



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

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December 20, 2012

Nahale Freeland Kalfas  
Board of Examiners for Speech and Language  
Pathologists and Audiologists  
P. O. Box 16885  
Greensboro, NC 27416-4353

Re: 21 NCAC 64 .0903

Dear Ms. Kalfas:

At its December 20, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on lack of statutory authority and lack of necessity in accordance with G.S. 150B-21.10.

G.S. 150B-39(c) states that "[i]n preparation for, or in the conduct of, a contested case subpoena may be issued and served in accordance with G.S. 1A-1, Rule 45." Rule 45(b) sets out who may serve a subpoena. There is no authority cited for the agency to specify otherwise as the rule does in (b)(1) and (2).

G.S. 150B-39(c) sets out standards an agency may use to quash a subpoena. To the degree that Subparagraph (b)(5) and (6) are consistent with that statute, they are unnecessary. To the degree they are different, they are beyond the agency's authority.

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 action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

RAB:tdc

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1 21 NCAC 64.0903(a) is amended, and published in 27:03 NCR\_334 as follows:

2 21 NCAC 64.0903 ~~STANDARDS FOR AUDIOLOGISTS WHO DISPENSE HEARING AIDSSUBPOENAS~~

3 (a) Subpoenas requiring the attendance of witnesses, or those to produce  
4 documents, evidence, or ~~things~~ records shall be issued by the Board or the  
5 ~~designated administrative law judge~~ presiding officer within four business  
6 days of the receipt of a request from a party to the case for such subpoena  
7 unless there is an objection to the issuance of the subpoena.

8 (b) Subpoenas shall be served as the officer issuing the subpoena shall  
9 direct, as may be appropriate to the circumstances of the case. Subpoenas  
10 may be directed to be served by any of the following methods:

11 (1) By an employee of the agency.

12 (2) By the Sheriff of the county in which the individual or agency  
13 subpoenaed resides, when the party requesting such subpoena prepays the  
14 Sheriff's service fee.

15 (3) Subpoenas shall be issued in duplicate, with a "Return of Service"  
16 form attached to each copy. The individual serving the subpoena shall fill  
17 out the "Return of Service" form for each copy and promptly return one copy  
18 of the subpoena, with the attached "Return of Service" form completed, to the  
19 Board.

20 (4) Subpoena shall contain: the caption of the case; the name and  
21 address of the individual or agency subpoenaed; the date, hour and location  
22 of the hearing in which the witness is commanded to appear; a particularized  
23 description of the books, papers, records or other objects the witness is  
24 directed to bring with him to the hearing, if any; the identity of the party  
25 on whose application the subpoena issued; the date of issue; the manuscript  
26 signature of the Board or other issuing officer; and a return of service. The  
27 return of service form, as filled out, shows the name and capacity of the  
28 individual serving the subpoena, the date on which the service was made, the  
29 individual or agency on whom service was made, the location and manner in  
30 which service was made, and the manuscript signature of the individual making  
31 service.

1 (5) The Board or the designated administrative law judge, upon objection  
2 by an party or witness in a proceeding, shall have the authority to revoke a  
3 subpoena, if the subpoena is adjudged to be unreasonable, oppressive or  
4 otherwise unlawful.

5 (6) An objection will include a concise, but complete, statement of  
6 reasons why the subpoena should be revoked or modified. These reasons may  
7 include lack of relevance of the evidence sought, lack of particularity in  
8 the description of the evidence sought, or any other reason sufficient in to  
9 hold the subpoena invalid, such as that evidence sought to be subpoenaed is  
10 privileged, that appearance or production would be so disruptive as to be  
11 unreasonable in light of the significance of the evidence sought, or other  
12 undue hardships.

13 (7) Any such objection to a subpoena must be served on the party who  
14 requested the subpoena simultaneously with the filing of the objection with  
15 the Board.

16 (8) The party who requested the subpoena, in such time as may be granted  
17 by the Board or the designated administrative law judge may file a written  
18 response to the objection. The written response shall be served by the  
19 requesting party on the objecting witness simultaneously with filing the  
20 response with the Board.

21 (9) After receipt of the objection and response thereto, if any, the  
22 Board or its designated administrative law judge shall issue a notice to the  
23 party who requested the subpoena and the party who is challenging it, and may  
24 notify all other parties, of an open hearing, to be scheduled as soon as  
25 practicable, at which time evidence and testimony may be presented, limited  
26 to the narrow questions raised by the objection and response, if any.

27 (10) As soon as the Board or the designated administrative law judge  
28 determines whether the subpoena should be revoked or modified, the Board or  
29 the administrative law judge shall issue a written decision revoking or  
30 modifying or refusing to revoke or modify the subpoena. The decision will be  
31 issued to all parties to the proceeding and any objecting witness, and the  
32 decision will be made a part of the record of the proceeding.

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1 *History Note: Authority G.S. 90-304(a)(3)*  
2 *Amended Eff. January 1, 2013*