

1 21 NCAC 32A .0104 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32A .0104 MEETINGS**

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

7

8 *History Note: Authority G.S. 90-5; **90-5.1***

9 *Eff. February 1, 1976;*

10 *Amended Eff. May 1, 1990; ~~May 1, 1989.~~ May 1, 2017;*

11 *Readopted Eff. July 1, 2017.*

12

1 21 NCAC 32A .0111 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32A .0111 REQUEST FOR DECLARATORY RULING**

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

7 (b) Each Request for Declaratory Ruling **[must]** **shall** include the following information:

8 (1) the name and address of the person requesting the ruling;

9 (2) the statute or rule to which the request relates;

10 (3) a concise statement of the manner in which the requesting person is affected by the statute or rule or its
11 potential application to that person;

12 (4) a statement whether an oral hearing is desired and, if so, the **reason.** **[reason therefore.]**

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14 *History Note: Authority G.S. **90-5.1;** 150B-4;*

15 *Eff. ~~February 1, 2007.~~ February 1, 2007;*

16 *Readopted Eff. July 1, 2017.*

17

1 21 NCAC 32K .0101 is readopted with changes as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0101 DEFINITIONS**

4 In addition to the terms set forth in G.S. 90-21.22, the ~~The~~ following definitions apply to this Subchapter:

5 ~~(1)~~ "Board" or "NCMB" means the North Carolina Medical Board.

6 ~~(2)~~(1) "Compliance Committee" means the committee ~~which~~ that meets to coordinate with the NCMB Board
7 in its oversight of licensees in the PHP Program. It includes members of the PHP Program Board of
8 Directors, members appointed by ~~of~~ the NCMB Board, and a Physician Assistant member of ~~who is~~
9 ~~on~~ the PHP Program Board of Directors. The [NCMB] Board shall not appoint to the Compliance
10 Committee a current member of the [NCMB] Board or a past member who has served on the [NCMB]
11 Board within the past two years.

12 ~~(3)~~(2) "Impairment" means the inability to practice medicine or perform acts, ~~tasks~~ tasks, and functions with
13 skill and safety to patients by reasons of physical or mental illness or condition, including use of
14 alcohol, drugs, ~~chemicals~~ chemicals, or any other type of material.

15 ~~(4)~~(3) "Impaired Practitioner" means a licensee of the [NCMB] Board who is or could be afflicted with a
16 condition of impairment as defined ~~[above.]~~ in Item 3.

17 ~~(4)~~(5) "Licensee" means a person licensed by the NCMB Board.

18 ~~(5)~~(6) "~~Medical Director~~" "Chief Executive Officer" means the person employed by the Program to
19 coordinate the activities of the Program.

20 ~~(6)~~(7) "Participant" means a licensee of the NCMB Board who is permitted to participate and may receive
21 services from PHP, and ~~has executed a monitoring contract with~~ PHP Program.

22 ~~(7)~~(8) "Program" or "NCPHP" or "PHP" means the North Carolina Physicians Health ~~[Program.]~~ Program
23 ~~established for promoting a coordinated and effective peer review process.~~

24
25 *History Note: Authority G.S. 90-21.22;*
26 *Eff. August 1, 1988;*
27 *Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989;*
28 *Readopted Eff. July 1, 2017.*

1 21 NCAC 32K .0201 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0201 RECEIPT AND USE OF INFORMATION OF POTENTIAL IMPAIRMENT**

4 Information concerning ~~potential impairments~~ a Participant may be received by the Program through reports from any
5 source. Upon receipt of information of a potential impairment, the Program shall conduct ~~an assessment~~ a screening
6 interview of the **Participant.**[Participant] as soon as possible. This screening interview shall not create a physician-
7 patient or other clinical relationship. ~~A physician assistant selected by the Medical Director shall be present during an~~
8 ~~assessment of a physician assistant.~~ The Program may conduct routine inquiries regarding potential impairments.
9 ~~Licensees with potential impairments may~~ Participants shall **be required to** submit to ~~personal~~ interviews ~~before the~~
10 ~~Medical Director or a designee.~~ with Program staff. Records relating to the Participant’s involvement with the Program
11 shall not be [deemed] medical records.

