



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Medical Board	
2. Rule citation & name: 21 NCAC 32B .1707 Limited License for Disasters and Emergencies for Physicians and Physician Assistants with Inactive North Carolina Licenses	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: 03/20/2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 03/11/2020 b. Proposed Temporary Rule published on the OAH website: 03/11/2020 c. Public Hearing date: 04/15/2020 d. Comment Period: 03/18/2020- 04/15/2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): Yes f. Adoption by agency on: 05/21/2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Since the COVID-19 outbreak began, it has been difficult to contain. The World Health Organization, the Center of Disease Control and Prevention, and the United States Department of Health and Human Services have declared the COVID-19 a public health threat and emergency. Section 16 of Executive Order No. 116 temporarily waived licensure requirements for health care providers licensed in other states, territories, and the District of Columbia. The Medical Board seeks to help increase the pool of qualified health care providers who can provide assistance with a COVID-19 outbreak by creating an expedited process by which physicians and physician assistants with inactive North Carolina medical licenses may obtain a temporary emergency license. The adoption of the Medical Board's Emergency rule has helped alleviate health care provider shortages resulting from the COVID-19 outbreak in North Carolina and the Medical Board wishes to extend the health care provider's assistance.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The Medical Board needed to begin the process of creating an expedited means of reactivating licenses of qualified physicians and physician assistants to help care for patients in the outbreak of the COVID-19.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

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Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

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No

9. Rule-making Coordinator: Lynne Taylor

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10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Bryant A. Murphy

Title: President

E-Mail: bryant.murphy@ncmedboard.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

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Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Board

RULE CITATION: 21 NCAC 32B .1707

DEADLINE FOR RECEIPT: Friday, June 12, 2020

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

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Temporary Rulemaking Findings of Need Form:

In Box 5(e), please provide the date you sent the notice to your interested persons.

In the Rule:

In (b)(1), line 9, what is "sufficient" here? And sufficient to prove to whom – the Board?

On line 10 and elsewhere the term is used, what is "clinical medicine"? Is this a term used by your regulated public?

In (b)(2), line 11, what is "active and unrestricted"? Does your regulated public know?

In (b)(4), how will the area of practice where the individual is competent determined? Is this up the individual to determine?

In (c), what are the contents of this application? G.S. 150B-2(8a)(d) requires that the substantive contents of forms be in rule or law.

In (d), line 20, do you mean "shall" rather than "may"? If you mean "may," then under what scenario will the Board not verify the 80 hours of practice?

On line 21, the immediate two-year period of what? If you mean to use the language in (b)(1), then why not state "The Board shall verify the applicant complied with (b)(1)" But then, isn't the Board going to want to verify compliance with all of Paragraph (b)?

If you need to keep the language on line 21 as it is, you need to add language such as "the immediate two-year period prior to application."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 2, 2020

In (e), line 22, what is a “declared disaster”? You do not use that in the rest of the Rule (see Subparagraph (b)(4), line 16), and G.S. 90-12.5 speaks only to declarations of emergency.

Also in (e), how will the Board determine whether to limit the scope of practice, and based upon what? Will this be stated in the individual’s limited license?

In (f), lines 24 and 27, delete “Emergency” before “Rule” However, you likely want to delete the reference to the Rule on line 27, unless you are not planning to make this into a permanent rule.

On line 25, please replace “such” with “this” or “the”

What authority are you relying upon to retain this jurisdiction on lines 25-27?

In (g)(2), line 30, what is an “appropriate” authority?

On lines 30-31, please note my earlier question about the authority to include “disaster declaration” in this Rule, given the language in G.S. 90-12.5.

Why do you need the language after “ended” on line 31? Doesn’t line 28 address that the license is only effective for the shorter of the two dates?

In (h), line 32, what is “direct supervision”? Is this defined somewhere else in your Rules?

On lines 32-33, why not replace “and the supervising physician must be” with “who is” so it reads “... of an on-site physician who is licensed...”

On line 33, what is a “disaster” here?

On lines 34, what is the difference between a physician licensed to practice under G.S. 90-12.5 and a physician approved by this Rule?

In (i), I do not understand what is intended here. You refer to physicians practicing under this Rule not being required to meet Rule 32S .0213. But that Rule only governs PAs and their supervising physicians.

Page 2, line 2, please add at the bottom of the History Note a line “Temporary Adoption Eff. June 26, 2020.”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: June 2, 2020

21 NCAC 32B .1707 is adopted under temporary procedures as follows:

**21 NCAC 32B .1707 LIMITED LICENSE FOR DISASTERS AND EMERGENCIES FOR PHYSICIANS
AND PHYSICIAN ASSISTANTS WITH INACTIVE NORTH CAROLINA
LICENSES.**

(a) The Board shall waive the requirements for licensure in the circumstances set forth in G.S. 90-12.5.

(b) Limited Emergency License: Physicians and physician assistants who do not have an active medical license issued by any jurisdiction, but who at one time had a full and unrestricted North Carolina medical license, may apply for a limited emergency license on the following conditions:

(1) The applicant must certify and provide information sufficient to prove that he or she has practiced clinical medicine for at least eighty hours within the past two years;

(2) The applicant must have maintained an active and unrestricted medical license continuously for the ten-year period prior to going inactive;

(3) The applicant shall not have received any public discipline or inactivated his or her license while under investigation with such inactivation being reported to the National Practitioner Data Bank; and

(4) During the declared state of emergency, the physician or physician assistant shall limit his or her medical practice to the area of practice that he or she engaged in prior to going inactive or another area in which he or she is competent to provide medical care.

(c) The applicant must complete a limited emergency license application.

(d) The Board may verify that the applicant practiced clinical medicine for at least eighty hours in the immediate two-year period.

(e) In response to a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician's or physician assistant's scope of practice.

(f) The Board shall have jurisdiction over all physicians and physician assistants practicing under this Emergency Rule for all purposes set forth in or related to Article 1 of Chapter 90 of the North Carolina General Statutes, and such jurisdiction shall continue in effect even after such physician and physician assistant has stopped practicing medicine under this Emergency Rule or the Limited Emergency License has expired.

(g) This license shall be in effect for the shorter of:

(1) ninety days from the date it is issued; or

(2) thirty days after a statement by an appropriate authority is made that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license issued shall become inactive.

(h) The physician assistant must practice under the direct supervision of an on-site physician and the supervising physician must be licensed in this State, approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-12.5, or approved under this Rule;

(i) Physician assistants and physicians practicing pursuant to this Rule are not required to maintain documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0213.

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2 *History Note:* Authority G.S. 90-5.1(a)(3); 90-12.5;

3 *Emergency Adoption Eff. March 20, ~~2020~~, 2020;*

4 Eff. _____.