

G.S. 150B-21.3A Report for 21 NCAC Chapter 32, NORTH CAROLINA MEDICAL BOARD

Agency - North Carolina Medical Board

Comment Period - December 1, 2014 - January 31, 2015

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
<b>SUBCHAPTER 32A - ORGANIZATION</b>		21 NCAC 32A .0101	LOCATION	Amended Eff. July 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32A .0104	MEETINGS	Amended Eff. May 1, 1990	Necessary without substantive public interest	No		Yes	Necessary with substantive public interest
		21 NCAC 32A .0111	REQUEST FOR DECLARATORY RULING	Eff. February 1, 2007	Necessary without substantive public interest	No		Yes	Necessary with substantive public interest
		21 NCAC 32A .0112	DISPOSITION OF REQUEST	Eff. February 1, 2007	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32A .0113	PROCEDURE FOR DECLARATORY RULING	Eff. February 1, 2007	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32A .0114	SUSPENSION OF AUTHORITY TO EXPEND FUNDS	Eff. March 1, 2011	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
<b>SUBCHAPTER 32B – LICENSE TO PRACTICE MEDICINE</b>	<b>SECTION .1000 - PRESCRIBING</b>	21 NCAC 32B .1001	AUTHORITY TO PRESCRIBE	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .1300 - GENERAL</b>	21 NCAC 32B .1301	DEFINITIONS	Amended Eff. March 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1302	SCOPE OF PRACTICE UNDER PHYSICIAN LICENSE	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1303	APPLICATION FOR PHYSICIAN LICENSE	Amended Eff. December 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1350	REINSTATEMENT OF PHYSICIAN LICENSE	Amended Eff. September 1, 2104	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1360	REACTIVATION OF PHYSICIAN LICENSE	Amended Eff. September 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1370	REENTRY TO ACTIVE PRACTICE	Eff. March 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .1400 – RESIDENT'S TRAINING LICENSE</b>	21 NCAC 32B .1401	SCOPE OF PRACTICE UNDER RESIDENT'S TRAINING LICENSE	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1402	APPLICATION FOR RESIDENT'S TRAINING LICENSE	Amended Eff. September 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .1500 – FACULTY LICENSE</b>	21 NCAC 32B .1501	SCOPE OF PRACTICE UNDER MEDICAL SCHOOL FACULTY LICENSE	Eff. March 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1502	APPLICATION FOR MEDICAL SCHOOL FACULTY LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .1600 – SPECIAL PURPOSE LICENSE</b>	21 NCAC 32B .1601	SCOPE OF PRACTICE UNDER SPECIAL PURPOSE LICENSE	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1602	SPECIAL PURPOSE LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .1700 – OTHER LICENSES</b>	21 NCAC 32B .1701	SCOPE OF PRACTICE UNDER LIMITED VOLUNTEER LICENSE AND RETIRED LIMITED VOLUNTEER LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1702	APPLICATION FOR LIMITED VOLUNTEER LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	21 NCAC 32B .1703	SCOPE OF PRACTICE UNDER RETIRED LIMITED VOLUNTEER LICENSE	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest	

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		21 NCAC 32B .1704	APPLICATION FOR RETIRED LIMITED VOLUNTEER LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32B .1705	LIMITED PHYSICIAN LICENSE FOR DISASTERS AND EMERGENCIES	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
	<b>SECTION .2000 – EXPEDITED APPLICATION FOR PHYSICIAN LICENSE</b>	21 NCAC 32B .2001	EXPEDITED APPLICATION FOR PHYSICIAN LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32C - PROFESSIONAL CORPORATIONS</b>		21 NCAC 32C .0102	NAME OF PROFESSIONAL CORPORATION	Amended Eff. May 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0103	PREREQUISITES FOR INCORPORATION	Amended Eff. January 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0104	CERTIFICATE OF REGISTRATION	Amended Eff. January 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0105	STOCK AND FINANCIAL MATTERS	Amended Eff. May 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0106	CHARTER AMENDMENTS AND STOCK TRANSFERS	Amended Eff. May 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0108	FEES	Amended Eff. January 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32C .0109	REGISTRATION OF FOREIGN PROFESSIONAL CORPORATION	Eff. May 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32F - ANNUAL REGISTRATION</b>		21 NCAC 32F .0105	FORMS	Amended Eff. May 1, 1989	Unnecessary	No		No	Unnecessary
		21 NCAC 32F .0106	WAIVER FOR LICENSEES SERVING ON ACTIVE DUTY IN THE ARMED SERVICES OF THE US	Eff. August 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32K - NORTH CAROLINA PHYSICIANS HEALTH PROGRAM</b>	<b>SECTION .0100 - GENERAL INFORMATION</b>	21 NCAC 32K .0101	DEFINITIONS	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
	<b>SECTION .0200 - GUIDELINES FOR PROGRAM ELEMENTS</b>	21 NCAC 32K .0201	RECEIPT AND USE OF INFORMATION OF POTENTIAL IMPAIRMENT	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0202	ASSESSMENT AND REFERRAL	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0203	MONITORING TREATMENT SOURCES	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0204	MONITORING REHABILITATION AND PERFORMANCE	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0205	MONITORING POST-TREATMENT SUPPORT	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0206	REPORTS OF INDIVIDUAL CASES TO THE BOARD	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest
		21 NCAC 32K .0207	PERIODIC REPORTING OF STATISTICAL INFORMATION	Amended Eff. April 1, 2009	Necessary with substantive public interest	No		No	Necessary with substantive public interest

