



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

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June 19, 2017

Ms. Denise Baker
3004 Mail Service Center
Raleigh, NC 27699-3004

Sent via electronic mail to: denise.baker@dhhs.nc.gov

Re: Rules 10A NCAC 27H .0202, .0203, .0204, .0205, and .0206

Dear Ms. Baker:

At its meeting on March 16, 2017, the Rules Review Commission objected to Rules 10A NCAC 27H .0202, .0203, .0204, .0205, .0206, and .0207. At its meeting on June 15, 2017, the Rules Review Commission reviewed the rewritten Rules submitted by the Commission for MH/DD/SAS in response to the March 16, 2017 objections. At that time, they continued their objections to the above-referenced rules in accordance with G.S. 150B-21.9.

Please note that the Rules Review Commission approved Rule 10A NCAC 27H .0207 at the June 15, 2017 meeting.

The Rules Review Commission found that the Commission for MH/DD/SAS lacked the statutory authority to require that forensic evaluators be employed by an LME-MCO and objected to any such reference contained within Rules 10A NCAC 27H .0202 through .0206.

The Rules Review Commission objected to 10A NCAC 27H .0203, finding that the Commission for MH/DD/SAS lacked the statutory authority to require LME-MCOs to submit and verify information required by this Rule, nor delegate this responsibility to the LME-MCOs. Further, the Rules Review Commission found that it was unclear how the LME-MCO will determine whether the evaluator has expertise as set forth in Paragraph (b).

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The Rules Review Commission objected to 10A NCAC 27H .0204, specifically Subparagraph (a)(3), finding that it was unclear because it does not state what is meant by “required by law.”

The Rules Review Commission objected to 10A NCAC 27H .0205, finding that the Commission for MH/DD/SAS lacked the statutory authority to promulgate rules regarding LME-MCO oversight of forensic evaluators. Further, the Rules Review Commission found that it was unclear how the expertise of an evaluator is to be conveyed to the LME-MCO, as Rule .0205 indicates that it will be self-reporting by the evaluator, while .0203 indicates that the LME-MCO is required to determine the expertise of the evaluator. The Rules Review Commission found that as written, the Rules were unclear whether these provisions conflict with each other or whether they are different processes.

The Rules Review Commission found that while the Commission for MH/DD/SAS has shifted the actual termination of the certification to the Division in the rewritten version of Rule .0206, much of the termination responsibilities remain with the LME-MCO. As such, the Rules Review Commission objected to .0206, finding that the Commission for MH/DD/SAS lacked the authority to delegate the responsibilities related to the termination of certifications to LME-MCOs. Further, the Rules Review Commission found that it was unclear as to how the LME-MCO will know whether an individual is no longer a “licensed clinician” and whether a forensic evaluator has completed the required training.

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

Sincerely,

Amber C. May

Amber C. May
Commission Counsel