

Rule changes for North Carolina Board of Electrolysis Examiners

August 5, 2019

Dorenda Stilwell  
Hairaway Electrolysis & Laser, Inc  
1111 Forest Lane  
Thomasville, NC. 27360

To whom it may concern,

21NCAC 19.0409. physician and date of clients last physical ( Remove remaining wording) Not necessary may be a HIPPA issue?

19.0412 Splashes **take out. What splashes?**

21 NCAC 19 .0501

“(a) Supervising by Physician – It is the licensed laser hair practitioner’s responsibility to perform procedures solely within his or her scope of practice. A laser hair practitioner licensed under this Chapter shall perform laser hair removal under the supervision of a physician licensed by the state of North Carolina. The supervising physician is available during laser hair removal services, not required to be on site.

21 NCAC 19..702. (2) (B) add **STATE** back in this sentence (original rule). This will help get CEU approved more efficiently by state electrolysis and laser associations.

Thank you committee members and board members for making these changes. I was given the email to send this and some instructions, sorry for the inconvenience as my time is limited.

Best Regards,

Dorenda Stilwell

Dorenda Stilwell, LE, LLHP  
Vice-President, Greater Piedmont Electrolysis Association

We are here today to speak out against the proposed amendment to NCBEE's rules regarding a supervisory physician.

First of all, as it stands under North Carolina law, specifically, NCGS Chapter 88A-11.1(c), a laser hair removal practitioner can perform procedures and while a physician is supposed to be readily available, the physician is not required to be on site. This law has been in place for going on 15 years. This proposed amendment changes the current law in that it would now essentially require a physician to be on site.

Second, we take issue with how these proposed changes were presented. According to Chapter 150B, Article 2A regarding Rules of the NCGS, also known as the Administrative Procedure Act, there are requirements for agencies in the rule making process. Under §150B-19.1 (a)(1-6), it is required that:

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

We take issue specifically with (a)(2-5). The proposed amendment regarding a physician to essentially be on site while a laser procedure is performed actually increases the burden upon the laser hair removal practitioners by impeding their ability to perform their trade if they have to wait for a physician to be on site in order to provide services to their clients. For example, a physician may be on call at the local hospital or working off site and the practitioner would have to wait for the doctor to arrive in order to do their job. The proposed amendment regarding physicians is written so ambiguously that it is not clear as to whether or not laser hair removal business owners have to hire a physician to always be at the building or office. The proposed rule is also redundant in that a law has already been passed regarding physicians and their availability to laser hair removal practitioners. There is no reason to re-invent the wheel when the current law is working well as is. This proposed rule change is not in the best interests of the laser hair removal practitioners in this state. It is also clear from this proposed rule change that the Board is biased and self-interested. Members of the Board have publicly spoken out about

laser hair removal practitioners being members of the board. Finally, the text of the proposed amendment provides no scientific, technical, or economical information.

Further under this same section at (c)(2), it states:

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.

Yes, the proposed amendment has been published in the North Carolina Register, but there is no explanation of any of the proposed rules, to include the rule regarding physicians, nor is there a published reason for the proposed amendment/rule. Yes, it cites the statute, but that's it.

Third, the proposed amendment to increase the role of a physician in the removal of hair is discriminatory, restrictive, and blatantly unconstitutional.

The proposed amendment is discriminatory in that it will hurt laser practitioners, who are primarily women, from practicing their profession. It has already been agreed that laser practitioners in this state are required to have a physician to be an overseer of the profession according to current law. However, this proposed amendment goes too far in that it will put laser practitioners out of business and essentially physicians will only be able to perform laser hair removal. Again, we can't help but to believe that the Board is biased when members have spoken to media and the public regarding laser hair removal being a part of this board.

The proposed amendment to the rules is restrictive in that it would impede the ability of practitioners to actively practice their trade. Further, it would increase costs not only for the practitioners and owners of laser hair removal businesses, but also consumers, thereby denying access to a wanted and desired service. In all the years we have been in business in this state, we have had no incidents or complaints regarding the safety of our practice.

