing grades and performances cannot be credited to students who fail to meet the requirements of the evaluation plan.
- (o) Cosmetic art schools must provide to each student a copy of school policies and 21 NCAC 14I .0401. The school shall retain for the permanent file a copy of the student's acknowledgement of receipt of these documents.
- (p) The names of students with unsatisfied academic obligations shall not be submitted to the Board as graduates but may be submitted as withdrawn.
- (q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools shall not prevent the graduation of students who have met the Board minimum requirements and passed all school academic requirements.
- (r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools shall not give or deduct hours or performances as rewards or penalties.
- (s) An applicant may receive credit for instruction taken in another state if the applicant's record is certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records for validity on a case-by-case basis using the documentation provided by the student.
- (t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form mailed directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performances to the new school in which a student enrolls. Such original documentation shall be submitted to the Board with enrollment. Transfer forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type and total number of live model and mannequin service performances;
- (4) Enrollment date and last date of attendance;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

(u) A student must pass an entrance examination including mannequin evaluations given by the school to which the student is transferring for the hours to be transferred from one cosmetic art school to another.

Authority G.S. 88B-4; 88B-16.

SECTION .0600 - CURRICULA

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course shall begin with infection control and blood exposure procedures as defined in 21 NCAC 14H .0403 and .0404 and consist of 1500 hours of instruction in theory and practical application as set forth in this Rule.

(b) Theory and practical application subjects shall include:

- (1) Professional image;
- (2) Infection control;
- (3) Bacteriology;
- (4) Disinfection;
- (5) First aid;
- (6) Anatomy;
- (7) Electricity as it relates to cosmetic art;
- (8) Chemistry as it relates to cosmetic art;
- (9) Professional ethics;
- (10) Draping;
- (11) Shampooing;
- (12) Roller sets;
- (13) Pin curls;
- (14) Ridge curls with C shaping;
- (15) Fingerwaves;
- (16) Braids;
- (17) Artificial hair;
- (18) Up-styles;
- (19) Blowdrying;
- (20) Brush control;
- (21) Blowdrying with curling iron;
- (22) Pressing or thermal;
- (23) Hair cutting;
- (24) Partings;
- (25) Perm types and wraps;
- (26) Relaxer types and sectioning;
- (27) Color types and application sectioning;
- (28) Scalp treatments;
- (29) Manicures;
- (30) Pedicures;
- (31) Artificial nails;
- (32) Styles and techniques of cosmetology services including:
 - (A) Arranging;

- (B) Dressing;
- (C) Curling;
- (D) Waving;
- (E) Cutting techniques and implements including razors, clippers, thinning shears, and shears;
- (F) Cleansing;
- (G) Cutting;
- (H) Singeing;
- (I) Bleaching, or coloring hair;
- (J) Esthetics;
- (K) Manicuring;
- (L) Business management; and
- (M) Salon business; and;

(33) Board laws, rules and website.

(c) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client. ~~Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph and any service offered in the school. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application.~~ In addition to the requirements set forth in Paragraph (a) of this Rule all students shall be trained on the following performance requirements:

- (1) Infection Control;
- (2) Blood exposure procedure;
- (3) Blow drying;
- (4) Hot iron;
- (5) Styles that apply tension (twists, braiding, locs, or knots);
- (6) Solid form cut;
- (7) Elevated cut;
- (8) Cut with tapered or thinning shears;
- (9) Razor cut;
- (10) Clipper cut;
- (11) Shears over comb cut;
- (12) Clippers over comb cut;
- (13) Virgin darker;
- (14) Virgin lightener;
- (15) Retouch;
- (16) Foil;
- (17) Freehand painting;
- (18) Relaxer virgin;
- (19) Relaxer retouch;
- (20) Curl reforming virgin;
- (21) Curl reforming retouch;
- (22) Permanent waving rod placement rectangle;
- (23) Permanent waving rod placement contour;
- (24) Permanent waving rod placement bricklay-overlap;
- (25) Permanent waving rod placement – spiral;
- (26) Basic manicure;
- (27) Artificial nails
- (28) Basic facial;
- (29) Waxing including face and body;
- (30) Hair removal with ~~depilatory~~ and tweezers;
- (31) Hair removal with razor; and
- (32) Makeup application.

~~(d) Sharing of performance completions shall not be allowed. Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application. Teachers must ensure students follow infection control, tool safety, appropriate draping and safe application of products for all service performances. Students must pass the infection control and blood exposure procedures evaluation plan with a score of 100 percent, received theory and practical instructions and passed each of the evaluations in this Paragraph prior to performing services on a live model:~~

- ~~(1) Blow drying and hot iron;~~
- ~~(2) Hair cut with shears, a razor and clipper.~~
- ~~(3) Color application including virgin and retouch~~
- ~~(4) Relaxer application including virgin and retouch;~~
- ~~(5) Permanent waving;~~
- ~~(6) Basic manicure with pedicure difference;~~
- ~~(7) Basic facial including steam;~~
- ~~(8) Waxing;~~

~~(e) Credit for a performance shall be given to only one student.~~

~~(f)(e)~~ Certification of performance completions shall be required on the graduation form and application for the Board examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type completed;
- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

~~(g)(f)~~ Before a student may perform services on a live model the student must pass both the infection control and blood exposure procedures with a score of 100 percent and have received both theory and practical instruction on the performance to be completed.

Authority G.S. 88B-4; 88B-16.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course shall begin with infection control and blood exposure procedures as defined in 21 NCAC 14H .0403 and .0404 and consist of 1200 hours of instruction in theory and practical application as set forth in this Rule.

(b) Theory and practical application subjects shall include:

- (1) Professional image;
- (2) Infection control;
- (3) Bacteriology;
- (4) Disinfection;
- (5) First aid;
- (6) Anatomy;
- (7) Electricity as it relates to cosmetic art;
- (8) Chemistry as it relates to cosmetic art;
- (9) Professional ethics;
- (10) Draping;
- (11) Shampooing;

- (12) Roller sets;
- (13) Pin curls;
- (14) Ridge curls with C shaping;
- (15) Fingerwaves;
- (16) Braids;
- (17) Artificial hair;
- (18) Up-styles;
- (19) Blowdrying;
- (20) Brush control;
- (21) Blowdrying with curling iron;
- (22) Pressing or thermal;
- (23) Hair cutting;
- (24) Partings;
- (25) Perm wraps;
- (26) Relaxer sectioning;
- (27) Color application sectioning;
- (28) Scalp treatments;
- (29) Manicures;
- (30) Pedicures;
- (31) Artificial nails;
- (32) Styles and techniques of cosmetology services including:

- (A) Arranging;
- (B) Dressing;
- (C) Curling;
- (D) Waving;
- (E) Cutting techniques and implements including razors, clippers, thinning shears, and shears;
- (F) Cleansing;
- (G) Cutting;
- (H) Singeing;
- (I) Bleaching, or coloring hair;
- (J) Esthetics;
- (K) Manicuring;
- (L) Business management; and
- (M) Salon business; and;

(33) Board laws, rules and website.