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		21 NCAC 32K .0208	CONFIDENTIALITY	Amended Eff. May 1, 1989	Necessary with substantive public interest	No		No	Necessary with substantive public interest
<b>SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS</b>		21 NCAC 32M .0101	DEFINITIONS	Amended Eff. September 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0102	SCOPE OF PRACTICE	Amended Eff. August 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0103	NURSE PRACTITIONER REGISTRATION	Amended Eff. September 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0104	PROCESS FOR APPROVAL TO PRACTICE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0105	EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AS A NURSE PRACTITIONER	Amended Eff. December 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0106	ANNUAL RENEWAL	Amended Eff. December 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0107	CONTINUING EDUCATION (CE)	Amended Eff. December 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0108	INACTIVE STATUS	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0109	PRESCRIBING AUTHORITY	Amended Eff. December 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0110	QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE AGREEMENT	Amended Eff. December 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0111	METHOD OF IDENTIFICATION	Amended Eff. August 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0112	DISCIPLINARY ACTION	Amended Eff. April 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0115	FEES	Amended Eff. November 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32M .0116	PRACTICE DURING A DISASTER	Amended Eff. December 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32N - FORMAL AND INFORMAL PROCEEDINGS</b>		21 NCAC 32N .0106	DEFINITIONS	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0107	INVESTIGATIONS AND COMPLAINTS	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0108	INVESTIGATIVE INTERVIEWS BY BOARD MEMBERS	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0109	PRE-CHARGE CONFERENCE	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0110	INITIATION OF DISCIPLINARY HEARINGS	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0111	CONDUCTING DISCIPLINARY HEARINGS	Eff. February 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		21 NCAC 32N .0112	POST HEARING MOTIONS	Eff. February 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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		21 NCAC 32N .0113	CORRECTION OF CLERICAL MISTAKES	Eff. February 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32P – LIMITED LIABILITY COMPANIES</b>		21 NCAC 32P .0101	NAME OF LIMITED LIABILITY COMPANY	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32P .0102	PREREQUISITES FOR ORGANIZATION	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32P .0103	CERTIFICATE OF REGISTRATION	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32P .0104	CHARTER AMENDMENTS AND MEMBERSHIP TRANSFERS	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32P .0105	DOCUMENTS	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32P .0106	FEES	Eff. June 1, 1994	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32R – CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS</b>	<b>SECTION .0100 – CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS</b>	21 NCAC 32R .0101	CONTINUING MEDICAL EDUCATION (CME) REQUIRED	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32R .0102	APPROVED CATEGORIES OF CME	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32R .0103	EXCEPTIONS	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32R .0104	REPORTING	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32S - PHYSICIAN ASSISTANTS</b>	<b>SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION</b>	21 NCAC 32S .0201	DEFINITIONS	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0202	QUALIFICATIONS AND REQUIREMENTS FOR LICENSE	Amended Eff. March 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0203	MANDATORY NOTIFICATION OF INTENT TO PRACTICE	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0204	ANNUAL RENEWAL	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0205	INACTIVE LICENSE STATUS	Eff. September 1, 2009	Unnecessary	No		No	Unnecessary
		21 NCAC 32S .0206	LICENSE REACTIVATION	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0207	LICENSE REINSTATEMENT	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0209	EXEMPTION FROM LICENSE	Amended Eff. November 1, 2013	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0210	IDENTIFICATION REQUIREMENTS	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
21 NCAC 32S .0211	AGENCY	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest		
21 NCAC 32S .0212	PRESCRIPTIVE AUTHORITY	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest		
21 NCAC 32S .0213	SUPERVISION OF PHYSICIAN ASSISTANTS	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest		

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		21 NCAC 32S .0214	SUPERVISING PHYSICIAN	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0215	RESPONSIBILITIES OF PRIMARY SUPERVISING PHYSICIANS IN REGARD TO BACK-UP SUPERVISING PHYSICIANS	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0216	CONTINUING MEDICAL EDUCATION	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0217	VIOLATIONS	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0218	TITLE AND PRACTICE PROTECTION	Eff. September 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0219	LIMITED PHYSICIAN ASSISTANT LICENSE FOR DISASTERS AND EMERGENCIES	Amended Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0220	EXPEDITED APPLICATION FOR PHYSICIAN ASSISTANT LICENSURE	Eff. November 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0221	LIMITED VOLUNTEER LICENSE	Eff. December 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0222	RETIRED LIMITED VOLUNTEER LICENSE	Eff. December 1, 2012	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32S .0223	SCOPE OF PRACTICE	Eff. December 1, 2012	Unnecessary	No		No	Unnecessary
<b>SUBCHAPTER 32T – CLINICAL PHARMACIST PRACTITIONER</b>	<b>SECTION .0100 – CLINICAL PHARMACIST PRACTITIONER</b>	21 NCAC 32T .0101	CLINICAL PHARMACIST PRACTITIONER	Amended Eff. March 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32U - PHARMACISTS VACCINATIONS</b>	<b>SECTION .0100 - PHARMACISTS VACCINATIONS</b>	21 NCAC 32U .0101	ADMINISTRATION OF VACCINES BY PHARMACISTS	Amended Eff. September 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32V – PERFUSIONIST REGULATIONS</b>		21 NCAC 32V .0101	SCOPE	Eff. September 1, 2007	Unnecessary	No		No	Unnecessary
		21 NCAC 32V .0102	DEFINITIONS	Amended Eff. November 1, 2014	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0103	QUALIFICATIONS FOR LICENSE	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0104	REGISTRATION	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0105	CONTINUING EDUCATION	Amended Eff. November 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0106	SUPERVISION OF PROVISIONAL LICENSED PERFUSIONISTS	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0107	SUPERVISING PERFUSIONIST	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0108	DESIGNATION OF PRIMARY SUPERVISING PERFUSIONIST FOR PROVISIONAL LICENSEE	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0109	CIVIL PENALTIES	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest

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		21 NCAC 32V .0110	IDENTIFICATION REQUIREMENTS	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0111	PRACTICE DURING A DISASTER	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0112	TEMPORARY LICENSURE	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0113	ORDERS FOR ASSESSMENTS AND EVALUATIONS	Eff. September 1, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0114	PROVISIONAL LICENSE TO FULL LICENSE	Eff. December 12, 2007	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32V .0115	FEES	Amended Eff. November 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32W - ANESTHESIOLOGIST ASSISTANT REGULATIONS</b>		21 NCAC 32W .0101	DEFINITIONS	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0102	QUALIFICATIONS FOR LICENSE	Amended Eff. March 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0103	INACTIVE LICENSE STATUS	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0104	ANNUAL RENEWAL	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0105	CONTINUING MEDICAL EDUCATION	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0106	STUDENT ANESTHESIOLOGIST ASSISTANTS	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0107	EXEMPTION FROM LICENSE	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0108	SCOPE OF PRACTICE	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0109	SUPERVISION OF ANESTHESIOLOGIST ASSISTANTS	Amended Eff. April 1, 2010	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0110	LIMITATIONS ON PRACTICE	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
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		21 NCAC 32W .0113	FEES	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0114	VIOLATIONS	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32W .0115	PRACTICE DURING A DISASTER	Eff. April 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest
<b>SUBCHAPTER 32X – PRACTITIONER INFORMATION</b>		21 NCAC 32X .0101	REQUIRED INFORMATION	Eff. August 11, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32X .0102	VOLUNTARY INFORMATION	Eff. August 11, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32X .0103	CONTENTS OF THE REPORT	Eff. August 11, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest

G.S. 150B-21.3A Report for 21 NCAC Chapter 32, NORTH CAROLINA MEDICAL BOARD

Agency - North Carolina Medical Board

Comment Period - December 1, 2014 - January 31, 2015

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
		21 NCAC 32X .0104	PUBLISHING CERTAIN MISDEMEANOR CONVICTIONS	Amended Eff. April 1, 2011	Necessary without substantive public interest	No		No	Necessary without substantive public interest
		21 NCAC 32X .0105	NONCOMPLIANCE OR FALSIFICATION OF INFORMATION	Eff. August 11, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest

**February 20, 2015**

**North Carolina Rules Review Commission  
1711 New Hope Church Road  
Raleigh, NC 27609**

***The North Carolina Medical Board (the "NCMB") is responding to comments received from Dr. Jeanne McIntosh (the "commenter"). Dr. McIntosh's comments and this response are covered by N.C. Gen. Stat. §150B-21.31, Periodic review and expiration of existing rules.***

***Because of the length and nature of the complainant's comments, the Board is inserting its responses within the body of the commenter's document. The Board's responses are in bold italics.***

***The NCMB will attend the April 16, 2015 meeting of the Rules Review Commission and will be pleased to address any questions or concerns the Commission may have regarding the Board's designation of its rules, or the comments from Dr. McIntosh.***

***Respectfully submitted,***

***Nancy H. Hemphill, JD  
Special Projects Coordinator***

***And***

***Wanda A. Long  
Rules Coordinator for the NCMB***

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***Please note:***

- 1. The comments came from the email address: "[drjeannemcintosh@gmail.com](mailto:drjeannemcintosh@gmail.com)." Dr. McIntosh is not a licensee of the North Carolina Medical Board.***
  - 2. All footnotes and highlighting in this document were done by Dr. McIntosh.***
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31 January 2015

To Whom It May Concern;

Allow me to present the following comments concerning NCMB rules currently pending periodic review. Following general comments, I address the specific substance of the rules and relate my objections to the standards for review by the Commission set forth in G.S. 150B-21.9(a).

As a general note pertaining to all the NCMB rules under review at this time, I am concerned that a substantial number of rules are simultaneously under review. I personally found it unduly

burdensome to attempt to effectively review and comment on so many rules during the public commentary period. Other members of the public may have been similarly burdened or even discouraged from commenting altogether. I question the prudence of the NCMB addressing so many rules at once under the periodic review mechanism. In addition to this being uncharacteristic of the Board's practice, only 11 of the rules selected for review were last reviewed in 2004 or earlier; thereby effecting the necessity of periodic review at this time. Counting subchapters and their sub parts individually, 135 NCMB rules are currently slated for periodic review at the April Commission meeting. In addition, the Board has 11 rules scheduled for public hearing in March. Recently, the Board drafted substantial changes to NCGS 90, at the direction of the Office of the State Auditor, which are also pending review.

I do not believe that it is in the public interest for so much legislation concerning one agency to be concurrently pending review and possible revision within a relatively short period of time under the current circumstances. A comprehensive, systematic, and integrative effort with specifically articulated and authorized objectives is required for responsible legislative review of this magnitude. Change to any statute or rule can have a ripple effect in terms of unanticipated influence on dependent rules and statutes. To review so many rules at once increases the risk of adverse unanticipated effects and is contrary to the legislative intent of the periodic review mechanism. It also strains the resources of both the NCMB and the Commission. NCMB officials have asserted [1] [2] that their resources are inadequate to perform the functions entrusted to them by the General Assembly for the benefit and protection of the people of North Carolina. In light of this inadequacy, devoting the resources necessary for due diligence in reviewing the 124 rules that are not under mandate for review this year appears arbitrary and reckless. Based on these issues, I respectfully request that the NCMB provide justification for simultaneously reviewing so many rules, and that the time for public comment be extended.

Recent developments within the General Assembly involving proposed changes to state organization and oversight of occupational licensing boards also give rise to questions concerning the prudence of an uncharacteristically precipitous and sweeping review of 135 rules at one time. Such action prior to the anticipated establishment of a state occupational licensing commission tasked with establishing effective standards for the oversight of OLAs, and the complaint process in particular, is likely to complicate the commission's task with respect to the NCMB. Common sense dictates that if an agency's governing statutes and rules will be subject to comprehensive scrutiny and fundamental revision in the foreseeable future, then any interim revision of rules should be limited to an absolute minimum to avoid duplication of effort, confusion, and burden on the individuals subject to those rules. The only rules that I believe justify review in the interim are those statutorily required to be reviewed during the current window, and those that pose an imminent threat to the rights and welfare of the people. I believe a number of the rules meet this latter criterion; and therefore warrant a level of scrutiny sufficient to assuage the bureaucratic aspirations of even the most zealous of boards. In consideration of these factors, I respectfully recommend that the NCMB revise the current periodic review

schedule to focus on quality rather than quantity. I appreciate your consideration of my objections to the overall quantity, relative to the narrow timeframe and pending legislative objectives, of NCMB rules scheduled to be reviewed.

