



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 22, 2013

Catherine Jorgenson
Hearing Aid Dealers and Fitters Board
4030 Wake Forest Road
Suite 209
Raleigh, NC 27609

Re: Rules 21 NCAC 22F .0108, 22F .0120, 22I .0103 and 22J .0103

Ms. Jorgenson:

At its February 21, 2013 meeting, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 21 NCAC 22F .0108 for failure to comply with the Administrative Procedure Act. Despite the certification on the form and introductory statement, a notice of text for this rule was not published in the North Carolina Register. G.S. 150B-21.2(a)(1) requires an agency to publish a notice of text in the Register before it adopts a permanent rule.

The Commission objected to Rule 21 NCAC 22F .0120 due to ambiguity, as it is unclear what standards the Board will use in approving continuing education, what topic content categories are applicable for continuing education credit and the applicable clock hours for those topics. In addition, the Commission objected to the rule because the Board lacks statutory authority to set continuing education requirements outside of rulemaking.

The Commission objected to Rule 21 NCAC 22I .0103 due to ambiguity, as it is not clear in Paragraph (e) what standards of practice the Board considers to be "recognized".

The Commission objected to Rule 21 NCAC 22J .0103 based upon ambiguity, as Item (3) is unclear regarding how the Board will determine if a person is a "nationally recognized celebrity".

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
- Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

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

Amanda J. Reeder
Commission Counsel

1 21 NCAC 22F .0108 is hereby amended as published in the NC Register, Volume 27, Issue 10, as follows:

2
3 21 NCAC 22F .0108 REVIEW OF EXAMINATION

4 As set forth in G.S. 93B-8 (c), each registered applicant who takes and does not pass the qualifying examination shall
5 be granted an opportunity to review his that portion of the examination that is controlled by the Board in the presence of
6 a representative of the Board, upon written request from the applicant. Such written request shall be received by the
7 Board no later than 30 consecutive days after the written notification of the examination results was issued by the
8 Board. Such review shall be held at the Board's office unless the Board determines that the review should be held at
9 another location.

10
11 *History Note: Authority G.S. 93B-8; 93D-3(c);*

12 *Eff. April 23, 1976;*

13 *Amended Eff. March 1, 2013; February 1, 1996; January 1, 1992; May 1, 1988.*

1 21 NCAC 22F .0120 is hereby amended as published in the NC Register, Volume 27, Issue 10, as follows:
2

3 **21B NCAC 22F .0120 CONTINUING EDUCATION**

4 (a) Except as provided herein, each individual ~~Each~~ licensee shall be required to obtain 10 clock hours of approved
5 continuing education, on an annual basis, as a requirement for license renewal. The duty of obtaining information
6 regarding the number of required continuing education program clock hours of credit or the topic content categories
7 applicable for credit, and for obtaining the forms, issued by the Board, for requesting program approval and attendance
8 verification is solely the responsibility of the licensee. Current requirements may be obtained from the office of the
9 Board and these requirements shall be reviewed annually by the Board.

10 (b) An individual shall be exempt from the continuing education requirement for the first license renewal after initial
11 licensure.
12

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

14 *Eff. April 23, 1976;*

15 *Amended Eff. March 1, 2013; March 1, 1996; May 1, 1988.*
16
17
18

21 NCAC 22I .0103 is hereby amended as published in the NC Register Vol 27, Issue 10, with changes as follows:

21 NCAC 22I .0103 VISUAL INSPECTION AND HEARING TEST

(a) All licensees and registered apprentices shall ~~use~~ make a visual inspection of the external auditory canal and the tympanic membrane, using a suitable device having its own light source for visual inspection of the external auditory canal and the tympanic membrane, in order to fulfill the requirements of 21 CFR 801 (effective August 15, 1977), Subpart 801.420 concerning the warning to hearing aid dispensers, which has been adopted by reference in Rule ~~0001~~ .0101 of this Subchapter.