(c) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client. ~~Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph and any service offered in the school. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application.~~ In addition to the requirements set forth in Paragraph (a) of this Rule all students shall be trained on the following performance requirements:

- (1) Infection Control;
- (2) Blood exposure procedure;
- (3) Blow drying;
- (4) Hot iron;
- (5) Styles that apply tension (twists, braiding, locs, or knots);
- (6) Solid form cut;
- (7) Elevated cut;
- (8) Cut with tapered or thinning shears;
- (9) Razor cut;
- (10) Clipper cut;
- (11) Shears over comb cut;

- (12) Clippers over comb cut;
- (13) Virgin darker;
- (14) Virgin lightener;
- (15) Retouch;
- (16) Foil;
- (17) Freehand painting;
- (18) Relaxer virgin;
- (19) Relaxer retouch;
- (20) Curl reforming virgin;
- (21) Curl reforming retouch;
- (22) Permanent waving rod placement rectangle;
- (23) Permanent waving rod placement contour;
- (24) Permanent waving rod placement bricklay-overlap;
- (25) Permanent waving rod placement – spiral;
- (26) Basic manicure;
- (27) Artificial nails;
- (28) Basic facial;
- (29) Waxing including face and body;
- (30) Hair removal with depilatory and tweezers;
- (31) Hair removal with razor; and
- (32) Makeup application.

~~(d) Sharing of performance completions shall not be allowed. Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application. Teachers must ensure students follow infection control, tool safety, appropriate draping and safe application of products for all service performances. Students must pass the infection control and blood exposure procedures evaluation plan with a score of 100 percent, received theory and practical instructions and passed each of the evaluations in this Paragraph prior to performing services on a live model:~~

- (1) Blow drying and hot iron;
- (2) Hair cut with shears, a razor and clipper.
- (3) Color application including virgin and retouch
- (4) Relaxer application including virgin and retouch;
- (5) Permanent waving;
- (6) Basic manicure with pedicure difference;
- (7) Basic facial including steam;
- (8) Waxing;

~~(e) Credit for a performance shall be given to only one student.~~
~~(f)(e)~~ Certification of performance completions shall be required on the graduation form and application for the Board examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type completed;
- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

~~(g)(f)~~ Before a student may perform services on a live model the student must pass both the infection control and blood exposure procedures with a score of 100 percent and have received both theory and practical instruction on the performance to be completed.

Authority G.S. 88B-4; 88B-16.

21 NCAC 14T .0604 ESTHETICS CURRICULUM

(a) To meet the approval of the Board, an esthetician training course shall begin with infection control and blood exposure procedures as defined in 21 NCAC 14H .0403 and .0404 and consist of at least 600 hours of instruction in theory and practical application as set forth in this Rule.

(b) Theory and practical application subjects shall include:

- (1) Anatomy or physiology;
- (2) Infection control;
- (3) Disinfection;
- (4) First aid;
- (5) Chemistry as it relates to esthetics;
- (6) Draping;
- (7) Facial or body treatment (cleansing, manipulations, masks, and chemical peels);
- (8) Hair removal;
- (9) Basic dermatology;
- (10) Skin care machines, electricity, and apparatus;
- (11) Aromatherapy;
- (12) Nutrition;
- (13) Make-up or color theory;
- (14) Styles and techniques of esthetics services including:
 - (A) Facials;
 - (B) Makeup application;
 - (C) Performing skin care;
 - (D) Hair removal;
 - (E) Eyelash extensions;
 - (F) Applying brow and lash color;
 - (G) Business management; and
 - (H) Professional ethics; and
- (15) Board laws, rules and website.

(c) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client. ~~Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph and any service offered in the school. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application.~~ In addition to the requirements set forth in Paragraph (a) of this Rule all students shall be trained on the following performance requirements:

- (1) Infection Control;
- (2) Blood exposure procedure;
- (3) Basic facial;
- (4) Waxing including underarm, lip, eyebrow, leg and bikini;
- (5) Hair removal with depilatory and tweezers;
- (6) Makeup application;
- (7) Facials with machines;
- (8) Exfoliation;
- (9) Facials with LED light;
- (10) Facials with high frequency (direct and indirect); and
- (11) Lash application.

(d) Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph. Evaluation plans must include a minimum of infection

control, tool safety, draping, and safe application. Teachers must ensure students follow infection control, tool safety, appropriate draping and safe application of products for all service performances. Students must pass the infection control and blood exposure procedures evaluation plan with a score of 100 percent, received theory and practical instructions and passed each of the evaluations in this Paragraph prior to performing services on a live model:

- (1) Basic facial;
- (2) Waxing;
- (3) Lash lift and brow lamination;
- (4) Artificial lashes;
- (5) Lash and brow tint.

~~(d)~~(e) Certification of performance completions shall be required on the graduation form and Board's application for the examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type completed;
- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

~~(e)~~ Sharing of performance completions shall not be allowed.

~~(f)~~ Credit for a performance shall be given to only one student.

~~(g)~~(f) Before a student may perform services on a live model the student must pass both the infection control and blood exposure procedures with a score of 100 percent and have received both theory, mannequin, and practical instruction on the performance to be completed.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0605 MANICURING CURRICULUM

(a) To meet the approval of the Board, a manicurist training course shall begin with infection control and blood exposure procedures as defined in 21 NCAC 14H .0403 and .0404 and consist of at least 300 hours of instruction in theory and practical application as set forth in this Rule.

(b) Theory and practical application subjects shall include:

- (1) Manicuring theory;
- (2) Infection control;
- (3) First aid;
- (4) Trimming;
- (5) Filing;
- (6) Shaping;
- (7) Decorating;
- (8) Arm and hand manipulation;
- (9) Sculptured and artificial nails (application, repair, fill, and removal);
- (10) Pedicuring; and
- (11) Styles and techniques for the care, treatment, and decoration of the following:
 - (A) Fingernails;
 - (B) Toenails;
 - (C) Cuticles;
 - (D) Nail extensions and artificial nails;
 - (E) Electric file;
 - (G) Business management;
 - (H) Professional ethics; and

(I) Board laws, regulations and website.

(c) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client. ~~Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph and any service offered in the school. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application.~~ In addition to the requirements set forth in Paragraph (a) of this Rule all students shall be trained on the following performance requirements:

- (1) Infection Control;
- (2) Blood exposure procedure;
- (3) Basic manicure;
- (4) Basic pedicure;
- (5) Nail tips;
- (6) Acrylic overlay (application, repair, fill, and removal);
- (7) Sculptured nails (application, repair, fill, and removal); and
- (8) Gel overlay (application, repair, fill, and removal).

~~(d)~~ Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application. Teachers must ensure students follow infection control, tool safety, appropriate draping and safe application of products for all service performances. Students must pass the infection control and blood exposure procedures evaluation plan with a score of 100 percent, received theory and practical instructions and passed each of the evaluations in this Paragraph prior to performing services on a live model:

- (1) Basic manicure with pedicure difference;
- (2) Sculptured nails including application, fill, and removal.