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13 *History Note: Authority G.S. 90-21.22;*
14 *Eff. August 1, 1988;*
15 *Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989.*
16 *Readopted Eff. July 1, 2017.*
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1 21 NCAC 32K .0202 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0202 ASSESSMENT AND REFERRAL**

4 When an initial ~~assessment~~ screening interview reveals that ~~further~~ assessment, ~~treatment~~ treatment, or monitoring is
5 indicated, ~~PHP~~ the Program shall advise the ~~licensee~~ Participant and referral source of the findings and recommendations.

6 The Program shall develop a ~~treatment~~ plan designed to ensure that the ~~recipient~~ Participant is safe to practice.

7

8 *History Note: Authority G.S. 90-21.22;*

9 *Eff. August 1, 1988;*

10 *Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989;*

11 *Readopted Eff. July 1, 2017.*

1 21 NCAC 32K .0203 is readopted **with changes** as published in 31:NCR 1757-1760 as follows:

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3 **21 NCAC 32K .0203 MONITORING TREATMENT SOURCES**

4 The Program shall monitor the cost of treatment. Treatment sources receiving referrals from the Program also shall
5 be monitored as to their ability to provide:

6 (1) **[adequate]** medical and non-medical staffing;

7 (2) **[appropriate]** treatment;

8 (3) **[adequate]** facilities; and

9 (4) **[appropriate]** post-treatment support.

10

11 *History Note: Authority G.S. 90-21.22;*

12 *Eff. August 1, 1988;*

13 *Amended Eff. ~~April 1, 2009.~~ April 1, 2009;*

14 *Readopted Eff. July 1, 2017.*

1 21 NCAC 32K .0204 is readopted with changes as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0204 MONITORING REHABILITATION AND PERFORMANCE**

4 (a) If a licensee Participant is referred to the Program by the Board, and if the Program finds that treatment or monitoring
5 are appropriate, the Program shall ask the licensee Participant to sign a monitoring contract. ~~contract in order to become~~
6 ~~an active participant in the Program.~~ If the licensee Participant chooses not to sign a monitoring contract, the Program
7 ~~may shall~~ refer the licensee Participant to the Board. ~~Board for potential disciplinary action.~~

8 (b) If a licensee Participant is self-referred to the Program, and if the Program finds that treatment or monitoring are
9 appropriate, the Program shall ask the licensee Participant to sign a monitoring contract. ~~contract in order to become a~~
10 ~~participant in the program.~~ The Program shall report the Participant to the Board [if the criteria of G.S. 90-21.22 are met.]
11 as required by G.S. 90-21.22.

12 (c) Participants shall be required to submit urine or other bodily specimens if requested by ~~PHP~~ the Program.

13 (d) Participants ~~may shall~~ be required to submit to periodic ~~personal~~ interviews with the ~~Medical Director or a designee~~.
14 Program staff.

15 (e) ~~Treatment providers~~ Participants shall be required to sign [appropriate] releases allowing their treatment providers,
16 [employers] employers, or [other workplace monitors] other individuals assigned by the Program to monitor the
17 Participant in the workplace to submit reports regarding a ~~licensee's~~ the Participant's rehabilitation and performance to
18 the Program, Program and to the Board if the Participant is known to the Board. Participants shall ensure the [such]
19 reports are provided to the Program and the Board if the Participant is known to the Board. Such reports shall be in
20 accordance with state and federal laws. The Program shall maintain case records for each Participant, participant or
21 licensee.

22 (f) When appropriate the Program shall require Participants to engage in post-treatment support. Post-treatment support
23 [may include] includes family counseling, advocacy, after care support groups, self-help groups and other services and
24 programs [deemed appropriate] to improve recoveries. The Program shall monitor post-treatment support.

25 ~~[(g) The Program shall monitor post treatment support.]~~

26
27 *History Note: Authority G.S. 90-21.22;*
28 *Eff. August 1, 1988;*
29 *Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989;*
30 *Readopted Eff. July 1, 2017.*

1 21 NCAC 32K .0205 is repealed through readoption as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0205 MONITORING POST-TREATMENT SUPPORT**

4

5 *History Note:* Authority G.S. 90-21.22;

6 Eff. August 1, 1988;

7 Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989;

8 Repealed Eff. July 1, 2017.

1 21 NCAC 32K .0207 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0207 PERIODIC REPORTING OF STATISTICAL INFORMATION**

4 On **[not less than]** a quarterly basis and upon ~~Upon~~ request by the Board, the Program shall provide statistical and
5 demographic information concerning potential impairments, **existing** impairments, self-referrals, post-treatment **support**
6 **support.** and other demographic and substantive information collected through Program operations.

