



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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

June 17, 2016

William M. Polk
Department of Public Safety
Sent via electronic mail to Will.Polk@ncdps.gov

Re: Return of Rule 14B NCAC 03 .0104

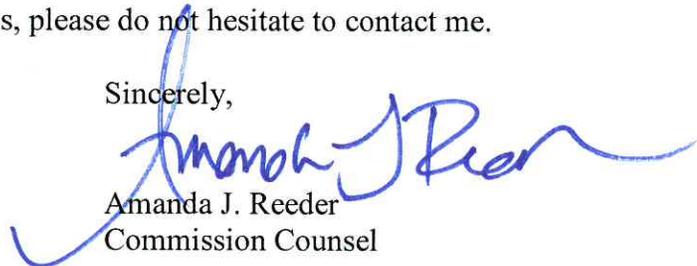
Dear Mr. Polk:

At its May 19, 2016 meeting, the Rules Review Commission objected to the above-referenced Rule in accordance with G.S. 150B-21.10.

The Department responded in accordance with the provisions of G.S. 150B-21.12(a)(2) on May 26, 2016 and indicated that the Department agreed with the objection. This letter is to confirm that pursuant to G.S. 150B-21.12(d), Rule 14B NCAC 03 .0104 is being returned to the agency. Additionally, the Rule will be removed from the North Carolina Administrative Code. No further action will be taken by the Rules Review Commission on this Rule.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Amanda J. Reeder
Commission Counsel

Attached: Filing dated April 15, 2016

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SUBMISSION FOR PERMANENT RULE

ORIGINAL
4/15/2016

1. Rule-Making Agency: North Carolina Department of Public Safety – Division of Emergency Management	
2. Rule citation & name (name not required for repeal): 14B NCAC 03 .0104 Organization	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 08/17/2015 Link to Agency notice: www.ncdps.gov Hearing on: none Adoption by Agency on: 04/15/2016 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact (check all that apply): <input type="checkbox"/> State funds affected <input type="checkbox"/> Environmental permitting of DOT affected and analysis submitted to Board of Transportation <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: 2011-145 and 2012-12 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: The amendments to the rules is to reflect changes to the locations and counties included in the three branch offices, updates to the organizational structure of North Carolina Emergency Management and updating the name from Crime Control and Public Safety to Public Safety. The rest of the changes are to conform to the statutory changes in Chapter 166A and the creation of the Department of Public Safety.	
10. Rule-making Coordinator: William Polk Address: 4201 Mail Service Center Raleigh, NC 27699 Phone: 919-825-2706 E-Mail: will.polk@ncdps.gov Agency Contact, if any: William Polk Phone: 919-825-2706 E-Mail: will.polk@ncdps.gov	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: William Polk Title: Assistant General Counsel
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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1 14B NCAC 03 .0104 is proposed for amendment as follows:
2

3 **14B NCAC 03 .0104 ORGANIZATION**

4 (a) The division of emergency management is headed by a director who, under the direction of the Deputy
5 ~~Secretary~~ Commissioner of Law Enforcement of the Department of ~~Crime Control and~~ Public Safety, supervises and
6 controls the activities of the division and assists in the coordination of the emergency preparedness activities of all
7 state departments and agencies. The director provides assistance, guidance, and coordination to county and
8 municipal governments in developing and maintaining emergency plans and organizations.

9 (b) The division is subdivided into the ~~emergency preparedness operations section~~, the ~~emergency response~~
10 ~~planning and homeland security section~~, the ~~logistics section~~, the ~~recovery section~~, risk management section, public
11 ~~affairs office~~ and the ~~administrative support branch~~. The ~~emergency preparedness operations section~~ is headed by
12 ~~the deputy director~~ who supervises the assistant directors of the ~~planning and homeland security section~~, ~~logistics~~
13 ~~section~~, ~~recovery section~~, and ~~risk management sections~~. ~~and the emergency response section~~ are headed by an
14 ~~assistant director~~. The ~~administrative support branch~~ and ~~public affairs office~~ comes under the direction of the
15 director of the division of emergency management.

16 (c) The functions of the ~~emergency preparedness operations section~~ are to ~~manage delivery of State assistance and~~
17 ~~services in support of local governments~~. During emergency operations center (EOC) activations the operations
18 ~~section identifies, assigns and manages the resources needed to accomplish the incident objectives~~. Outside of EOC
19 ~~activation, the operations section coordinates emergency management activities among counties and local~~
20 ~~governments and plans and prepares for its duties during activations~~. The operations section consists of three field
21 ~~branch offices, the civil air patrol branch, and the EOC operations branch~~. ~~plan and train in all aspects of emergency~~
22 ~~response to include radiological matters~~. ~~It provides advice to local government officials and emergency~~
23 ~~management personnel on development of plans, facilities, and training of staff personnel and the general public~~.

