

REQUEST FOR TECHNICAL CHANGE

AGENCY: Hearing Aid Dealers and Fitters Board

RULE CITATION: 21 NCAC 22F .0202

DEADLINE FOR RECEIPT: Wednesday, August 10, 2016

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

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

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

In (a), lines 4 and 5, I take it you need to retain "at least"?

In (c), line 16, I suggest stating "An individual who passes the licensing... Period shall have satisfied the continuing..."

In the History Note, you have a proposed effective date of September 1, 2016. However, in the NC Register (30:22), you proposed an October 1, 2016 effective date. I assume that moving the date forward was in error, so please change the date to October 1, 2016.

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: July 27, 2016

1 21 NCAC 22F .0202 is amended as published in 30:22 NCR 2394 as follows:

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3 **21 NCAC 22F .0202 ANNUAL CONTINUING EDUCATION REQUIREMENTS**

4 (a) A licensee shall complete and record with the Board at least ten hours (1.00 CEU credit) of Board-approved
5 continuing education annually, including at least five hours (0.50 CEU credit) classified as Category 1 in accordance
6 with Rule .0203 of this Section.

7 (b) The CEU Accrual Period for each license renewal shall be the calendar year preceding license renewal. CEU credit
8 cannot be carried over from one CEU Accrual Period to the next, even if the CEU credit earned exceeds the license
9 renewal requirement.

10 ~~(c) A licensee may receive CEU credit for only one of the sessions when sessions with essentially identical content are
11 presented at the same or different CE Programs during any two consecutive Board CEU Accrual Periods. The Board shall
12 determine whether sessions have essentially identical content by reviewing the presenters, educational objectives, and
13 content for each session as provided on the program application.~~

14 ~~(d) A licensee completing the same self study during any two consecutive CEU Accrual Periods shall be granted CEU
15 credit only once.~~

16 ~~(e)~~(c) An individual passing the licensing exam during a CEU Accrual Period satisfies the continuing education
17 requirement for the corresponding license renewal.

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19 *History Note: Authority G.S. 93D-3(c); 93D-11;*

20 *Eff. September 1, 2013;*

21 *Amended Eff. September 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Hearing Aid Dealers and Fitters Board

RULE CITATION: 21 NCAC 22F .0208

DEADLINE FOR RECEIPT: Wednesday, August 10, 2016

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

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

Throughout this Rule, you refer to forms such as the "Report of Attendance" and "CEU Verification Report." I note these terms are defined in Rule 21 NCAC 22F .0201. Are the contents of these forms set forth in rules or law?

In (b), line 7, why is "Program" capitalized? It isn't in (c)(4), line 13.

In (c)(3), line 11, I believe "Internet" should be capitalized.

In the History Note, it is fine if you wish to delay the effective date to January 1, 2017. Please simply confirm that is the intent.

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: July 27, 2016

1 21 NCAC 22F .0208 is amended as published in 30:22 NCR 2394-95 as follows:

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3 **21 NCAC 22F .0208 SELF-STUDY**

4 (a) Self-study may be completed to satisfy up to ~~all 10~~ five hours of the continuing education requirement during each
5 CEU Accrual Period.

6 (b) Each self-study event shall be one session and up to ~~10~~ five sessions completed in the same CEU Accrual Period may
7 be reported on one self-study Report of Attendance as a self-study Program.

8 (c) A licensee shall record self-study CEU credit with the Board by submitting all of the following:

9 (1) an electronic CEU Verification Report;

10 (2) a completed self-study Report of Attendance;

11 (3) an official transcript listing the licensee's score of 80 percent or greater on an internet-presented
12 examination pertaining to the content of the self-study activity; and

13 (4) the recording fee as set forth in Rule 21 NCAC 22A .0501 for each self-study program.

14 (d) The Board shall accept electronic images of the self-study Report of Attendance and official transcripts when
15 submitted electronically in conjunction with the CEU Verification Report.

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17 *History Note: Authority G.S. 93D-3(c); 93D-11;*

18 *Eff. September 1, 2013;*

19 *Amended Eff. January 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Hearing Aid Dealers and Fitters Board

RULE CITATION: 21 NCAC 22L .0101

DEADLINE FOR RECEIPT: Wednesday, August 10, 2016

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

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

How is this Committee created - are they appointed by the Board? And who is on it? Do you have a Rule that sets this out?