(b) ~~All licensees and registered apprentices shall conduct a hearing test using an audiometer, the calibration for which is on file at the Board office, or equivalent physiologic testing.~~

(c) ~~A hearing test shall be conducted within 90 days prior to the dispensing of a hearing aid and a copy of the hearing test shall be maintained for a period of at least three years.~~

~~(e)(d)~~ The hearing test shall be conducted in an environment conducive to obtaining accurate results and shall include the following, unless physiologic testing is utilized:

_____ (1) pure tone audiometry, including air conduction testing and bone conduction testing;

_____ (2) live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

_____ (3) effective masking, if audiometric testing reveals a difference between the ears at any one frequency equal to or greater than 40 decibels or if there is audiometric air-bone gap of 15 dB or greater;

_____ (4) testing at least at the following frequencies: 500 Hz, 1000 Hz, 2000 Hz, 3000Hz, and 4000 Hz; and

_____ (5) Mid-octaves-Mid-octave testing- shall be tested performed when there is a 20 dB or greater difference between any adjacent octaves.

~~(d) the evaluation of products dispensed to determine effectiveness based on recognized standards of practice. Measures of evaluation may include but are not limited to: sound field measurements, real ear measurements and client evaluation sheets.~~

(e) products dispensed shall be evaluated to determine effectiveness based on recognized standards of practice. Measures of evaluation shall include at least one of the following: sound field measurements, real ear measurements or client evaluation sheets.

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

Eff. April 23, 1976;

Amended Eff. March 1, 2013; April 1, 1989; May 1, 1988.

1 21 NCAC 22J .0103 is hereby amended, as published in the NC Register, Vol 27, Issue 10, as follows:

2
3 21 NCAC 22J .0103 ADVERTISING

4 It shall be unethical to perform any of the following acts:

5 (1) ~~To use or cause or prompt the use of any advertising matter, promotional literature, testimonial, guarantee,~~
6 ~~warranty, label, brand, insignia, or any other representation however disseminated or published which is~~
7 ~~misleading, deceiving, or untruthful; To advertise a particular model, type, or kind of hearing aid for sale~~
8 ~~when purchasers or prospective purchasers responding to such advertisements cannot have it demonstrated~~
9 ~~to them or cannot purchase the advertised hearing aid from the licensee or registered apprentice;~~

10 ~~(2) To advertise a particular model, type, or kind of hearing aid for sale when purchasers or prospective~~
11 ~~purchasers responding to such advertisements cannot have it demonstrated to them or cannot purchase the~~
12 ~~advertised model or kind from the licensee or registered apprentice, and the purpose of the advertisement is~~
13 ~~to obtain prospects for the sale of a different model, type, or kind of hearing aid than that advertised;~~

14 ~~(3)(2) To advertise that a product is offered for sale at a special or reduced price, or words of similar meaning~~
15 ~~such as "sale price," when, within the past six months from the date of the advertisement, less than 50~~
16 ~~percent of all sales of that specific model of the product were sold at a higher price; price higher than the~~
17 ~~special or reduced price;~~

18 ~~(4) To advertise hearing aids at a low price and thereafter attempt to encourage customers to purchase similar~~
19 ~~hearing aids which were not described and priced in such advertising; or~~

20 ~~(5) To advertise or disseminate any information which represents hearing aids as having a regular price or~~
21 ~~stated value, or words of similar meaning such as "list price," when, within the past six months from the~~
22 ~~date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at~~
23 ~~that price.~~

24 (3) ~~To advertise a testimonial or endorsement by a living person unless the advertisement (1) contains the~~
25 ~~actual full name of the person directly following the quote or directly under any picture, (2) lists the~~
26 ~~person's city and state of residence for any person who is not a nationally recognized celebrity, and (3)~~
27 ~~discloses whether the person making the endorsement or testimonial received compensation for making the~~
28 ~~endorsement or testimonial;~~

29 (4) ~~To advertise titles or credentials by the use of initials unless the meaning of the initials are written out in the~~
30 ~~advertisement; or~~

31 (5) ~~To advertise using words of comparison or performance specifications not based on verifiable data [ie:~~
32 ~~lowest price, MSRP, highest quality, fits up to 35dB hearing loss].~~

33
34 History Note: Authority G.S. 93D-3(c); 93D-13(a);
35 Eff. April 23, 1976;
36 Amended Eff. March 1, 2013; May 1, 1988.
37