**NCMB response:**

***In 2013, the General Assembly enacted N.C.Gen.Stat. § 150B-21.3A, which mandates that each agency subject to the article must conduct a review of all of its rules in accordance with a mandated process. This sweeping review did not originate with the NCMB; the NCMB is simply complying with state law.***

***Furthermore, the schedule of each agency's review was set by the Rules Review Commission (the "RRC"), as it was mandated to do by N.C. Gen. Stat. §150B-91.3A(d); the NCMB is merely complying with the RRC by taking its rules through this process. The RRC is scheduled to review the NCMB's rules at its April 2015 meeting.***

I turn now to specific comments concerning NCMB rules currently pending periodic review; addressing the specific substance of the rules and the relationship of my objections to the standards for review by the Commission set forth in G.S. 150B-21.9(a)<sup>1</sup>. As previously stated, I found the burden of reviewing so many rules to be prohibitive to adequate consideration. Therefore, I limit my remarks to the objections that I found most pressing given the time available to me for the task of review. My comments refer to two subsections: 21 NCAC 32A and 21 NCAC 32N. I am very familiar with the substance of these rules, as demonstrated by my inclusion of them in this document. I have also had personal experience over the past year with looking to these rules to advocate for the safety, welfare, and rights of myself and my fellow North Carolina citizens. In doing so, I have arrived at the opinion that these rules do not satisfactorily protect the citizens of North Carolina from abuses of discretion by the NCMB. Furthermore, I believe that these rules obstruct effective administration within other state agencies with mandates that matrix to those of the NCMB.

Most of my comments on the substance of these rules relate to subchapters and/or subsections in their entirety rather than in itemized form because it is necessary to consider them as a whole in order to make any sense of them whatsoever. The substance of these subchapters, even when

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<sup>1</sup> § 150B-21.9 (a) (4) states "It was adopted in accordance with Part 2 of this Article." § 150B-21.2. (a) states, in pertinent part, " Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1" Therefore G.S. 150B-19.1 is incorporated in § 150B-21.9 (a) (4) by reference. In the present document, provisions of G.S. 150B-19.1 are listed as standards for review set forth in § 150B-21.9 (a) (4).

considered in their totality, fail to meet the criterion of being clear and unambiguous (standard of review 150B-21.9.(a) (2)).

## SUBCHAPTER 32A - ORGANIZATION

### **21 NCAC 32A .0104 MEETINGS**

The Board customarily meets at regularly scheduled intervals as appropriate to carry out Board business. Other meetings may be called by the President of the Board or upon written request of the majority of the members of the Board.

**The Board customarily meets at regularly scheduled intervals as appropriate to carry out Board business.** This is ambiguous because it does not provide any specific information about the meeting schedule. Reference to custom is not appropriate in a rule. There is ambiguity with respect to the opportunity for the public to participate in and receive information about meetings.

Information regarding public access to meetings, agendas, and minutes is necessary so that the public can have a reasonable opportunity to participate. The NCMB has closed portions of public meetings in the past year without providing the public with a statutory explanation for the closed meeting. The NCMB has held public meetings in the past year with inadequate public notice of the agenda. (standard of review 150B-21.9.(a) (3)).

Revision of the rule is necessary to reduce the burden upon those persons or entities who must comply with the rule. Revision of this rule is necessary to serve the public interest. (standard of review 150B-21.9.(a) (4)).

#### ***NCMB response:***

***The Board's website, [www.ncmedboard.org](http://www.ncmedboard.org), provides public information about NCMB meeting dates, hearing dates, agendas of upcoming meetings, minutes of past meetings (back to 1859), and much more. Agendas of upcoming Board meetings are posted on the website about three weeks beforehand. Detailed agendas of Board committee meetings (held as part of the overall Board meeting) are posted about one week prior. Much of this information can be accessed in different ways: via the home page of the website, or under "Media Resources." The website also includes a site search function which would enable a member of the public to inquire about all of these topics and more. Dates of Board meetings for 2015 and 2016 are currently posted on the website.***

***During Board meetings and hearings, a printed copy of the agenda is also posted on the front door of the Board's offices. In addition, printed copies are placed in the public areas for anyone to peruse. Also, Board meeting dates are filed with the Secretary of State's office as required by law.***

*It is not feasible to list meeting dates and times in the rules. However, the Board is willing to remove the word “customary” and add language that notifies the reader as to where more information regarding meeting dates may be found. Therefore, the Board will recategorize this rule as “necessary with substantive interest” and will consider amending and readopting it.*

*The commenter also alleges that the Board has closed portions of public meetings without providing a statutory explanation. The Board’s agendas, which are freely accessible to the public, do note that certain portions of its meetings or hearings are “closed” as permitted by law and during which the public is not permitted to be present. The following disclosure is placed at the end of each agenda, which should provide adequate notice and explanation to anyone.*

#### *Notes on Closed Session*

*(1) Closed portions are to investigate, examine, or determine the character and other qualifications of applicants for professional licenses or certificates while meeting with respect to individual applicants for such licenses or certificates.*

*(2) Closed portions are to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, or 90-21 and 22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes.*

*(3) Closed portions are to consult with the Board’s attorney in order to preserve the attorney-client privilege between the attorney and the Board.*

*(4) Closed portions are to take disciplinary action against persons holding licenses or certificates while meeting with respect to individual holders of such licenses or certificates.*

*(5) Closed portions are to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.”*

*Finally, the Board is unaware of any instance in which it has “held public meetings in the past year with inadequate public notice of the agenda” but would be happy to address any specific concerns.*

#### **Subsections Regarding Declaratory Rulings**

##### **21 NCAC 32A .0111 REQUEST FOR DECLARATORY RULING**

(a) All requests for declaratory rulings shall be written and **mailed to the Board** at 1203 Front Street, Raleigh, North Carolina 27609. The envelope containing the request shall bear the notation: "REQUEST FOR DECLARATORY RULING".

(b) Each Request for Declaratory Ruling must include the following information:

- (1) the name and address of the person requesting the ruling;
- (2) the statute or rule to which the request relates;

- (3) a concise statement of the manner in which the requesting person is affected by the statute or rule or its potential application to that person;
- (4) a statement whether an oral hearing is desired and, if so, the reason therefore.

It is not reasonably necessary for requests for declaratory rulings to be mailed. Adding the option of email would ease the burden on the requestor and provide a record of the request (standard of review 150B-21.9.(a) (4)).