Finally, it is believed that the proposed amendment regarding physicians is unconstitutional not only for its discriminatory effects, but for its impediment for laser hair removal business owners to practice freely in the marketplace. In 2015, the Supreme Court of the United States in *North Carolina Board of Dental Examiners v. FTC*, ruled that the board's actions to restrict non-dentists from offering teeth whitening services was unconstitutional because it restricted their ability to do so. Further the Court held that since the Board was made up of members active in the marketplace, the same as the members of the Board of the NCBEE, that the Board could only claim immunity from federal anti-trust actions if the Board were subject to active supervision by the State. Under the Court's decision in *Parker v. Brown*, when a state acts to regulate activity within its boundaries, that regulation is immune from federal anti-trust actions. However, when the regulatory action is undertaken by an entity made up of non-state actors, courts must ensure the regulatory action is attributable to state policy. Courts must determine whether the state has clearly authorized to the entity to regulate and whether the entity is subject to active supervision from the state. While an entity may be excused from the active supervision requirement in some situations, such as when the entity is electorally accountable, none of these considerations



applied to the Board. Because the Board was not subject to active supervision from the state, the Board could not claim immunity from federal anti-trust actions.

Although these proposed rules are not concerning non-practitioners, the ruling of the Supreme Court is relevant here because of the factors laid out above. Bottom line, this Board is not immune from a lawsuit if it continues to pursue this matter of essentially keeping one group that also belongs to the Board, laser hair removal practitioners, out of the marketplace and from participating in the trade for which they have trained. Meanwhile it would have no repercussions for those who practice electrolysis, which further points to this proposed rule change being discriminatory.

In conclusion, the proposed rule change requiring a physician to essentially be on site is discriminatory because it will mostly affect women who practice laser hair removal, redundant because we already have a statute that requires us to have a medical director, restrictive in that it would impede our ability to practice our trade, and unconstitutional because it is an attempt and seemingly designed to keep laser hair removal practitioners out of the marketplace in this state.

Liz Fisher

lizfisher1hr@gmail.com

## Burgos, Alexander N

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**Subject:** FW: [External] Fwd: Rules changes by the NC Board of Electrolysis Examiners

**From:** ap <[apsaintsing@aol.com](mailto:apsaintsing@aol.com)>

**Sent:** Tuesday, August 6, 2019 1:50 PM

**To:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>; [ncbeexam@att.net](mailto:ncbeexam@att.net)

**Subject:** [External] Fwd: Rules changes by the NC Board of Electrolysis Examiners

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-----Original Message-----

From: ap <[apsaintsing@aol.com](mailto:apsaintsing@aol.com)>

To: rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>

Sent: Tue, Aug 6, 2019 1:45 pm

Subject: Fwd: Rules changes by the NC Board of Electrolysis Examiners

As an electrologist/laser hair practitioner, I have real concerns about the rules which were submitted by the Electrolysis Board. We opposed several of these rules at the public hearing and in writing but to no avail. Please consider changes to the following rules:

21 NCAC 19.0412 referring to splashes and sprays. Neither electrolysis nor non ablative lasers cause splashes or sprays of blood.

21 NCAC 19.0501 referring to a client being seen by a physician before a laser treatment. Our supervising physicians say it is unnecessary. This causes a financial burden on the client, an unnecessary burden on overworked doctors, and a delay in treatment. Laser hair removal is a **cosmetic** procedure and should be treated as such. We are well educated and are taught to recognize any potential problem and are required to have **10 hours** of continuing education per year.

21 NCAC 19.0702 (2 B) we would like to have **state** added back as it was originally written to allow state organizations to present seminars for continuing education.

Thank you for your consideration in this very important matter. If you need further information, please feel free to contact me.

Best regards.

Alice Saintsing, LE, LLHP

336 884-4222

## Burgos, Alexander N

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**Subject:** FW: [External] (21 NCAC 19 Section .0500) Object to patient required to be examined by physician prior to laser hair treatment

**From:** Katelyn Padgett <[katelynp1063@gmail.com](mailto:katelynp1063@gmail.com)>

**Sent:** Wednesday, August 7, 2019 10:11 AM

**To:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>

**Cc:** [ncbeexam@att.net](mailto:ncbeexam@att.net)

**Subject:** [External] (21 NCAC 19 Section .0500) Object to patient required to be examined by physician prior to laser hair treatment

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Dear NC Board of Electrolysis Examiners,

I am writing to you to object to the proposed rule change that would require laser hair removal treatments to be performed under the supervision of a physician. I am a consumer of hair removal services and I believe this rule change would actively harm the consumer in the state of North Carolina. It would not increase the safety or efficacy of these treatments, it would increase the cost of treatments, it would reduce the choice in providers the consumer has, and it would create an uneven playing field between licensed and unlicensed providers.