~~(d)~~(e) Certification of performance completions shall be required on the graduation form and Board's application for the examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type completed;
- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

~~(e)~~ Sharing of performance completions shall not be allowed.

~~(f)~~ Credit for a performance shall be given to only one student.

~~(g)~~(f) Before a student may perform services on a live model the student must pass both the infection control and blood exposure procedures with a score of 100 percent and have received both theory, mannequin, and practical instruction on the performance to be completed.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0606 NATURAL HAIR CARE CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course shall begin with infection control and blood

exposure procedures as defined in 21 NCAC 14H .0403 and .0404 and consist of 300 hours of instruction in theory and practical application as set forth in this Rule.

(b) Theory and practical application subjects shall include:

- (1) Infection control;
- (2) Bacteriology;
- (3) Board laws, regulations, website, and licensure scope of practice.
- (4) First aid;
- (5) Shampooing;
- (6) Draping;
- (7) Anatomy;
- (8) Disorders of the hair and scalp;
- (9) Client consultation;
- (10) Twisting;
- (11) Wrapping;
- (12) Extending;
- (13) Locking;
- (14) Blowdry and thermal iron;
- (15) Business management; and
- (16) Professional ethics.

(c) Performances shall be defined as the systematic completion of all steps for safe and effective cosmetic art services to a client. Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph and any service offered in the school. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application. In addition to the requirements set forth in Paragraph (a) of this Rule all students shall be trained on the following performance requirements:

- (1) Infection Control;
- (2) Blood exposure procedure;
- (3) Twists;
- (4) Knots;
- (5) Locs;
- (6) 2 strand overlap;
- (7) 3 strand overbraid;
- (8) 3 strand underbraid;
- (9) On the scalp 3 strand braid;
- (10) Track and sew weft; and
- (11) Adding hair extensions.

(d) Each school must develop and use performance evaluation plans for each of the Board required performances listed in this Paragraph. Evaluation plans must include a minimum of infection control, tool safety, draping, and safe application. Teachers must ensure students follow infection control, tool safety, appropriate draping and safe application of products for all service performances. Students must pass the infection control and blood exposure procedures evaluation plan with a score of 100 percent, received theory and practical instructions and passed each of the evaluations in this Paragraph prior to performing services on a live model:

- (1) Trach and sew weft;
- (2) Three strand overbraid and underbraid.

~~(d)~~(e) Certification of performance completions shall be required on the graduation form and Board's application for the examination. Graduation forms shall include the following:

- (1) Student name and social security number;
- (2) School code;

- (3) Course type completed;
- (4) Date of course completion;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

~~(e) Sharing of performance completions shall not be allowed.~~

~~(f) Credit for a performance shall be given to only one student.~~

~~(g) A performance shall consist of 10 or more lengths of hair.~~

~~(h)~~(f) Before a student may perform services on a live model the student must pass both the infection control and blood exposure procedures with a score of 100 percent and have received both theory, mannequin, and practical instruction on the performance to be completed.

Authority G.S. 88B-2; 88B-4; 88B-16.

21 NCAC 14T .0615 FIELD TRIPS

(a) Cosmetic art schools shall notify the Board prior to any field trip and record the field trip hours of each student. Cosmetic Art Educational Field Trips include the following locations or activities:

- (1) cosmetic art shops;
- (2) cosmetic art conventions;
- (3) competition training;
- (4) other Schools;
- (5) state Board Office;
- (6) supply Houses;
- (7) college or Career Day at School;
- (8) fashion Shows;
- (9) rest Homes/Nursing Homes;
- (10) hospitals; and
- (11) funeral Homes.

(b) An instructor shall be present during the educational field trips listed in Paragraph (a) of this Rule for credit to be given to students, with a ratio of one instructor per 25 students present.

(c) The maximum number of hours a student may earn for field trips is 40 ~~credit~~ hours for cosmetology students, 20 ~~credit~~ hours for esthetician students, and 10 ~~credit~~ hours for manicurist or natural hair care students.

(d) Students may earn up to four additional hours of credit for curriculum requirements for interviews at a licensed cosmetic art shop.

(e) Students may not earn credit for any service performances completed outside of the school.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

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CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .2017, amend the rules cited as 21 NCAC 46 .2001, .2004-.2009, .2011, .2013-.2016, and repeal the rule cited as 21 NCAC 46 .2010.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless

the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbop.org/rulemakings.htm

Proposed Effective Date: August 1, 2020

Public Hearing:

Date: May 26, 2020

Time: 10:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: *The Board proposes a thorough revision of its administrative hearing procedural rules in Section .2000. The Board has not revised the majority of the rules in over thirty years. During that time, both the spirit and the letter of the Administrative Procedures Act have moved away from the existing rules, and the existing rules contain outdated and extraneous requirements that the Board has not required parties to satisfy in order to decide their claims. The revisions would: (1) bring the rules into compliance with the letter of the APA; (2) remove rules that attempt to restate substantive law, provisions of the APA, and other board rules; (3) bring the rules into compliance with the Board's practices; (4) provide clarity on procedural steps not previously covered (or covered adequately) in the rules for the guidance of all parties; (5) notify the parties of certain provisions that are currently covered in Board orders, so that parties can be aware of those provisions from the outset; and (6) generally make the hearing process as efficient as it can be consistent with the APA.*

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email jcampbell@ncbop.org

Comment period ends: May 26, 2020 at 10:00 a.m.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (>= \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SECTION .2000 - ADMINISTRATIVE PROVISIONS

21 NCAC 46 .2001 FILING AND SERVICE RIGHT TO HEARING

(a) Parties shall file all papers provided for in this Section with the Board, either before service or within five days after service. The Board shall consider a paper to be filed when the Board actually receives it. Parties shall direct filings to the Investigations and Inspections Coordinator, North Carolina Board of Pharmacy, 6105 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517.

(b) In addition to filing all papers with the Board, the Board and other parties shall serve all papers as follows:

- (1) The Board shall serve a notice of hearing under Rule .2006 of this Section on all parties by any method for service of process permitted by G.S. 150B-38(c).
- (2) Parties shall serve subpoenas under Rule .2013 of this Section by any method for service permitted by G.S. 150B-39(c). In investigation or preparation for, or in the conduct of, a contested case, among others who are authorized to serve subpoenas, Board staff may serve subpoenas on behalf of the Board, pursuant to G.S. 1A-1, Rule 45.
- (3) Parties shall serve all other papers in the contested case on all parties (including counsel to the Board) by any method for service permitted by G.S. 1A-1, Rule 5.
- (4) The Board shall serve all its orders by any method for service permitted by G.S. 150B-42(a).