***NCMB response:***

***The use of US mail for submitting a legal document is reasonable and not unduly burdensome on the public. Requiring a written and mailed request is consistent with the importance attached to a request for a declaratory ruling, and helps the Board with complying with statutory timing requirements. Allowing a declaratory ruling request to be submitted by email, given the volume of emails the Board receives each day, and the informality typically associated with emails, could cause significant administrative problems.***

***Typically, persons filing legal documents send them via certified mail, return receipt requested, so that they have confirmation that the document was sent and received. By way of comparison and analogy, Rule 5 of the NC Rules of Civil Procedure discuss two types of service with regard to legal documents, which are personal delivery (including by means of facsimile) and mail. Rule 5(e)(2) goes on to say:***

***Filing by electronic means. If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein.***

***The NCMB will follow developments in the NC Supreme Court and Administrative Office of the Courts, and will adapt its delivery requirements when standards for electronic filing are finalized.***

***All that being said, the Board is always willing to consider using the most recent technology in conducting its business. Therefore, the Board will recategorize this rule as “necessary with substantive public interest and will consider amending and readopting it.***

The rule is not clear in terms of proceedings in which declaratory rulings are decided. It could be interpreted to mean that the proceeding is private (standard of review 150B-21.9.(a) (2)). Except under limited statutory circumstances, proceedings of the NCMB are open to the public, so all deliberations concerning rulings should be public. If a person does not request a hearing, are deliberations conducted in a non public forum? Declaratory rulings should be on the agenda of the regular Board meeting, and a notice should be posted in advance along with instructions for

public commentary. The rule should indicate that the hearing is public and could ask the submitter to indicate if they would like to be allotted time to present at the meeting.

**NCMB response:**

***Declaratory Ruling proceedings are conducted in accordance with the Open Meetings Law, N.C. Gen. Stat. §143-318.10 and the Administrative Procedure Act, N.C.Gen.Stat.§ 150B-1, et seq. Therefore, all proceedings – whether a hearing or deliberations – in connection with a Request for Declaratory Ruling are open to the public. Notice of the proceeding and the opportunity to submit information regarding the declaratory ruling are addressed in 21 NCAC 32A .0113 (copy below)***

***21 NCAC 32A .0113 PROCEDURE FOR DECLARATORY RULING***

***Prior to issuing a declaratory ruling, the Board shall give notice of the declaratory ruling proceedings to any person(s) it deems appropriate and shall direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted. The proceedings may consist of written submissions, an oral hearing, or other proceedings.***

It is not reasonably necessary to limit persons requesting declaratory rulings to individuals who may be personally affected. Individuals or organizations interested in advocating for the citizens of NC should be able to request a ruling, as long as they are clear with respect to the application and effect to a specific situation or class of persons. The NCMB would benefit from the foresight, perspective, and expertise of a variety of stakeholders. (standard of review 150B-21.9.(a) (4)). Pursuant to § 150B-4 : “Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency.” The language of this statute is not limited to aggrieved persons. It defines an alternate condition for requesting a declaratory ruling; specifically an inconsistency or conflict inherent to the statute, rule, or agency interpretation. Any party could identify such an issue and request a ruling. Therefore it is reasonably necessary for the rule to be amended to make clear that any party may request a declaratory ruling if a conflict or inconsistency is identified. (standard of review 150B-21.9.(a) (4))

**NCMB response:**

***Pursuant to N.C. Gen. Stat. § 150B-4, only an aggrieved person may request a declaratory ruling from a state agency. N.C. Gen. Stat. §150B-2(6) defines an aggrieved person as “any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.” Because this requirement is statutory, the Medical Board cannot alter that requirement by rule.***

**21 NCAC 32A .0112 DISPOSITION OF REQUEST**

(a) Upon receipt of a Request for Declaratory Ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

(b) When the Board determines that the issuance of a declaratory ruling is inappropriate, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(c) The Board shall decline to issue a declaratory ruling where:

- (1) there has been a similar controlling factual determination made by the Board in a contested case;
- (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule; or
- (3) the subject-matter of the request is involved in pending litigation in any state or federal court in North Carolina;
- (4) the petitioner fails to show that the circumstances are so changed since the adoption of the statute or rule that a ruling is warranted.

The current text misconstrues grounds for a declaratory judgment *affirming the status quo* as grounds for denial of a *request* for declaratory judgment. Therefore, it fails to meet the standard of being clear and unambiguous. (standard of review 150B-21.9.(a) (2))

It is inappropriate to deny a request for declaratory judgment because the petitioner fails to show that circumstances have changed since the adoption of the rule. There is no readily available means for a petitioner to obtain this information. Similarly, there is no readily available means for a petitioner to know what determinations were made during prior rule review or in contested cases. The Board does not consistently publish this information and it is not indexed in this fashion. Therefore these rules are unduly burdensome and do not serve the public interest (standard of review 150B-21.9.(a) (4)).

If the Board finds that the request does not warrant a modified interpretation of a rule or statute, it is appropriate to issue a declaratory judgment to that effect rather than to refuse to rule at all. Therefore these (sic) rules are not reasonably necessary to implement the authorizing statute (standard of review 150B-21.9.(a) (3)).

It is unduly burdensome in terms of cost and labor for the NCMB to determine if the subject matter of the request is involved in any pending litigation in the state. (standard of review 150B-21.9.(a) (4)). At any time there are many thousands of pending cases, in which new issues may continually emerge, and which may take years to resolve. This rule would create a state of perpetual limbo in which the NCMB could not react to emergent issues to uphold its duties to the people of NC. Procedures already exist for the NCMB to address any future unanticipated circumstances that may affect the validity of a rule. Therefore this rule is not reasonably necessary to implement the authorizing statute (standard of review 150B-21.9.(a) (3)). Furthermore, the NCMB is currently involved in litigation (as the defendant)<sup>2</sup> concerning a constitutional question, yet has taken upon itself, absent statutory mandate, the review of 124 rules. It does not appear that pending litigation is an obstacle to the Board's review of rules or issuance of declaratory rulings.

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<sup>2</sup> 5:14-cv-00504-BO Jemsek v. North Carolina et al. The state was dismissed from the case.