7

8 *History Note: Authority G.S. 90-21.22;*

9 *Eff. August 1, 1988;*

10 *Amended Eff. April 1, 2009; ~~May 1, 1989.~~ May 1, 1989;*

11 *Readopted Eff. July 1, 2017.*

12

1 21 NCAC 32K .0208 is repealed through readoption as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0208 CONFIDENTIALITY**

4

5 *History Note:* *Authority G.S. 90-21.22;*

6 *Eff. August 1, 1988;*

7 *Amended Eff. ~~May 1, 1989.~~ May 1, 1989;*

8 *Repealed Eff. July 1, 2017.*

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1 21 NCAC 32K .0209 is adopted with changes as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32K .0209 REVIEW COMMITTEE**

4 (a) A Review Committee is created exists for Participants to request reconsideration of [PHP] Program staff findings
5 and recommendations in the following areas:

- 6 (1) General nature of diagnosis;
7 (2) Need for additional assessment beyond [PHP] Program;
8 (3) Need for treatment;
9 (4) Need for monitoring by [PHP] Program; or
10 (5) Closure of file or loss of [PHP] Program advocacy;

11 (b) The Review Committee shall have three primary members and three alternate members. The [PHP] Program
12 Executive Committee ~~will~~ shall nominate all potential members. The [PHP] Program Board of Directors shall appoint
13 members to the Review Committee. Review Committee members shall not be current members of the [PHP] Program
14 Compliance Committee, the [PHP] Program Board of Directors, or the North Carolina Medical Board, nor shall they
15 have served in those organizations within two years of their appointment to the Review Committee.

16 (c) Two primary Review Committee members shall be clinicians, including one physician and one person with relevant
17 clinical experience with substance use disorders. One Review Committee member, either primary or alternate, shall be
18 a physician assistant.

19 (d) A Participant who wishes to challenge one of the matters included in subsection (a) of this Rule ~~must~~ shall deliver
20 to the Chair of the Board of Directors a written request for review of the matter within ten days of being notified of the
21 matter giving rise to the disagreement. Prior to the Review Committee considering the request, the Participant ~~must~~
22 shall:

- 23 (1) Sign a release allowing [PHP] Program staff to share all information with Review Committee
24 members;
25 (2) Agree to abide by the finding of the Review Committee;
26 (3) Agree that all decisions by the Review Committee ~~are~~ shall be final; and
27 (4) Sign a form releasing [PHP] Program and the Review Committee from legal liability for activities
28 conducted in good faith consistent with the provisions of N.C. Gen. Stat. § 90-21.22(f).

29 (e) At any time prior to the Review Committee undertaking the request for reconsideration, the Participant and [PHP]
30 Program staff ~~are encouraged, but not required, to~~ may attempt to resolve the disagreement prior to the Review
31 Committee meeting.

1 (f) The Chair of the Board of Directors shall empanel the three primary members of the Review Committee to act on
2 the request for reconsideration. In the event one or more primary members are not available, the Chair of the Board of
3 Directors shall select from the alternate members to constitute a panel of three members.

4 (g) The ~~three member panel of the~~ Review Committee ~~(“panel”)~~ shall meet and the Participant and Program staff
5 shall appear ~~via~~ by teleconference within 30 days after receipt of the written request for reconsideration.

6 (1) At least five days prior to the teleconference meeting, Program staff and the Participant shall furnish to
7 each other and to the ~~panel~~ Review Committee any materials they ~~believe are relevant for~~ would
8 like the ~~panel~~ Review Committee to consider. However, information provided to the Program from
9 the Board regarding a Participant shall be provided pursuant to N.C. Gen. Stat. § 90-16(c), and ~~such~~
10 the information, including reports of investigation and attachments thereto, shall remain confidential
11 and shall not be provided to the Participant.

12 (2) The teleconference shall last no more than one hour.

13 (3) If the Participant is a physician assistant, a physician assistant member of the Review Committee
14 ~~must~~ shall be included in the ~~panel~~ Review Committee.