~~(a) When the Board acts or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person notice of the right to a hearing by mailing by certified mail to that person at the last known address of that person a notice of the proposed action and a notice of a right to a hearing.~~

~~(b) Prior to issuing the notice called for in Paragraph (a) of this Rule, and with the consent of the party or parties, the Board may attempt to settle disputes through the informal procedures set out in Rule .2008(a) of this Section.~~

Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42.

21 NCAC 46 .2004 REQUEST FOR HEARING

(a) Any time an individual If a person believes that a Board administrative action has substantially affected that individual's person's rights, duties, or privileges have been affected substantially by the Board's administrative action, but that person

has not received a notice of a right to an administrative hearing, that individual person may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual may submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request for hearing shall contain the following information:

- (1) petitioner's name and address; address of the petitioner;
- (2) a concise statement of the Board action that the petitioner challenges; taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific an explicit statement of request for a hearing.

(d) ~~A (c)~~ In order to preserve a person's rights with respect to a Board action, the person shall file a request for administrative hearing must be submitted to with the Board Board's office within 60 days after the person receives or receipt of notice of the Board action taken by the Board that the person challenges, which is challenged. The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 46 .2005, a hearing shall be scheduled.

Authority G.S. 90-85.6; 150B-38.

21 NCAC 46 .2005 GRANTING OR DENYING HEARING REQUEST

(a) The Board will grant a request for a hearing if it determines that the ~~party requesting the hearing~~ petitioner is a "person aggrieved" within the meaning of G.S. 150B-2(6). The Board will provide notice of the time and place for the hearing. If the party fails to appear, the Board may deny the party's request for failure to prosecute it or may proceed to hear the matter in the party's absence.

(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision. The denial of request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) ~~Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .2006 of this Section.~~

Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-42.

21 NCAC 46 .2006 NOTICE OF HEARING

(a) Before imposing final discipline under G.S. 90-85.38 on a person who holds a license, registration, permit, or other privilege issued by the Board, the Board shall file and serve a notice of hearing pursuant to G.S. 150B-38(b). The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) ~~the name, position, address and telephone number of a person at the offices of the Board to contact for further information or discussion;~~
- (2) ~~the date, time, and place for a pre hearing conference, if any; and~~
- (3) ~~any other information deemed relevant to informing the parties as to the procedure of the hearing.~~

(b) A party who has been served with a notice of hearing may file and serve a written response not less than 10 days before the date set for the hearing. If the party wishes to submit this written response instead of personally appearing at the hearing, the party should note that desire in the written response, and the Board will consider the written response in lieu of a personal appearance.

(c) If a party who has been served with a notice of hearing neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall rule the party to be in default and the allegations of the notice to be admitted, and the Board may enter a final agency decision by default granting any relief available to the Board.

(d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspend suspending a license, registration, permit, or other privilege granted by the Board, license or permit. Upon service of the order, the licensee licensee, registrant, or permit holder to whom the order is directed shall immediately cease the practice of stop practicing pharmacy or cease the dispensing of and stop dispensing devices and medical equipment in North Carolina. Failure to receive the order shall not invalidate the order. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However, pursuant to Rules .2004 and .2005 of this Section, a person subject to a summary suspension may request a hearing on whether the public health, safety or welfare permits terminating or modifying the terms of the summary suspension pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

Authority G.S. 90-85.6; 90-85.12; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-42.

21 NCAC 46 .2007 WHO SHALL HEAR CONTESTED CASES

(a) All administrative hearings shall be conducted by the Board, a panel consisting of a A majority of the Board shall conduct all hearings, as set forth in G.S. 150B-40(b), except as provided in the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(c).

(b) The Board President shall be the presiding officer at any hearing, unless the President is disqualified, absent or otherwise determines that he or she is unable to serve in that capacity. In the event that the President does not preside, the Board Vice President shall be the presiding officer at any hearing, unless the Vice President is disqualified, absent or otherwise determines that he or she is unable to serve in that capacity. In the event that neither the President nor the Vice President preside, the Board shall

designate another presiding officer. The presiding officer shall have all duties and powers set forth in G.S. 150B-40(c). Matters involving device and medical equipment permit holders shall be initially heard by a device and medical equipment subcommittee. The subcommittee shall be elected pursuant to Section .2100 of this Chapter. Prior to issuing a notice of hearing, the subcommittee and the party or parties may agree to follow the informal procedures set out in Rule .2008 of this Section.

(c) After hearing the matter, the device and medical equipment subcommittee shall propose a recommended decision to the Board. Sanctions shall be consistent with G.S. 90-85.38. If the Board accepts the recommended decision, it shall constitute a final agency decision for the right to judicial review. If the Board rejects the recommended decision, the Board may propose an alternative decision or schedule the matter for a formal hearing before the Board.

Authority G.S. 90-85.6; 90-85.12; 150B-38; 150B-40.

21 NCAC 46 .2008 INFORMAL PROCEDURES

(a) Prior to ~~Before~~ issuing a notice of hearing, the Board ~~or the device and medical equipment subcommittee and the party or parties~~ may agree to conduct one of more conferences a conference in which a member of the Board ~~or the device and medical equipment subcommittee~~ and the party or parties meet to consider the possibility of ~~disposing of~~ resolving the dispute ~~without a hearing~~ or any other matter as may aid in the prompt disposition of the dispute. If such a conference is held, the Board, ~~or the device and medical equipment subcommittee~~, The member of the Board may direct one or more of the following dispositions:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation that Board staff provide informal guidance to resolve the dispute;
- ~~(2)(3)~~ Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order; consent; or
- ~~(3)(4)~~ Scheduling, with appropriate notice, for contested case hearing.

The Board must approve all recommendations under Subparagraphs (1), (2) and (3) of this Paragraph. ~~All recommendations of dismissal must be approved by the Board. Any consent order proposed may dispose of the dispute or set forth such matters as were agreed to between the parties that may expedite the hearing. All matters contained in the consent order must be agreed to by the party or parties and approved by the Board at its next regular meeting. The Board member or member of the device and medical equipment subcommittee who participated in the conference may participate in Board discussions concerning any recommendation made but may not vote upon the recommendation. The Board member who participated in the conference shall disqualify himself or herself in accordance with 21 NCAC 46 .2011 Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.~~

(b) ~~After issuance of a notice of hearing, the The Board or the device and medical equipment subcommittee and the party or parties may agree in advance to simplify the hearing by stipulation or any other method provided by G.S. 150B-41(c), by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.~~

Authority G.S. 90-85.6; 150B-38, 150B-39; 150B-40; 150B-41; 150B-42.

21 NCAC 46 .2009 MOTIONS PETITION FOR INTERVENTION

Except as otherwise provided in this Section, parties must file and serve motions related to a contested case at least ten days before the hearing, except those made during the hearing. The presiding officer may decide to hear pre-hearing motions either before the hearing or at the hearing before witnesses testify.