**NCMB Response:**

***The NCMB rules list standard and obvious reasons for denying a request for a declaratory ruling. (Numerous other occupational licensing agency rules include this exact language.) Moreover, a petitioner who believes the Board wrongly denied a request for a declaratory ruling can always seek judicial review of that decision. N.C. Gen. Stat. §150B-4(a1)(2). The pending litigation basis is not burdensome because the Board would be a party to the pending litigation and thus would know about it.***

**21 NCAC 32A .0113 PROCEDURE FOR DECLARATORY RULING**

Prior to issuing a declaratory ruling, the Board shall give notice of the declaratory ruling proceedings to any person(s) it deems appropriate and shall direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted. The proceedings may consist of written submissions, an oral hearing, or other proceedings.

The substance of the rules regarding declaratory rulings are not clear and unambiguous (standard of review 150B-21.9.(a) (3)). The criteria for certain decisions are limited to whatever is deemed “appropriate” to the Board. This leaves ample room for abuse of discretion and provides inadequate guidance for judicial review.

§ 150B-2 (8a) 9g) defines a rule as NOT including “Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.” Therefore the statement in 21 NCAC 32A .0113: “...the Board... shall direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted” falls outside the definition of a rule because a fact finding proceeding is an investigation. Therefore this issue is not within the authority delegated to the agency by the General Assembly (standard of review 150B-21.9.(a) (1)).

**NCMB Response:**

***This rule gives the Board appropriate discretion in deciding how best to proceed with a declaratory ruling. All decisions are subject to judicial review to determine if they are arbitrary or capricious. N.C.Gen.Stat.§ 150B-2 (8a)(g) provides an exception from rulemaking as to how the staff of an agency performs its duties, much akin to a Standard Operating Procedure. This exception does not apply to how an agency conducts the evidence gathering portion in a declaratory ruling proceeding.***

**21 NCAC 32A .0114 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

§ 150B-2 (8a) 9g) defines a rule as NOT including “Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; **in settling financial disputes or negotiating financial arrangements**; or in the defense, prosecution, or settlement of cases.” Therefore the statement in 21 NCAC 32A .0114: “...all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account...” falls outside the definition of a rule because it concerns the settling of a financial dispute and the negotiation of financial arrangements. Therefore this issue is not within the authority delegated to the agency by the General Assembly (standard of review 150B-21.9.(a) (1)).

***NCMB Response:***

***This rule was adopted to conform with N.C. Gen. Stat. §93B-2 (d), which primarily addresses Boards’ obligations to file annual reports with state leaders. Failure to file such an annual report “shall result in a suspension of the board’s authority to expend funds until such time as the report is filed.”***

***The NCMB continually receives fees for license applications, license renewals, corporate registrations, and a few other types of service. In the unlikely event that the Board failed to file said annual report, this money would still be received. It is important to have a mechanism to create an escrow account in which to place those funds. It would also be important for the work of the Medical Board to continue, meeting its obligations “to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina.”***

***Furthermore, the mechanism set out in the statute and the rule would not factually constitute the settling of financial disputes or the negotiation of financial arrangements.***

## SUBCHAPTER 32N - FORMAL AND INFORMAL PROCEEDINGS

The majority of the rules within this subchapter relate to investigations and hearings. § 150B-2 (8a) 9g) defines a rule as NOT including “**Statements that set forth criteria or guidelines to be used by the staff of an agency in performing** audits, investigations, or inspections; **in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.**” **All statements setting forth criteria and guidelines relating to investigations and hearings in subchapter 32N** fall outside the definition of a rule. Therefore these issues are not within the authority delegated to the agency by the General Assembly (standard of review 150B-21.9.(a) (1)).

**NCMB Response:**

***The North Carolina Medical Board has statutory authority to adopt rules to implement its statutory obligations. As the rules listed above show, statutory authority and references to the Rules of Evidence, the Rules of Civil Procedure, and the Administrative Procedures Act are listed throughout the NCMB rules.***

***When promulgating or amending its rules, the NCMB works collaboratively with Rules Review Commission staff in advance of RRC meetings to ensure that its proposed rules are clear and unambiguous, necessary, and within the Board's statutory authority. The rules governing disciplinary hearings, Subsection N, were revised fairly recently, having an effective date of 2/1/2012.***

***As said before, N.C.Gen.Stat. § 150B-2 (8a)(g) provides an exception from rulemaking as to how the staff of an agency performs its internal management duties, much akin to a Standard Operating Procedure. This exception does not apply to how an agency conducts the evidence gathering portion in a declaratory ruling proceeding.***

**21 NCAC 32N .0106 DEFINITIONS**

As used in this Section:

- (1) "Disciplinary Proceedings" means hearings conducted pursuant to G.S. 90-14.2 through 90-14.7, and Article 3A of Chapter 150B.
- (2) "Good cause" related to motions or requests to continue or for additional time for responding includes:
  - (a) death or incapacitating illness of a party, or attorney of a party;
  - (b) a court order requiring a continuance;
  - (c) lack of proper notice of the hearing;
  - (d) a substitution of the attorney of a party if the substitution is shown to be required;
  - (e) agreement for a continuance by all parties if either more time is demonstrated to be necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the Board have agreed to a new hearing date or the parties have agreed to a settlement of the case that has been or is likely to be approved by the Board; and
  - (f) where, for any other reason, either party has shown that the interests of justice require a continuance or additional time.
- (3) "Good cause" related to motions or requests to continue or for additional time for responding shall not include:
  - (a) intentional delay;
  - (b) unavailability of a witness if the witness testimony can be taken by deposition; and
  - (c) failure of the attorney or respondent to use effectively the statutory notice period provided in G.S. 90-14.2(a) to prepare for the hearing.
- (4) "Licensee" means all persons to whom the Board has issued a license as defined in G.S. 90-1.1.

- (5) "Respondent" means the person licensed or approved by the Board who is named in the Notice of Charges and Allegations.