**Impact on Safety and Efficacy:** I have used two separate laser hair removal providers. Both providers were extremely cognizant of my safety and worked to ensure the treatments did not damage my skin in any way. Both providers were very knowledgeable regarding the various risk factors involved in laser hair removal. I do not think adding a physician to supervise my treatment would have improved my safety at all. Additionally, no physician I have ever interacted with has the requisite knowledge that my laser providers had, including various dermatologists. Without the same specialized training my laser providers have undergone a physician would not have the knowledge they need to add anything of value; and the laser providers themselves already have that knowledge!

**Increase Cost:** Laser hair removal is already a very expensive process. Requiring a physician to participate would increase this cost further and put it out of reach for more consumers. This would reduce the available market of people who could use laser hair removal services, thereby harming laser hair removal professionals across the state. This would likely put some percentage of providers out of business.

**Reduced Choice:** As providers go out of business, the consumer will be faced with fewer options for where to get their laser hair removal done. As I am sure the Board knows, different providers offer different types of laser equipment and various types are more effective on certain skin types and hair types. This reduction in choice may remove some of these options from the market entirely, leaving the consumer with no good option for their skin/hair type and/or suboptimal results.

**Uneven Playing Field:** Laser hair removal professionals are already operating under multiple different licensing and regulatory regimes in the state. These different regimes have different requirements, and some are more onerous than others. The proposed rule would disproportionately negatively impact laser hair removal professionals who are licensed directly by the board, versus those operating under a physician's license. Making this problem worse, not better, would seem to run counter to one of the goals of good regulation which is to ensure that there is a level, fair, equitable, and transparent playing field on which various service providers may compete for business.

I hope my letter will help convince you to reconsider this rule change. I believe this is a bad rule for consumers of laser hair removal services, and bad for laser hair removal professionals as well.

Sincerely,

Katelyn Padgett

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## Burgos, Alexander N

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**Subject:** FW: [External] Oppose Proposed Changes to 21 NCAC 19.0501 Physician Supervisionrvision Guidelines

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**From:** Mary Canel <[canelme@gmail.com](mailto:canelme@gmail.com)>  
**Sent:** Wednesday, August 7, 2019 7:05 PM  
**To:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>  
**Subject:** [External] Oppose Proposed Changes to 21 NCAC 19.0501 Physician Supervisionrvision Guidelines

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Rules Committee  
To Whom It May Concern:

This email is to protest the proposed substantive changes to Section .0500 of the Physician/Laser Hair Practitioner Guidelines; specifically 21 NCAC 19.0501 SUPERVISING PHYSICIAN

I am an Adult Nurse Practitioner and owner of Inspirit Aesthetics, PLLC. The proposed changes will impose hardship on the patient, the health care provider, and the Laser Hair Practitioner. This perspective is informed by my personal and professional experience.

As a consumer of electrolysis and laser hair removal services for the past fifteen to twenty years, I have received efficient and affordable services from highly trained Electrologists and Laser Hair Practitioners. The pecialists provided me with excellent skin assessment, patient education, and answered my questions fully. I scheduled appointments during my lunch hour so as not to interrupt time with my children and family. The addition of physician assessment pre and post each treatment will penalize the consumer by adding time to the procedure and add substantial cost to the treatment.

My professional experience as a Registered Nurse since 1982 and a Nurse Practitioner since 1992. The Board of Electrolysis Examiners upholds rigorous standards for licensure. It is absolutely an unjustifiable economic burden on the consumer and especially on a primarily female work force of highly qualified Laser Hair Practitioner to require an on-site physician to examine the clients who are already receiving top-notch care.

AN OVERBURDENED HEALTH CARE SYSTEM DOES NOT NEED THESE ADDITIONAL UNNECESSARY STEPS IN ORDER TO PROVIDE THIS SERVICE.