(a) ~~A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).~~

(b) ~~The petition must include the following information:~~

- ~~(1) the name and address of petitioner;~~
- ~~(2) the business or occupation of petitioner, where relevant;~~
- ~~(3) a full identification of the hearing in which petitioner is seeking to intervene;~~
- ~~(4) the statutory or non statutory grounds for intervention;~~
- ~~(5) any claim or defense in respect of which intervention is sought; and~~
- ~~(6) a summary of the arguments or evidence petitioner seeks to present.~~

~~(c) The moving party must serve copies of the petition on all parties to the case.~~

~~(d) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.~~

~~(e) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.~~

Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41.

21 NCAC 46 .2010 TYPES OF INTERVENTION

Authority G.S. 90-85.6; 150B-38.

21 NCAC 46 .2011 DISQUALIFICATION OF BOARD MEMBERS

(a) ~~Self disqualification. If for any reason a Board member determines that personal bias or other reason for that Board member's disqualification exists in factors renders that Board~~

~~member unable to hear a contested case, case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.~~

(b) ~~Petition for disqualification.~~ If for any reason any party in a contested case believes case, in good faith, has evidence that a Board member is personally biased or another reason for disqualification exists, otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file and serve a motion for disqualification, which must be supported by a sworn, notarized affidavit testifying to the facts relevant to disqualification, with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of case). Ex parte communication by or on behalf of a party with a Board member about the facts of a case at any time during either the investigation or prosecution of potential violations shall be grounds for disqualification of that Board member, other than communications by Board counsel and staff during the course of seeking a summary suspension or communications during any other proceeding before the Board. Before a hearing begins (or during the hearing, if applicable), both the Board member and the party must disclose the communications between the Board member and a party about the facts of the case to the Board and to the parties.

(c) ~~Contents of affidavit.~~ The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) ~~Timeliness of affidavit.~~

(1) ~~An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule.~~

(2) ~~Where an affidavit for disqualification is filed A party may file and serve a motion for disqualification less than then ten days before or during the course of a hearing hearing, only based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting the petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record.~~

(d) ~~The Board Board, before rendering its decision, shall decide whether the evidence requires justifies disqualification.~~ disqualification before it renders the final agency decision in the contested case. The decision about the disqualification of a Board member will be made by the other Board members. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.

(e) ~~The presiding officer may determine the method of resolving the motion for disqualification in the presiding officer's discretion under G.S. 150B-40. This may include the authority to direct that~~

the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.

(f) ~~In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.~~

(e) ~~Procedure for determining disqualification.~~

(1) ~~The Board will appoint a Board member to investigate the allegations of the affidavit.~~

(2) ~~The investigator will report findings to the Board and make recommendations.~~

(3) ~~The Board shall decide whether to disqualify the challenged individual.~~

(4) ~~The person whose disqualification is to be determined will not participate in the decision case but may be called on upon to furnish information to the other members of the Board.~~

(5) ~~When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.~~

(6)(g) ~~If three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).~~

Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41.

21 NCAC 46 .2013 SUBPOENAS

(a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. A form of subpoena is available on the Board's website at ncbop.org/lawandrules.htm. The Board may issue the subpoena in accordance with G.S. 150B-39(c). Subpoenas must be issued and signed by the Board's Executive Director, the Board's legal counsel or a Board staff member designated by the Executive Director.

(b) The party shall serve the subpoena along with the fees and expenses required by G.S. 150B-39(c).

(c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).

(d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena by filing a motion to quash. The movant shall file and serve the motion to quash within 10 days of service of the subpoena or seven days before the contested case hearing, whichever is sooner. The Board shall hear and rule on objections as provided in G.S. 150B-39(c).

(a) ~~Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board and shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.~~

(b) ~~Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a~~

particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of one of the members of the Board or the Board's executive director; and a "return of service." The "return of service" form as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) ~~Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepaies the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.~~

(d) ~~Except as otherwise stated in a particular subpoena, any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.~~

(e) ~~Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.~~

(f) ~~Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.~~

(g) ~~The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.~~

(h) ~~After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.~~

(i) ~~Promptly after the close of such hearing, a majority of the Board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.~~

Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40.

21 NCAC 46 .2014 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. ~~At the request of a party or upon the Board's own motion, the~~ The presiding

officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42.

21 NCAC 46 .2015 FINAL DECISION

In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. All final agency decisions shall be drafted by Board staff or Board counsel and presented to the presiding officer. In the event that the presiding officer determines that the drafted order does not reflect the Board's findings of fact, conclusions of law or ruling, the presiding officer shall revise the drafted order to reflect the Board's decision. In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

Authority G.S. 90-85.6; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-41; 150B-42.

21 NCAC 46 .2016 PROPOSALS FOR DECISIONS

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), that statute governs the procedures before the administrative law judge. a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the rules of the Office of Administrative Hearings, 26 NCAC 3 .0026.

(b) Within 10 days after the proposal for decision is served on the parties under G.S. 150B-40(e), a Any party may file and serve written exceptions to this "proposal proposal for decision" and submit their its own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) ~~Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter~~ Exceptions must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case); the party takes exception. Each proposed finding of fact should refer specifically to pages of the record or otherwise precisely identify the evidence supporting the proposed finding, and each proposed conclusion of law must refer specifically to or otherwise precisely identify both the findings of fact and legal support for the proposed conclusion. A party may file and serve written arguments along with the exceptions and proposed findings of fact and conclusions of law.

(c) ~~Any A~~ A party may ask to present oral argument to the Board. Board upon request. The party must file and serve the request with the written submissions under Paragraph (b) of this Rule. The request must be included with the written exceptions.

(d) ~~Upon receipt of request for further~~ If a party requests oral argument, notice will be issued promptly to all parties designating the Board will notice the time and place for such oral argument.

The presiding officer may set the terms of oral argument, including order of argument and time limitations.

(d) After the procedures set forth in this Section, the Board will issue a final agency decision in accordance with Rule .2015 of this Section.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following filing of the written exceptions.

Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-41; 150B-42.

21 NCAC 46 .2017 REAPPLICATIONS, REINSTATEMENT, REHEARING, AND RECONSIDERATION

(a) The following terms govern reapplication, reinstatement, rehearing and other reconsideration requests from a final agency decision, unless otherwise expressly provided in that order:

- (1) No individual who holds a license, registration or other privilege from the Board who has that license, registration or other privilege either (a) revoked or (b) actively suspended indefinitely or for more than five years may petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.
- (2) No individual who has had an application for a license, registration or other privilege from the Board denied may submit another application or petition for reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that the Board denied. At that time, the individual must submit a new application for the Board to consider.
- (3) No permit holder who has had that permit either (a) revoked or (b) actively suspended indefinitely or for more than five years may submit another application or petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.
- (4) No proposed permit holder who has had an application for a permit denied may submit another application for a permit or petition for

reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that was denied. At that time, the proposed permit holder must submit a new application for the Board to consider.

(5) If any license, registration, permit or any other privilege is subject to a stayed suspension or an active suspension for a period of five years or shorter, the person holding that privilege may not submit another application, petition for reinstatement, to have the suspension lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, before the conclusion of that suspension.