The definitions section does not provide sufficient information to differentiate and define the terms within the subchapter. As a user, I find the wording within the subsections extremely confusing. (standard of review 150B-21.9.(a) (3)) For example, "disciplinary proceedings" only relates to disciplinary hearings, so it does not need to be called proceedings. This causes confusion with other proceedings mentioned in the subsections. The distinction between an investigation and an inquiry are unclear. The distinction between an order and an invitation are unclear. The distinction between a prehearing conference and a precharge conference are unclear. Many definitions needed to clarify the process of investigative and disciplinary proceedings are missing.

***NCMB Response:***

***We disagree that the definitions are unclear or confusing. A "precharge conference" is defined by N.C.Gen.Stat. § 90-14(i) and (j). A prehearing conference is an order by the Board President for the purposes set out in N.C.Gen.Stat. § 150B-40(c)(5), to "Direct the parties to appear and confer to consider simplification of the issues by consent of the parties..."***

***As stated previously, these rules were approved by the Rules Review Commission before they became effective February 1, 2012.***

**21 NCAC 32N .0107 INVESTIGATIONS AND COMPLAINTS**

(a) At the time of first oral or written communication from the Board or staff or agent of the Board to a licensee regarding a complaint or investigation, the Board shall provide the notices set forth in G.S. 90-14(i), except as provided in Paragraph (e) of this Rule.

(b) A licensee shall submit a written response to a complaint received by the Board within 45 days from the date of a written request by Board staff. The Board shall grant up to an additional 30 days for the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate and complete information. Where a licensee fails to respond in the time and manner provided herein, the Board may treat that as a failure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14(a)(14).

(c) The licensee's written response to a complaint submitted to the Board in accordance with Paragraph (b) of this Rule shall be provided to the complainant upon written request as permitted in G.S. 90-16(e1), except that the response shall not be provided where the Board determines that the complainant has misused the Board's complaint process or that the release of the response would be harmful to the physical or mental health of the complainant who was a patient of the responding licensee.

(d) A licensee shall submit to an interview within 30 days from the date of an oral or written request from Board staff. The Board may grant up to an additional 15 days for the interview where the licensee demonstrates good cause for the extension of time. The responses to the questions and requests for information, including documents, during the interview shall be complete and accurate. Where respondent fails to respond in the time and manner provided herein, the Board may treat that as a failure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14(a)(14).

(e) The licensee who is the subject of a Board inquiry may retain and consult with legal counsel of his or her choosing in responding to the inquiries as set out in G.S. 90-14(i).

The complaint section is very confusing and incomplete from the perspective of a complainant's roles, responsibilities, and rights. (standard of review 150B-21.9.(a) (2)) It is unclear from this section whether a complainant is a "person aggrieved" within the meaning of NCGS 150 B-2 (6). The NCMB currently does not interpret NCGS NCGS (sic) 150 B-2 (6) as applying to patients who file complaints with the Board.

***NCMB Response: as stated previously, N.C. Gen. Stat. 150B-2(6) defines a "person aggrieved" for purposes of the Administrative Procedure Act. Determination of who is a "person aggrieved" depends on the facts and circumstances of any particular situation. .***

***The Board takes seriously its obligation to be transparent in its communications with the public. In order to better serve the public, the Board has created an online tutorial which is posted on its website that explains the process and scope of the complaint process. Its intended audience is the public, from which most complaints originate.***  
***[http://www.ncmedboard.org/consumer\\_resources/complaints](http://www.ncmedboard.org/consumer_resources/complaints).***

***The Board also created a brochure called "A Consumer's Guide to the Complaint Process" which is sent via email to a person who files a complaint online, and is mailed to a person who is unable to submit a complaint online. It may be found at:***  
***[http://www.ncmedboard.org/images/uploads/publications\\_uploads/Complaint\\_brochure\\_2013.pdf](http://www.ncmedboard.org/images/uploads/publications_uploads/Complaint_brochure_2013.pdf)***

***Another resource available on the Board's website is directed at licensees who may be the subject of an investigation but would also provide information to complainants. This may be found at:***  
***[http://www.ncmedboard.org/images/uploads/publications\\_uploads/Investigations\\_brochure.pdf](http://www.ncmedboard.org/images/uploads/publications_uploads/Investigations_brochure.pdf)***

## **21 NCAC 32N .0108 INVESTIGATIVE INTERVIEWS BY BOARD MEMBERS**

(a) In addition to formal hearings pursuant to G.S. 90-14 and G.S. 90-14.2, the Board may ask a licensee to attend a non-public interview with members of the Board and staff to discuss a pending complaint or investigation. The invitation letter shall describe the matters of dispute or concern and shall enclose the notices required by G.S. 90-14(i), if not previously issued. No individual shall be placed under oath to give testimony. Statements made or information provided by a licensee during this interview may, however, be used against such licensee in any subsequent formal hearing.

(b) As a result of the interview, the Board may ask that the licensee take actions as referred to in G.S. 90-14(k), may offer the licensee the opportunity to enter into a consent order or other public

agreement that will be a matter of public record, may institute a formal public hearing concerning the licensee, or may take other action as the Board deems appropriate in each case.

(c) Unless ordered by the Board pursuant to G.S. 90-8, attendance at such an interview is not required. A licensee may retain legal counsel and have such counsel present during such interview.

(d) If ordered to appear for an interview, requests for continuances from interviews shall be filed with the President as soon as practicable and shall be granted only upon good cause shown.

#### **21 NCAC 32N .0109 PRE-CHARGE CONFERENCE**

(a) Prior to issuing public Notice of Charges and Allegations against a licensee, the Board shall inform the licensee in writing of the right to request a pre-charge conference as set forth in G.S. 90-14(j). The written notice regarding the pre-charge conference shall be sent by certified mail, return receipt requested to the last mailing address registered with the Board.

(b) A request for a pre-charge conference must be:

- (1) in writing via delivery of a letter or by facsimile or electronic mail;
- (2) addressed to the coordinator identified in the written notice provided as set forth in Paragraph (a) of this Rule; and
- (3) received by the Board no later than 30 days from the date appearing on the written notice provided as set forth in Paragraph (a) of this Rule.

(c) Upon receipt of a request for a pre-charge conference, the coordinator shall schedule the conference to occur within 45 days and serve notice of the date and time of the conference on the licensee or on counsel for licensee, if the Board is aware licensee is represented by counsel.

