

1 21 NCAC 30 .1009 (proposed as .1010) is adopted with changes as published in 32:18 NCR 1789-1797:

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3 **21 NCAC 30 ~~.1010~~ .1009 CHANGE TRANSFER OF OWNERSHIP**

4 (a) ~~An establishment license shall not be transferable when~~ When there is a change transfer in the majority ownership
5 interest of the ~~business.~~ The business, the new majority owner shall submit a new application for licensure. The Board
6 may issue temporary operating approval to the new majority owner for a period of 90 ~~days~~ days, if the establishment
7 held a valid license prior to the ~~change,~~ change and ~~if~~ the Board finds that the new majority owner will qualify for
8 licensure upon preliminary review of the application.

9 (b) ~~In the case of~~ When there is a change transfer of ownership that does not involve a change in the majority
10 ownership interest in the business, or a change in the ownership structure, the owner shall notify the Board of the
11 changes within 30 days, and submit fingerprint cards as required by G.S. 90-632.11 for new persons with ownership
12 interests.

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14 *History Note: Authority G.S. 90-632.13(6);*
15 *Eff. ~~October 1,~~ November 1, 2018.*

1 21 NCAC 30 .1010 (proposed as .1011) is adopted with changes as published in 32:18 NCR 1789-1797:

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3 **21 NCAC 30 ~~.1011~~ .1010 INFORMING BOARD OF VIOLATIONS**

4 (a) Establishment licensees with knowledge of alleged violations of the rules of this Chapter or the Practice Act shall
5 inform the Board within ~~two~~ five business days, whether or not the alleged violations are also reported to a law
6 enforcement agency. This shall ~~include~~ include, but is not limited to, the following violations:

7 (1) An LMBT or other employee or contractor of the establishment who has violated the prohibition on
8 sexual activity, as defined in Rules .0508 and .0509 of this Chapter;

9 (2) An LMBT who has engaged in behavior where there is a potential for malpractice as defined in Rule
10 .0102(6) of this Chapter; or

11 (3) Any person practicing massage and bodywork therapy without a license.

12 (b) Establishment licensees that have discharged an LMBT for cause, related to failure to uphold the Standards of
13 Professional Conduct set forth in Section .0500 of this Chapter shall inform the Board within 10 business days of the
14 action.

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16 *History Note:* Authority G.S. 90-626(9); 90-626(9)b.2; 90-632.10; 90-632.15(a)(5); 90-632.17; 90-632.18; 90-
17 633(a)(6); 90-634(b3);

18 *Eff. ~~October 1,~~ November 1, 2018.*



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

September 21, 2018

Charles Wilkins, Rulemaking Coordinator
Board of Massage and Bodywork Therapy
Sent via email only to: cwilkins@bws-law.com

Re: Objection to Rules 21 NCAC 30 .1009 and .1010

Dear Mr. Wilkins:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 21 NCAC 30 .1009 based upon lack of statutory authority and ambiguity. Specifically, the Commission found that the agency does not have statutory authority to completely forbid transfers of licenses, and as written, the Rule appears to do that. In addition, the Rule is unclear as written because it appears to conflate licensure transfer with a change of ownership, and therefore, it is not clear what is intended in Paragraph (b).

The Commission objected to Rule 21 NCAC 30 .1010 for ambiguity, as it is unclear in Paragraph (a) if the agency is only requiring the submission of allegations of violations addressed in (a)(1) through (3), or all rules in the Chapter and the Practice Act as set forth in the first sentence of the Rule.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

cc: Elizabeth Kirk, Administrator

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Massage and Bodywork Therapy

RULE CITATION: 21 NCAC 30 .1009

DEADLINE FOR RECEIPT: Thursday, September 13, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note, if you do not make any changes to the Rule as published in the Register, you will need to reinsert the underlining in this Rule.

On line 6, delete the "if" after "and"

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: August 29, 2018

1 21 NCAC 30 .1009 (proposed as .1010) is adopted as published in 32:18 NCR 1789-1797:

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3 **21 NCAC 30 ~~4010~~ .1009 CHANGE OF OWNERSHIP**

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5 business. The new owner shall submit a new application for licensure. The Board may issue temporary operating
6 approval to the new owner for a period of 90 days if the establishment held a valid license prior to the change, and if
7 the Board finds that the new owner will qualify for licensure upon preliminary review of the application.

8 (b) In the case of a change of ownership that does not involve a change in the majority ownership interest in the
9 business, or a change in the ownership structure, the owner shall notify the Board of the changes within 30 days, and
10 submit fingerprint cards as required by G.S. 90-632.11 for new persons with ownership interests.

11

12 *History Note: Authority G.S. 90-632.13(6);*

13 *Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Massage and Bodywork Therapy

RULE CITATION: 21 NCAC 30 .1010

DEADLINE FOR RECEIPT: Thursday, September 13, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(2), line 9, who determines whether there is "potential"? Will this be entirely up to the establishment licensee to determine?

In the History Note, please put the citations in numerical order as they were when published in the NC Register.

Also in the History Note, the proper citation is to 90-632.15(a)(5).

The proper citation is to G.S. 90-632(a)(6)

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: August 29, 2018

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17 90-634(b3);
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