In (a)(4), line 12, please insert a comma after "apprentice"

In (b), what are the contents of this form? Pursuant to G.S. 150B-2(8a)d, forms themselves do not have to be in forms, but the contents must be in rule or law. Is there another rule or law that lists the contents?

Also, how does the Board approve this form?

In (d)(2), line 20, replace "which" with "that"

Also, what is an "advertising violation"? Are you referring to a violation of Rule 21 NCAC 22J .0103? If so, do you want to include a cross-reference here?

How does the language on lines 16 and 17 affect the language in (d)(4)? The Board returns the forms, right? So, how can the Committee close the investigation? If the intent is that any incomplete forms will be administratively closed and then returned (if possible)? If so, why not move the language on lines 16 and 17 to this line?

In (e), line 24, what constitutes a "preliminary review"?

What are you doing in (e)? The Committee will either recommend dismissing the complaint or will begin to investigate? Is this when the procedures in (a) will be exercised?

In (f), how will this answer be done? What is required in an answer? Does the individual know how to contact the Committee? Is the contact information in a rule?

In (g) and (h), since the Committee may take this action, you need to state when or how it will decide to do so. (Please see G.S. 150B-19(6))

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In (h), line 32, replace “is” after “party” with “shall be”

In (i), line 34, replace “which” with “that”

In (j), Page 2, is this action to prevent causing recusals of the Board? What is the purpose of this?

And will this apply to charges under (e)(1) and (i)?

In (k), line 4, why is the Committee sending this, rather than the Board itself?

On line 5, what is the “letter of notification”? Please note, “any notice of charges” is required to be released pursuant to G.S. 93D-13(c).

In (l), line 7, what is your authority to issue this letter of caution? And what is your authority to say this is not a public record? 93D-13(c) creates a very narrow exception for public records.

In (m), what is your authority to state that a private reprimand is not a public record under G.S. 93D-13(c), which states:

§ 93D-13. Discipline, suspension, revocation of licenses and registrations; records.

(a) The Board may in its discretion administer the **punishment of private reprimand**, suspension of license or registration for a fixed period or revocation of license or registration as the case may warrant in their judgment for any violation of the rules and regulations of the Board or for any of the following causes:

(c) Records, papers, and other documents containing information collected or compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with registration, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes. **Any notice or statement of charges, notice of hearing, or decision rendered by the Board in connection with a hearing is a public record.** However, information that identifies a consumer who has not consented to the public disclosure of services rendered to the consumer by a person registered or licensed under this Chapter shall be deleted from the public record. All other records, papers, and documents containing information collected or compiled by or on behalf of the Board shall be public records, provided that any information that identifies a consumer who has not consented to the public disclosure of services rendered to the consumer is deleted. (1969, c. 999; 1973, c. 1331, s. 3; 1981, c. 601, s. 19; c. 990, s. 5; 1987, c. 827, s. 1; 1991, c. 592, s. 7; 2007-406, s. 5; 2011-311, s. 11.)

Is the private reprimand not issued after a hearing?

What is the purpose of the language on lines 11-13, “The Board shall deem the private reprimand accepted as formal discipline in the matter... refusal to accept the private reprimand”. Why not just state “A respondent may appeal the private reprimand by...”

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In (m), line 13 insert a comma after “reprimand”

In (m)(1), line 13, please note my earlier questions regarding the method of contacting the Committee.

In (m)(2), what is the address of the executive secretary?

In (n), you are saying that the Board may exercise discretion in determining to not apply discipline for violation? And it may do so if it will protect the public? How will the Board determine this?

In the History Note, why are you citing to G.S. 150B-38? Because of Paragraph (o)?

In the History Note, you have a proposed effective date of September 1, 2016. However, in the NC Register (30:22), you proposed an October 1, 2016 effective date. I assume that moving the date forward was in error, so please change the date to October 1, 2016.