15 (4) The ~~panel~~ Review Committee, ~~Participant~~ Participant, and Program staff shall announce the
16 names of all persons present on the phone call prior to the teleconference commencing. The
17 Participant shall be allowed not less than 15 minutes to make a presentation followed by questions of
18 the Participant and Program staff by ~~panel~~ Review Committee members. A Participant is permitted
19 to be represented by counsel, and that counsel may participate in the meeting. The Review
20 Committee process is not a legal or quasi-judicial proceeding and ~~is not~~ shall not be governed by
21 the Rules of Evidence, Rules of Civil ~~Procedure~~ Procedure, or the Administrative Procedures Act.
22 ~~Neither~~ Participant ~~nor~~ and Program staff ~~has any~~ have no right to question or ~~otherwise~~
23 examine Program staff or Participant. ~~Neither~~ Participant ~~nor~~ and Program staff have ~~any~~ no
24 right to question or ~~otherwise~~ examine ~~panel~~ Review Committee members.

25 (5) After the presentation and questioning, the ~~panel~~ Review Committee ~~members~~ shall discuss the
26 request for reconsideration without the presence of the Participant or Program staff. After
27 completing the discussion, the ~~panel~~ Review Committee shall announce its decision.

28 (6) The ~~panel~~ Review Committee shall choose among the assessment, ~~treatment~~ treatment, and
29 monitoring options provided by Program staff and the Participant. The ~~panel~~ Review Committee
30 shall not consider options for assessment, treatment, or monitoring ~~that have not been previously~~
31 ~~considered~~ not provided by Program staff or the ~~Participant~~ Participant, unless ~~significant~~ new
32 information is provided to the ~~panel~~ Review Committee.

33 (7) The ~~panel~~ Review Committee shall reduce its decision to writing and provide a copy of its written
34 decision to the Participant and Program staff within five business days.

1 (8) The [panel's] Review Committee's decision [is] shall be binding upon the Program and the
2 Participant.

3 (9) The Program staff shall make an official recording of the teleconference meeting and preserve the
4 recording. The Participant [is] shall be allowed to make a recording of the meeting.

5 (h) After completion of the review, new or additional review requests may be made by the Participant [only] if there are
6 new findings or recommendations by [PHP] Program regarding the Participant.

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9 History Note: Authority G.S. 90-21.22;

10 Eff. July 1, 2017.

1 21 NCAC 32M .0111 is readopted **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32M .0111 METHOD OF IDENTIFICATION**

4 When providing care to the public, the nurse practitioner shall identify **herself/himself** herself or himself as specified in
5 G.S. 90-640 and 21 NCAC 36 .0231.

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7 *History Note: Authority G.S. 90-18(14); G.S.90-640;*

8 *Eff. January 1, 1991;*

9 *Recodified from 21 NCAC 32M .0108 Eff. January 1, 1996;*

10 *Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996;*

11 *Recodified from Rule .0110 Eff. ~~August 1, 2004.~~ August 1, 2004;*

12 *Readopted Eff. July 1, 2017.*

13

1 21 NCAC 32Y .0101 is amended **with changes** as published in 31:17 NCR 1757 – 1760 as follows:

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3 **21 NCAC 32Y .0101 REPORTING CRITERIA**

4 (a) The Department of Health and Human Services ("Department") may report to the North Carolina Medical Board
5 ("Board") information regarding the prescribing practices of those physicians and physician assistants
6 ("prescribers") whose prescribing:

7 (1) falls within the top ~~one~~ **two** percent of those prescribing 100 morphine milligrams ~~of morphine~~
8 equivalents ("MME") per patient per day; or

9 (2) falls within the top ~~one~~ **two** percent of those prescribing 100 MME's per patient per day in
10 combination with any benzodiazepine and who are within the top one percent of all controlled
11 substance prescribers by volume.

12 (b) In addition, the Department may report to the Board information regarding prescribers who have had two or
13 more patient deaths in the preceding twelve months due to opioid ~~poisoning~~. poisoning where the prescribers
14 authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the
15 patient deaths.

16 (c) The Department may submit these reports to the Board upon request and may include the information described
17 in G.S. 90-113.73(b).

18 (d) The reports and communications between the Department and the Board shall remain confidential pursuant to
19 G.S. 90-16 and G.S. 90-113.74.

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21 *History Note: Authority **G.S. 90-5.1**; 90-113.74;*

22 *Eff. ~~May 1, 2015~~. May 1, 2015;*

23 *Amended Eff. July 1, 2017.*