(d) The pre-charge conference shall be conducted as provided in G.S. 90-14(j). The pre-charge conference will be conducted by telephone conference unless the interests of justice require otherwise or both parties agree to conduct the conference in person. No continuances of the pre-charge conference shall be allowed except when granted by the Board for good cause shown.

(e) The licensee may provide to the Board written documents not previously submitted by delivering those documents in electronic form to the coordinator identified in the written notice up to five days prior to the pre-charge conference.

(f) The Board shall provide information to the licensee during the pre-charge conference regarding the possibility of settlement of the pending matter prior to the issuance of a public notice of charges and allegations.

#### **21 NCAC 32N .0110 INITIATION OF DISCIPLINARY HEARINGS**

(a) The Board shall issue a Notice of Charges and Allegations only upon completion of an investigation, a finding by the Board or a committee of the Board that there exists a factual and legal basis for an action pursuant to any subsection of G.S. 90-14(a), and a pre-charge conference, if one was requested by the licensee.

(b) Disciplinary proceedings shall be initiated and conducted pursuant to G.S. 90-14 through G.S. 90-14.7 and G.S. 150B-38 through G.S. 150B-42.

(c) A pre-hearing conference shall be held not less than seven days before the hearing date unless waived by the Board President or designated presiding officer upon written request by either party. The purpose of the conference will be to simplify the issues to be determined, obtain stipulations in regards to testimony or exhibits, obtain stipulations of agreement on undisputed facts or the application of particular laws, consider the proposed witnesses for each party, identify and exchange documentary evidence intended to be introduced at the hearing, and

consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

(d) The pre-hearing conference shall be conducted in the offices of the Medical Board, unless another site is designated by mutual agreement of all parties; however, when a face-to-face conference is impractical, the Board President or designated presiding officer may order the pre-hearing conference be conducted by telephone conference.

(e) The pre-hearing conference shall be an informal proceeding and shall be conducted by the Board President or designated presiding officer.

(f) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by the presiding officer, respondent or respondent's counsel and Board counsel, and introduced into the record at the beginning of the disciplinary hearing.

(g) Motions for a continuance of a hearing shall be granted upon a showing of good cause. In determining whether to grant such motions, the Board shall consider the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina. Motions for a continuance must be in writing and received in the office of the Medical Board no less than 14 calendar days before the hearing date. A motion for a continuance filed less than 14 calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance shall be ruled on by the President of the Board or designated presiding officer.

(h) The Respondent may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any Board member to hear and weigh evidence concerning the Respondent. Challenges must be in writing accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the President of the Board or designated presiding officer at least 14 days before the hearing except for good cause shown. Nothing contained in this Rule shall prevent a Respondent appearing before the Board at a formal hearing from making inquiry of Board members as to their knowledge of and personal bias concerning that person's case and making a motion based upon the responses to those inquiries that a Board member recuse himself or herself or be removed by the Board President or presiding officer.

(i) In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 90-8 and 150B-39 by either the Board or the Respondent. Any discovery request by a Respondent to the Board shall be filed with the Executive Director of the Board. Nothing herein is intended to prohibit a Respondent or counsel for Respondent from issuing subpoenas to the extent that such subpoenas are otherwise permitted by law or rule. The Medical Board may issue subpoenas for the Board or a Respondent in preparation for or in the conduct of a contested case as follows:

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery;
- (2) Requests by a Respondent for subpoenas shall be made in writing to the Executive Director and shall include the following:
  - (A) the full name and home or business address of all persons to be subpoenaed; and
  - (B) the identification, with specificity, of any documents or information being sought;

- (3) Where Respondent makes a request for subpoenas and complies with the requirements in Subparagraph (2) of this Paragraph, the Board shall provide subpoenas promptly;
  - (4) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena; and
  - (5) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.
- (j) All motions related to a contested case shall be in writing and submitted to the Medical Board at least 14 calendar days before the hearing. Pre-hearing motions shall be heard at the pre-hearing conference described in Paragraph (c) of this Rule. Motions filed fewer than 14 days before the hearing shall be considered untimely and shall not be considered unless the reason for the motion could not have been ascertained earlier. In such case, the motion shall be considered at the hearing prior to the commencement of testimony. The Board President or designated presiding officer shall hear the motions and any response from the non-moving party and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

## **21 NCAC 32N .0111 CONDUCTING DISCIPLINARY HEARINGS**

- (a) Disciplinary hearings conducted before a majority of Board members shall be held at the Board's office or, by mutual consent, in another location where a majority of the Board has convened for the purpose of conducting business. For proceedings conducted by an administrative law judge, the venue shall be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Medical Board are open to the public; however, portions are closed to protect the identity of patients pursuant to G.S. 90-16(b).
- (b) All hearings by the Medical Board shall be conducted by a quorum of the Medical Board, except as provided in Subparagraph (1) and (2) of this Paragraph. The Medical Board President or his or her designee shall preside at the hearing. The Medical Board shall retain independent legal counsel to provide advice to the Board as set forth in G.S. 90-14.2. The quorum of the Medical Board shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting the decision of the majority of the quorum of the Board. The final form of the order shall be determined by the presiding officer, who shall sign the order. When a majority of the members of the Medical Board is unable or elects not to hear a contested case:
- (1) The Medical Board may request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing so long as the Board has not alleged the licensee failed to meet an applicable standard of medical care. The provisions of G.S. 150B, Article 3A shall govern a contested case in which an administrative law judge is designated as the Hearing Officer; or
  - (2) The Medical Board President may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. The provisions of G.S. 90-14.5(a) through (d) shall govern a contested case in which a hearing committee is designated.

(c) If any party or attorney of a party or any other person in or near the hearing room engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Medical Board may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Medical Board shall receive the additional testimony. If new members of the Board or a different independent counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(e) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C apply to contested case proceedings, except as provided otherwise in this Rule, G.S. 90-14.6 and G.S. 150B-41.

In conclusion, I am running up on the deadline for submitting my comments, so please excuse the abrupt closing. I thank you for considering my comments.

Respectfully,  
Jeanne M. McIntosh