(6) For the purposes of Subparagraphs (3), (4) and (5) of this Paragraph, the Board shall treat a permit holder or proposed permit holder the same as a prior permit holder or proposed permit holder if either of the following two conditions is true: (a) the permit holder or proposed permit holder has the same pharmacy manager and there is more than 10 percent common ownership as the prior permit holder or proposed permit holder; or (b) the permit holder or proposed permit holder has 50 percent or more common ownership as the prior permit holder or proposed permit holder. To determine common ownership under this Rule, the Board shall consider business entities to be identical to other business entities if there is more than a 50 percent common ownership. Furthermore, to determine common ownership under this Rule, the Board shall combine the interests of individuals with the interests of any business entities in which the individuals have more than a 10 percent interest, as well as with the interests of individuals in the same family.

(b) The Board may alter the terms provided in Paragraph (a) of this Rule, after applying the facts and circumstances of the matter and its application of the disciplinary provision in G.S. 90-85.38. Unless the Board expressly modifies these terms in the final agency decision, the terms of Paragraph (a) of this Rule apply to that decision.

(c) If a person submits a petition or application that does not satisfy the limits set forth in this Rule, the Executive Director shall not schedule any hearing on the petition or application before the Board until the limits set forth in this Rule are satisfied.

(d) A person's ability to petition for reinstatement or to submit a new application under this Rule does not indicate that the Board will grant any such petition or application. The Board will grant or reinstate a license, registration, permit or other privilege only after a finding that the grant or reinstatement is appropriate under the Pharmacy Practice Act and its rules and regulations. In making that decision, the Board will consider, among other things, the gravity of the misconduct that caused the denial, suspension or revocation; the applicant's history; the applicant's current ability to practice pharmacy with reasonable skill, competence and safety

PROPOSED RULES

to the public; and the applicant's conduct since the order of denial,
suspension or revocation.

Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-40; 150B-42.

This Section contains information for the meeting of the Rules Review Commission February 20, 2020 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Brian P. LiVecchi
W. Tommy Tucker, Sr.

Appointed by House

Jeanette Doran (1st Vice Chair)
Andrew P. Atkins
Anna Baird Choi (2nd Vice Chair)
Paul Powell
Garth Dunklin

COMMISSION COUNSEL

Amber Cronk May (919) 431-3074
Amanda Reeder (919) 431-3079
Ashley Snyder (919) 431-3081

RULES REVIEW COMMISSION MEETING DATES

March 19, 2020 April 16, 2020
May 21, 2020 June 18, 2020

**RULES REVIEW COMMISSION MEETING
MINUTES****February 20, 2020**

The Rules Review Commission met on Thursday, February 20, 2020, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Paul Powell, and Tommy Tucker.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield and Alex Burgos.

The meeting was called to order at 9:02 a.m. with Chairman Hyde presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the January 16, 2020 meeting. There were none and the minutes were approved as distributed.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow-up matters for Private Protective Services Board and Psychology Board.

FOLLOW UP MATTERS**Department of Natural and Cultural Resources**

07 NCAC 13F .0202, .0303, and .0304 - The agency is addressing the request for technical changes from the January meeting. No action was required by the Commission.

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

12 NCAC 09E .0105 - The agency is addressing the objection from the January meeting. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0114, .0201, .0202, .0203, .0205, .0502, .0701, .0702, .0705, .0706, .0801, .0802, .0806, .0902, .0903, .0904, .0909, .0910, .0911, .0912, .1301, .1302, .1306, .1401, .1402, and .1406 – All rewritten rules were approved with Commissioners Hyde and LiVecchi voting against.

Jeff Gray, the rulemaking coordinator for the agency, addressed the Commission.

Environmental Management Commission

The agency is addressing the objection for 15A NCAC 02B .0240 (to be recodified as 15A NCAC 02B .0703). No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206 - The agency is addressing the objections. No action was required by the Commission.

Sedimentation Control Commission

15A NCAC 04A .0101 and .0105; 04B .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0115, .0118, .0120, .0124, .0125, .0126, .0127, .0129, .0130, .0131, and .0132; 04C .0103, .0106, .0107, .0108, .0110, and .0111; 04D .0102; 04E .0101, .0102, .0104, .0201, .0203, .0403, .0405, .0406, .0501, .0502, .0503, and .0504 - The agency is addressing the request for technical changes from the January meeting. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0304, .0305, .0309, .0313, .1901, .1902, .1904, and .1905 - The agency is addressing the request for technical changes from the January meeting. No action was required by the Commission.

Wildlife Resources Commission

15A NCAC 10F .0306 was unanimously approved.

Board of Examiners of Electrical Contractors

21 NCAC 18B .0212, .0303, .0404, .0408, and .0901 were unanimously approved.

State Board of Opticians

21 NCAC 40 .0321 was unanimously approved.

Prior to the review of the rule from the State Board of Opticians, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

At 10:16 a.m. the Chair called the meeting into a brief recess.

The meeting resumed at 10:24 a.m.

Psychology Board

21 NCAC 54 .2006 and .2008 - The Commission objected to these Rules based on lack of statutory authority. The Commission specifically found that G.S. 90-270.5 requires psychological associates to be supervised and that it is beyond the statutory authority of the Psychology Board to exempt a psychological associate from supervision requirements once he or she meets certain criteria. Commissioners Choi, LiVecchi, and Powell voted against the objection.

21 NCAC 54 .1602, .1605, .1606, .1607, .1608, .1609, .1610, .1611, .1612, .1701, .1702, .1703, .1705, .1706, .1707, .1802, .1803, .1901, .1903, .1904, .2001, .2002, .2005, .2007, .2009, .2101, .2102, .2103, .2104, .2202, .2203, .2301, .2302, .2303,

.2304, .2305, .2308, .2309, .2311, .2314, .2401, .2402, .2601, .2701, .2703, .2704, .2705, .2706, .2801, .2802, .2803, .2804, .2805, and .2806 - The agency is addressing the request for technical changes from the January meeting. No action was required by the Commission.

Steven Shaber with Poyner Spruill representing the NC Psychological Association, addressed the Commission.

Ed Gaskins with Everett, Gaskins & Hancock, addressed the Commission.

Janet Heuring Larsen addressed the Commission.

Sondra Panico with the Attorney General's Office and representing the agency, addressed the Commission.

Dr. Winston Goldman addressed the Commission.

Dr. Helen Brantley with the agency, addressed the Commission.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – At the November meeting, the Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced rules have a substantial economic impact and therefore require a fiscal note. A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the rules in accordance with the Administrative Procedure Act. OSBM has not formally responded to this request. No action was required by the Commission.

These rules will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture

02 NCAC 09E .0116 was unanimously approved.

Credit Union Division

04 NCAC 06C .1302 was unanimously approved.

Department of Insurance

The Commission extended the period of review for 11 NCAC 12 .0321, .0514, .1501, .1502, .1503, .1504, .1505, .1506, .1507, .1508, .1509, and .1803 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address technical changes and submit the revised rules at a later meeting.

