



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

April 17, 2014

Joshua Hickman
Department of Justice / Division of Criminal Information
Sent via email attachment to Jhickman@ncdoj.gov

Re: 12 NCAC 04H, 04I, and 04J – All Rules Filed

Dear Mr Hickman:

At its meeting today, the Rules Review Commission extended the period of review on the above captioned rules in accordance with G.S. 150B-10. It did this in order to give you more time to complete the requested technical changes and perhaps make any other necessary changes in your rules.

The Commission hopes to complete action on these rules at its next meeting on Thursday, May 15, 2014.

If you have any questions concerning this action please call or email me.

Sincerely,

Joseph J DeLuca
Commission Counsel

Administration
919/431-3000
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fax: 919/431-3104

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April 17, 2014

Erica Garner
Rule-making Coordinator
Wildlife Resources Commission
1701 Mail Service Center
Raleigh, North Carolina 27699-1701

Re: 15A NCAC 10K .0101

Dear Ms. Garner:

At the Rules Review Commission's meeting today, the Commission objected to the above-captioned Rule in accordance with G.S. 150B-21.10.

The Commission objected to Rule 15A NCAC 10K .0101 based on the adopted amended language creating unclear or ambiguous course requirements. Specifically, in Paragraph (a) of the amended language, the requirement of "a minimum of 10 hours of instruction" was deleted and as adopted, the Rule merely states "[a] hunter education instructor-led course or self-paced, independent study option." There is no longer a definitive minimum period of instruction time. In Paragraph (b) of the amended language "four hours" is deleted, but as adopted, this Rule maintained the language "60 percent." The percentage of time without a definitive minimum period of instruction time makes the language "60 percent" unclear and ambiguous.

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 action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

cc: Kate Pipkin

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April 17, 2014

Johnny M. Loper
NC Board of Examiners in Optometry
Sent via email to jloper@wcsr.com

Re: Objections to Rules 21 NCAC 42B .0107 and .0114.

Dear Mr. Loper:

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

The Commission objected to both rules for failure to comply with the Administrative Procedure Act. In the initial filing on March 20, 2014, the Board stated on the Submission for Permanent Rule forms that the rules had not yet been formally adopted by the agency, but would be on November 14, 2014. Agencies are required to adopt rules before submitting them to the Commission. (*See* G.S. 150B-21.1) In response to a Request for Technical Change from Commission staff that requested the actual date of adoption by the agency, the Board filed new Submission for Permanent Rule forms on April 11, 2014. The new forms stated the rules had been adopted by the Board on November 14, 2013. The comment period for both rules was January 2, 2014 through March 3, 2014. G.S. 150B-21.2(g) states, in relevant part, "An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed[.]"

Based upon the submissions of the agency, the Commission found that the Board failed to comply with the Administrative Procedure Act. If the Board did comply with the Act, it may file evidence of compliance with the Commission for review at a later meeting in accordance with G.S. 150B-21.12.

The Commission also objected to Rule 42B .0114 based upon ambiguity. In Subparagraphs (a)(1) and (b)(2), the Board proposed to determine "other methods as appropriate to the Board" and gave no guidance on how this will be determined. This lack of guidance makes the rule unclear.

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The Commission also objected to the rule for lack of statutory authority to require in Subparagraph (a)(1)(iii) for the applicant to be performing at a satisfactory level of competency in the occupational specialty. G.S. 93B-15.1 requires performance in the specialty, but it does not require the individual to be actively performing it to seek licensure under the statute. This statute does not confine itself to active duty military members, but instead speaks to those who have received military training and been awarded an MOS. The law can extend to retired or discharged military applicants seeking licensure. In addition, the language is ambiguous, as there is no guidance in the Rule as to what will constitute the "satisfactory level" of competency.

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,

A handwritten signature in black ink, appearing to read "Amanda J. Reeder", with a long horizontal flourish extending to the right.

Amanda J. Reeder
Commission Counsel