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

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1 21 NCAC 22L .0101 is amended as published in 30:22 NCR 2395-96 as follows:

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3 **21 NCAC 22L .0101 COMMITTEE ON INVESTIGATIONS**

4 (a) The Committee on Investigations shall review all complaints submitted to the Board. The Committee on
5 Investigations may:

- 6 (1) hire an investigator or such persons as it deems necessary to determine whether it believes that
7 probable cause exists to support formal disciplinary action against a licensee, apprentice, or
8 registered sponsor;
- 9 (2) subpoena persons to provide the Committee with sworn testimony or documents, provided that the
10 subpoena is signed by the President or Secretary-Treasurer of the Board;
- 11 (3) make inquiries designed to assist the Committee in its review of matters under investigation; or
12 (4) initiate charges against a licensee, apprentice or registered sponsor if violations are suggested by
13 the evidence considered by the Committee during an investigation of a complaint.

14 (b) The complainant shall submit a signed ~~complaint on the Board provided~~ Board-approved complaint form form.
15 The complaint form ~~which~~ is available on the Board website (www.nchalb.org) or by contacting the Board office.

16 (c) The Board shall not respond to or investigate anonymous complaints or inquiries. The Board shall return
17 incomplete forms to the complainant, if a complainant is listed on the incomplete form.

18 (d) The Committee on Investigations shall administratively close:

- 19 (1) any complaint anonymously submitted;
- 20 (2) a complaint that alleges an advertising violation which occurred more than one year prior to
21 notifying the Board of the alleged violation;
- 22 (3) a complaint withdrawn by the complainant at any stage of the ~~investigation.~~ investigation; or
23 (4) incomplete forms.

24 (e) After a preliminary review of a complaint, the Committee on Investigations shall:

- 25 (1) recommend to the Board a finding that there is no probable cause to believe a violation of the law
26 or rules exists; or
- 27 (2) serve the respondent with a written explanation of the charges being investigated by the
28 Committee.

29 (f) The respondent shall answer in writing within 20 days of receipt of the notification of charges.

30 (g) The Committee ~~shall~~ may offer the complainant a summary of the respondent's answer.

31 (h) The Committee ~~shall~~ may offer the parties an opportunity to present oral statements to the Committee after the
32 written answer is received from the respondent. Neither party is compelled to attend.

33 (i) With assistance from the Board's legal counsel, the Committee shall determine the validity and merit of the
34 charges, and whether the accused party has violated any standard of conduct which would justify a disciplinary
35 action based upon the grounds as specified in G.S. 93D-13 or this Chapter.

1 (j) The Committee on Investigations shall present its findings and recommendation to the Board, including proposed
2 discipline, if any, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such
3 as licensee, apprentice, sponsor, and consumer.

4 (k) The Board may find no probable cause for disciplinary action and dismiss the charges. The Committee on
5 Investigations shall notify the parties of the Board action. The Board shall not release the letter of notification to
6 any member of the public pursuant to G.S. 93D-13(c).

7 (l) The Board may find no probable cause for disciplinary action but issue a letter of caution to the respondent. The
8 Board does not consider this letter a public record and shall not release the letter of caution to any member of the
9 public pursuant to G.S. 93D-13(c).

10 (m) The Board may find probable cause for disciplinary action and serve the respondent with a private reprimand.
11 The Board does not consider the content of the private reprimand a public record pursuant to G.S. 93D-13(c). The
12 Board shall deem the private reprimand accepted as formal discipline in the matter unless the respondent submits a
13 refusal to accept the private reprimand which shall:

14 (1) be in writing, addressed to the Committee on Investigations;

15 (2) be filed with the executive secretary for the Board within 20 days after service of the private
16 reprimand; and

17 (3) include a request for a contested case hearing in accordance with 21 NCAC 22L .0103.

18 (n) The Board may find probable cause of a violation of the Board's statute or rules and authorize the Committee on
19 Investigations, by and through the Board's legal counsel, to undertake negotiations with the respondent to settle the
20 matter without a hearing when such settlement accomplishes the Board's duty to protect the consuming public.

21 (o) The Board may find probable cause for disciplinary action beyond a private reprimand due to the circumstances
22 and nature of the violation. In such cases, the Board shall:

23 (1) serve a notice of hearing on the accused party as required by G.S. 150B, Article 3A., which may
24 also be released to any requesting member of the public pursuant to G.S. 93D-13(c);

25 (2) designate a presiding officer for the contested case; and

26 (3) conduct a hearing in accordance with the rules of this Subchapter.
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28 *History Note: Authority G.S. 93D-3; 93D-13; 150B-38;*

29 *Eff. January 1, 1992;*

30 *Amended Eff. September 1, 2016; December 1, 2013; February 1, 2010; April 1, 1996.*