Board of Dental Examiners

All rules were unanimously approved.

Board of Nursing

21 NCAC 36 .0405 was unanimously approved.

Prior to the review of the rule from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

Board of Recreational Therapy Licensure

All rules were unanimously approved.

Building Code Council

All rules were unanimously approved.

EXISTING RULES REVIEW

Department of Natural and Cultural Resources

07 NCAC 14B - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than July 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

Staff provided an overview of S.L. 2019-198. Rulemaking Coordinators have been instructed to fill out box 5 on the Submission for Permanent Rule form if they are adopting or amending a rule subject to the requirements of S.L. 2019-198.

The meeting adjourned at 11:40 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 19, 2020 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

February 20, 2020

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Steven Shaber	NCPA
Helen Brantley	NC Psychology Board
John Brantley	NCPA
Martha Turner-Orest	NCPA
Sonda Parice	NC Psychology Bd
Hannah Jennigan	NCDOT
Julia Hawk	VPSS
Nancy Laney	NCPA
Mary Ann Olsen	NCAAP
Tien Cheng	NCDOS
Carmel Hollis	OSBUI
Elliot Silverstein	NCPA
Angela Ellis	NCBON
Reed Fountain	NCEC
Jennifer Lewis	NCBON
Tracy Hitehugh	NCBON
Gayle Winstead	NCBON
Magdalene Bowe	NCAAP
Tony Knox	NCCUR
George Ferguson	NCDAS
LC Person	CSS

RULES REVIEW COMMISSION

February 20, 2020

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 20, 2020

Mariah C. Street
Department of Natural and Cultural Resources
4601 Mail Service Center
Raleigh, NC 27699

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **07 NCAC 14B**

Dear Ms. Street:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 20, 2020 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached document shall be readopted by the agency no later than July 31, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW**

April 19, 2018

APO Review: May 01, 2018

Natural and Cultural Resources, Department of

Total: 6

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>07 NCAC 14B .0401</u>	Necessary with substantive public interest
<u>07 NCAC 14B .0504</u>	Necessary with substantive public interest
<u>07 NCAC 14B .0602</u>	Necessary with substantive public interest
<u>07 NCAC 14B .0605</u>	Necessary with substantive public interest
<u>07 NCAC 14B .0606</u>	Necessary with substantive public interest
<u>07 NCAC 14B .0607</u>	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES
February 20, 2020 Meeting

AGRICULTURE, BOARD OF

<u>Current Good Manufacturing Practice of the North Carolina...</u>	02 NCAC	09E	.0116
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CREDIT UNION DIVISION

<u>Other Reserves</u>	04 NCAC	06C	.1302
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PRIVATE PROTECTIVE SERVICES BOARD

<u>Application Completion Deadline</u>	14B NCAC	16	.0114
<u>Application for Licenses and Trainee Permits</u>	14B NCAC	16	.0201
<u>Fees for Licenses and Trainee Permits</u>	14B NCAC	16	.0202
<u>Renewal or Re-issue of Licenses and Trainee Permits</u>	14B NCAC	16	.0203
<u>Company Business License</u>	14B NCAC	16	.0205
<u>Polygraph Trainee Permit Requirements</u>	14B NCAC	16	.0502
<u>Application for Unarmed Security Guard Registration</u>	14B NCAC	16	.0701
<u>Fees for Unarmed Security Guard Registration</u>	14B NCAC	16	.0702
<u>Unarmed Security Guard Registration Identification Cards</u>	14B NCAC	16	.0705
<u>Renewal of Unarmed Security Guard Registration</u>	14B NCAC	16	.0706
<u>Application/Armed Security Guard Firearm Registration Permit</u>	14B NCAC	16	.0801
<u>Fees for Armed Security Guard Firearm Registration Permit</u>	14B NCAC	16	.0802
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	14B NCAC	16	.0806
<u>Application for Firearms Trainer Certificate</u>	14B NCAC	16	.0902
<u>Fees for Trainer Certificate</u>	14B NCAC	16	.0903
<u>Renewal of a Firearms Trainer Certificate</u>	14B NCAC	16	.0904
<u>Unarmed Trainer Certificate</u>	14B NCAC	16	.0909
<u>Application for an Unarmed Trainer</u>	14B NCAC	16	.0910
<u>Renewal of an Unarmed Trainer Certificate</u>	14B NCAC	16	.0911
<u>Rosters of Unarmed Trainer Classes</u>	14B NCAC	16	.0912
<u>Application for Unarmed Armored Car Service Guard Registr...</u>	14B NCAC	16	.1301
<u>Fees for Unarmed Armored Car Service Guard Registration</u>	14B NCAC	16	.1302
<u>Renewal or Reissue of Unarmed Car Service Guard Registration</u>	14B NCAC	16	.1306
<u>Application/Armed Armored Car Service Guard Firearm Regis...</u>	14B NCAC	16	.1401
<u>Fees for Armed Armored Car Service Guard Firearm Registra...</u>	14B NCAC	16	.1402
<u>Renewal of Armed Armored Car Service Guard Firearm Regist...</u>	14B NCAC	16	.1406

WILDLIFE RESOURCES COMMISSION

<u>Carolina Beach</u>	15A NCAC	10F	.0306
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DENTAL EXAMINERS, BOARD OF

<u>Application for Licensure</u>	21 NCAC	16B	.0301
<u>Dental Licensure by Credentials</u>	21 NCAC	16B	.0501
<u>Limited Volunteer Dental License</u>	21 NCAC	16B	.0601
<u>Instructor's License</u>	21 NCAC	16B	.0701
<u>Temporary Volunteer Dental Permit</u>	21 NCAC	16B	.0801
<u>Dental Licensure by Endorsement Based on Military Service</u>	21 NCAC	16B	.1001

<u>Dental Licensure by Endorsement Based on Status as Milita...</u>	21 NCAC	16B	.1002
<u>Application for Licensure</u>	21 NCAC	16C	.0301
<u>Dental Hygiene Licensure by Credentials</u>	21 NCAC	16C	.0501
<u>Application for Provisional License</u>	21 NCAC	16D	.0104
<u>Restrictions on Practice</u>	21 NCAC	16E	.0102
<u>Application for Provisional License</u>	21 NCAC	16E	.0103
<u>Dental Hygiene License by Endorsement Based on Military S...</u>	21 NCAC	16G	.0107
<u>Dental Hygiene License by Endorsement Based on Status as ...</u>	21 NCAC	16G	.0108
<u>Application for Intern Permit</u>	21 NCAC	16Y	.0102

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

<u>Apprentice Training</u>	21 NCAC	18B	.0212
<u>Electrical Installation: Project: Project Value-Limitation</u>	21 NCAC	18B	.0303
<u>Annual License Fees</u>	21 NCAC	18B	.0404
<u>School, Hospital and Nonprofit Electrical Contractors and...</u>	21 NCAC	18B	.0408
<u>Applicants Convicted of Crimes</u>	21 NCAC	18B	.0901