Thank you for your consideration,

Mary E Canel, RN, MSN, MA, ANP-BC  
[canelme@gmail.com](mailto:canelme@gmail.com)



**Burgos, Alexander N**

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**Subject:** FW: [External] Section .0500 Physician/Laser Hair Practitioner Guidelines

-----Original Message-----

From: Jane Waller <jwwaller1@gmail.com>

Sent: Wednesday, August 7, 2019 8:32 PM

To: rrc.comments <rrc.comments@oah.nc.gov>

Cc: ncbeexam@att.net

Subject: [External] Section .0500 Physician/Laser Hair Practitioner Guidelines

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To Whom It May Concern,

I am writing this letter to express my objection to patients being required to be examined by a physician prior to laser hair treatment. Licensed Laser Hair Practitioners have been well trained in patient evaluations and perform laser hair procedures without direct physician supervision, unless certain conditions would indicate otherwise. Physician supervision prior to and after laser treatment is not necessary.

Respectfully,  
Jane W. Was

Sent from my iPad

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

To: Rules Review Commission

From: Laurie Jones

Re: Rules for Licensed Hair Removal Practitioners

Date: 08/08/2019

Section .0500 Physician/Laser Hair

Practitioner Guidelines

21 NCAC 19            Supervising Physician

Dear Board Members,

I object to the rule that patients are required to be examined by a physician prior to laser hair removal by a licensed hair removal practitioner. I feel that these rules are unnecessary and created with no merit. The need for a physician to see a hair removal client before and after treatment is unnecessary. As a client of a licensed hair removal practitioner, I received successful treatments in a clean and safe environment. I see no need to require a physician's over site or approval. This would only add unnecessary costs and create unjustified hardships for the existing licensed hair removal practitioners. If I felt the need to see a physician for this type of service I would have done so. I do not understand the reason for this rule. It appears to be over-regulation, and I would like for you to explain how this added cost would make this procedure any safer. If you go to a licensed practitioner you are receiving a safe procedure. These hair removal procedures are not cheap by any means.

Please feel free to contact me if you have any questions, or need further information about my experience with laser hair removal. I have had multiple sessions over many years.

Sincerely,

Laurie Jones

tb@advancedlasernc.com

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To: Rrc.comments@oah.nc.gov  
Cc: susan magas  
Subject: Rules NCBE

Dear Rules Review Commission,

I request to speak at the Rules Review hearing on Thursday, August 15, 2019.

Ref: Section.0500 PHYSICIAN/LASER HAIR PRACTITIONER GUIDLINES

I want to object to 21NCAC 19.0501 SUPERVISING PHYSICIAN (LINE 9, 10, 11, 12,)

**The laser hair practitioner shall receive physician supervision before the initial laser treatment procedure.**

**The laser hair practitioner shall perform services only after a physician or other practitioner licensed by the NC Medical Board (NCMB) Under G.S. 1, Article 90 has examined the patient.**

This rule has placed a huge hardship on our small business for the following reasons:

1. It is very difficult to find a physician to come to our offices to see our patients. There is a shortage of Physicians in this state and they are busy with their own practices
2. It is very expensive to pay a physician to be at our office when we need them to see our patients. Most of us work after 5 and on Saturdays to accommodate our patients for this service.
3. We have to educate the Physician on the Laser Hair Removal procedure because we are the ones that have completed the formal training required by the board. We are the ones that have the 20 hours of continuing education each year. We are the ones with the experience because we provide the actual treatments on a daily basis to the public.
4. We work six days a week and we need to schedule new patients as soon as possible when they call. If not we lose them to other practices. Requiring new patients to come back to our offices for physician examination is an issue for many patients. It serves no purpose for our patients. It is costly and non productive. It does not assure safe treatment.
5. As Licensed Hair Removal practitioners we are trained in patient evaluations prior to procedures. We know if there is a special concern to contact the medical director to see the patient prior to treatment.
6. It appears this rule is an attempt to monopolize the Laser hair removal trade.


I have been practicing electrolysis for 49 years and Laser Hair for almost 20 years. I currently hold an instructors License In both Electrolysis and Laser. I have worked as a clinical Laser trainer for several Laser companies at which time I trained

Physician offices and hospitals in Laser Hair Removal. The training only included a 4 to 6 hour in service instruction in Laser

Hair removal. This is all the training some offices have that offer this service. As Licensed Hair Removal Practitioners we have more training and continuing education on Laser Hair Removal than anyone in the state.

Please approve my request to speak regarding these issues.

Sincerely,



Trudy Brown, LLHEI, LEI

Advanced Laser & Skin Rejuvenation

3750 Admiral Drive, Suite106

High Point, N.C. 27265