

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Chiropractic Examiners

RULE CITATION: 21 NCAC 10 .0503

DEADLINE FOR RECEIPT: Thursday, September 8, 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

For the entire text of the rule, please use 1.5 line spacing in accordance with [26 NCAC 02C .0108\(1\)\(g\)](#)

Lines 8, 24 thru 25, 27, and 28, consider adding "Chiropractic" before "Review Committee" to use a consistent term

Line 10, add "or she" after "he"

Lines 10 thru 11, delete "in his stead"

Line 11, add "or her" after "his"

Line 12, add "and" at the end of the clause

Line 17, replace "licentiate" with "licensee" to use the statutory term set forth in Article 8 of G.S. 90

Lines 20 thru 22, in light of G.S. 150B-3, along with the citations to G.S. 150B-23 and 150B-38, is this language necessary? Consider the following re-write for Paragraph (c):

Notice of Hearing. The secretary shall provide notice of all probable cause hearings in accordance with G.S. 150B-3(b).

Line 24, what is meant by the clause "at his discretion such procedures as are necessary to facilitate examination of evidence."? Please clarify.

Line 25, replace "which" with "that"

Lines 30 and 32, replace the periods at the end of the clauses with semicolons

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, August 24, 2016

Line 32, add an "or" after the semicolon

Lines 35 thru 36, what is meant by the clause "in accordance with the statutes governing contested cases"? Please clarify by either stating the specific statutes or deleting the clause.

Line 28, add G.S. 90-141 to the authority line to clarify the role of the secretary

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Wednesday, August 24, 2016

1 Rule 21 NCAC 10 .0503, as published in 30:19, pp. 2043-4 of the N.C. Register, is amended with changes to read as
2 follows:
3

4 **21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE**

5 (a) General. Formal complaints shall be investigated by the Chiropractic Review Committee. The committee shall
6 hold a hearing to determine whether there is probable cause to believe a violation of the laws governing Chiropractic
7 has occurred.

8 (b) Composition of Review Committee. The committee shall be composed of:

9 (1) the secretary of the Board of ~~Examiners, Examiners. If the secretary is unable to attend a particular~~
10 ~~probable cause hearing, he may designate another physician member of the Board to serve in his~~
11 ~~stead and assume his duties at said hearing;~~

12 (2) the attorney for the Board of ~~Examiners, Examiners;~~

13 (3) ~~a licentiate selected by the secretary from among those who, at the most recent election held pursuant~~
14 ~~to 21 NCAC 10 Rule .0103(c), were elected candidates for Board membership but were not~~
15 ~~appointed to the Board; an alternate Board member. "Alternate Board member" means:~~

16 (A) a former Board member selected by the secretary; or

17 (B) a licentiate selected by the secretary from among those who, at any election held pursuant
18 to 21 NCAC 10 Rule .0103(c), have been elected nominees for Board membership but not
19 appointed to the Board.

20 (c) Notice of hearing. The secretary shall provide notice of the probable cause hearing to the chiropractor complained
21 against ~~by certified mail~~ at least 15 days in advance of the hearing. ~~Notice may be served in any manner permitted by~~
22 ~~Rule 4 of the North Carolina Rules of Civil Procedure for service of process upon a natural person.~~

23 (d) Conduct of Probable Cause Hearing. The probable cause hearing shall be informal, and the secretary may
24 establish at his discretion such procedures as are necessary to facilitate examination of the evidence. The Review
25 Committee may consider evidence at the probable cause hearing which would not be admissible if offered at the
26 hearing in a contested case.

27 (e) Action by the Review Committee. After examining the evidence presented at the probable cause hearing, the
28 Review Committee may dispose of each charge in the formal complaint as follows:

29 (1) If no probable cause exists to believe that a violation of G.S. 90-154 has occurred, the charge may
30 be dismissed.

31 (2) If the respondent admits the charge, he may be directed to cease and desist from commission of
32 those acts which violate the provisions of G.S. 90-154.

33 (3) If a charge is denied and probable cause is found, or if a charge, while admitted, is of such gravity
34 as to make the imposition of punitive sanctions appropriate, the complaint shall be presented to the
35 Board of Examiners for its decision on the merits in accordance with the statutes governing
36 contested cases.
37

38 *History Note: Authority G.S. 90-143; 90-154;*
39 *Eff. December 1, 1988;*
40 *Amended Eff. October 1, 2016.*