NURSING, BOARD OF

<u>Approval of Nurse Aide Education Programs</u>	21 NCAC	36	.0405
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OPTICIANS, STATE BOARD OF

<u>Training Establishment Requirements</u>	21 NCAC	40	.0321
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RECREATIONAL THERAPY LICENSURE, BOARD OF

<u>Continuing Education Requirements for Licensed Recreation...</u>	21 NCAC	65	.0601
<u>Renewal Requirements for Licensed Recreational Therapist ...</u>	21 NCAC	65	.0602
<u>Reinstatement of Lapsed License</u>	21 NCAC	65	.0701
<u>Inactive Status</u>	21 NCAC	65	.0801
<u>Military Endorsement</u>	21 NCAC	65	.0902

BUILDING CODE COUNCIL

<u>2018 NC Mechanical Code/General Definitions</u>	202
<u>2018 NC Residential Code/Drain Pipe Materials and Sizes</u>	M1411.3.2
<u>2018 NC Residential Code/General</u>	M1502.1
<u>2018 NC Residential Code/Duct Installation</u>	M1502.4.2
<u>2018 NC Residential Code/Return-Air Intake</u>	M1602.3
<u>2018 NC Fire Code/Valet Trash Collection Services</u>	304.4
<u>2018 NC Residential Code/Frost Protection</u>	P2603.5.2
<u>2018 NC Residential Code/Fill</u>	R506.2.1

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
19	BOE	01535	1/7/2020; 1/14/2020	The People for Rev. Joseph L Irving	v.	State Board of Elections and Ethics Enforcement	May
19	BOE	02435	1/24/2020	Robert Jameson	v.	NC State Board of Elections	Ward
19	DHR	00943	5/21/2019; 1/9/2020	Central Family Care Home Dr Thelma B Brown	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Overby
19	DHR	02817	1/16/2020	Perkins Professional Daycare Inc	v.	Department of Health and Human Services	May
19	DHR	05406	1/28/2020	New Horizon Group Home LLC	v.	NC Department of Health and Human Services, Division of Social Services	Lassiter
19	DOJ	00322	1/27/2020	Kenneth M Tanguay	v.	North Carolina Criminal Justice Education and Training Standards Commission	Lassiter
19	DOJ	01621	1/23/2020	Matthew Bounds	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	01622	1/30/2020	Joshua Orion David	v.	NC Sheriffs Education and Training Standards Commission	Ward
19	DOJ	02498	1/23/2020	Justin T Combs	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	02985	1/6/2020	Thomas Council	v.	NC Sheriffs Education and Training Standards Commission	Overby
19	DOJ	03862	1/21/2020	Andre D Green Sr	v.	NC Sheriffs Education and Training Standards Commission	Bawtinheimer
19	INS	02486	1/3/2020	Candace Heer	v.	State Health Plan	May
19	INS	03891	1/13/2020	Donna Thomas Tedder	v.	North Carolina State Health Care Plan	Bawtinheimer

CONTESTED CASE DECISIONS

18	OSP	02258	1/6/2020	Jodette Dorene Hall	v.	North Carolina Department of Public Safety	Bawtinheimer
19	OSP	03469	1/27/2020	Alejandro Asbun	v.	North Carolina Department of Health and Human Services	Jacobs
19	OSP	03472	11/18/2019; 1/2/2020	Rex A Draughon	v.	NCDPS Adult Corrections and Juvenile Justice	Overby
19	OSP	04414	1/29/2020	Tiffany Efird	v.	NC DOT/ DMV	Bawtinheimer
				<u>Unpublished</u>			
19	BAR	06047	1/13/2020	Kelvin D Exum	v.	The North Carolina State Bar	Overby
19	BOE	04976	1/10/2020	Barbara Dantonio	v.	NC State Board of Elections	Ward
19	CPS	03805	1/7/2020	Christene Callihan	v.	Crime Victims Compensation Commission	Lassiter
19	CPS	05739	1/7/2020	Larry Richard Moore	v.	Public Safety operating as North Carolina State Highway Patrol	Sutton
19	CPS	06274	1/16/2020	Courtney King	v.	NC Crime Victims Comp Commission	Malherbe
19	CSE	03117	1/2/2020	Andrelle Wiley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	05599	1/16/2020	Eron Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	05671	1/7/2020	Tesha M Mangum	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
19	CSE	05693	1/23/2020	Ascencion Escamilla Rodriguez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
19	CSE	05799	1/16/2020	Charles Pettus	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	05856	1/30/2020	Antonio Mock	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	05921	1/13/2020	Damian D Liles	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Sutton
19	CSE	05928	1/23/2020	Allyson Lucia Chavis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
19	CSE	05963	1/30/2020	Dwain Evans	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
19	CSE	05971	1/14/2020	Thomas A Miller	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Service	Sutton
19	CSE	06058	1/16/2020	Lincoln Hardrick	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	06122	1/15/2020	Gregory E Dwyer	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward

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19	CSE	06127	1/13/2020	Claude Sanders	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
19	CSE	06330	1/14/2020	Christine L Barnes	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	CSE	06606	1/22/2020	Michael T Holloway	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Bawtinhimer
19	DCS	04290	1/10/2020	Lynetta J Givens	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
19	DHR	04623	1/28/2020	Loretta Buckley Malakie	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Sutton
19	DHR	05200	1/3/2020	Antonio Ray Davis	v.	Department of Health and Human Services, Division of Health Service Regulation	Ward
19	DHR	05205	1/10/2020	Onslow Pines Rest Home	v.	NC Dept of Health and Human Services (DHHS)	Mann
19	DHR	05871	1/17/2020	LifeQuest Disabilities Services Inc Jane Williams	v.	Trillium Health Resources	Lassiter
19	DHR	05911	1/22/2020	Teketa Pemberton	v.	DHHS	May
19	DHR	05962	1/22/2020	Nicole Richardson	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Mann
19	DHR	06006	1/7/2020	Lalee Lee	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Sutton
19	DHR	06383	1/7/2020	Lewis E Williams	v.	DHHS Ms Lisa G Corbett General Counsel	Bawtinhimer
19	DHR	06419	1/29/2020	Gaston Residential Services Inc	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
19	DHR	06446	1/21/2020	Kiayanis Harris	v.	North Carolina Department of Health and Human Services, Division of Child Development and Early Education	Malherbe
19	DHR	06567	1/23/2020	Sylvia Corry	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Malherbe
19	DHR	06942	1/30/2020	Valerie R Davis	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
19	DOJ	02330	1/2/2020	Demonte Dominique Shaw	v.	NC Private Protective Services Board	Bawtinhimer
19	DST	05116	1/17/2020	Michael Bagala A/K/A Bernard C Wijesingha	v.	State Treasurer of North Carolina, Retirement Systems Division	Jacobs
19	OSP	05895	1/28/2020	Charles A Wooten	v.	Cherry Hospital 1403 W Ash St Goldsboro NC (DHHS)	Overby