24 (d) The function of the ~~administrative support branch~~ ~~planning and homeland security section~~ manages and
25 ~~coordinates all information and planning functions as they relate to disaster contingency planning and the homeland~~
26 ~~security grant program planning within the division of emergency management~~. This includes research,
27 ~~development, coordination, implementation and evaluation of plans and polices focused on natural disasters~~
28 ~~(hurricanes, tornadoes, flash floods, riverine flooding, storm surge, earthquakes, mudslides, etc.), hazardous~~
29 ~~materials, nuclear power plants, other radiological/nuclear events, other man-made/technological disasters (dam~~
30 ~~failure, airplane accidents, search and rescue events, large transportation accidents), weapons of mass destruction,~~
31 ~~acts of terrorism, and terrorist incidents~~. The ~~planning and homeland security section~~ coordinates preparation of both
32 ~~strategic (short and long term) and operational (emergency, disaster operations) plans~~. ~~is to provide support to the~~
33 ~~division and to local governments in qualifying and applying for federal preparedness funds and programs~~.

34 (e) The functions of the ~~emergency response section~~ are to ~~develop and implement operating procedures for the~~
35 ~~state and local emergency operating centers; organize and train the state emergency response team; supervise the~~
36 ~~area coordinators' activities; and supervise the emergency response efforts of the division~~ ~~logistics section~~ are that
37 ~~they fulfill the division's daily logistics requirements~~. This includes but is not limited to the following: ~~transportation~~
38 ~~and distribution (mail, vehicle pools, movement of large items); handling of surplus items and inventory control~~
39 ~~(both fixed assets and non); warehousing of goods and equipment (including minimal office supplies); large scale~~
40 ~~contracting; large scale purchasing; training and conference coordination, both internal and external; and exercise~~
41 ~~coordination, both internal and external~~. The section also conducts short and long term planning functions and
42 ~~assists facility managers as needed~~. During EOC activations, the section provides logistical support to the State
43 ~~Emergency Response Team (SERT)~~. The logistics section has three branches: ~~logistics operations, logistics supply,~~
44 ~~and training and exercise~~.

45 (f) The functions of the ~~recovery section~~ are ~~plans and coordinate recovery activities among citizens, local~~
46 ~~governments, and various State and Federal agencies with disaster-related primary and support responsibilities to~~
47 ~~ensure these entities return to normalcy after a disaster~~. The section provides immediate assistance to reduce or
48 ~~relieve human suffering and support the restoration of essential services, and it coordinates and directs those~~
49 ~~operations when local government resources are inadequate or exhausted~~. The ~~recovery section~~ requests and
50 ~~coordinates assistance from other states, the federal government, and private disaster relief organizations as~~
51 ~~necessary and appropriate~~. The ~~recovery section~~ has three branches: ~~public assistance, hazard mitigation, and~~
52 ~~individual assistance~~.

53 (g) The functions of the ~~risk management section~~ are ~~plans, implements, and manage the efficient and effective~~
54 ~~acquisition, management, use, and dissemination of geospatial data, information, and information technology~~. Risk
55 ~~Management's primary mission is to accomplish the goal of a "prepared and resilient North Carolina from all~~

56 hazards and threats". Risk Management works towards improving the preparedness, incident command, response
57 and recovery of North Carolina's homeland security, law enforcement, and emergency management policy makers
58 and practitioners from hazards and threats. The risk management section provides three broad critical service
59 functions that support local, state and federal homeland security, emergency management, and law enforcement
60 efforts. These functions are: (1) identification, monitoring, and mapping of vulnerability and consequences from
61 hazards and threats on key infrastructure and key resources, (2) establishment and maintenance of key data exchange
62 and information technology infrastructure and applications for the efficient exchange of communication and data,
63 and (3) management of data acquisition, dissemination, maintenance, and exchange between local, state and federal
64 partners. Risk management consists of four branches: information technology branch, GIS data and manipulation
65 branch, flood warning branch, and floodplain mapping branch

66 (h) The administrative branch includes elements of human resources and finance. Both units fall under the
67 supervision of the division director. The executive officer for the division supervises both elements. Human
68 resources is responsible personnel services in include hiring, firing, promotions, demotions, reassignments, awards,
69 time keeping and maintaining the division personnel files. Additionally, processes the monthly vehicle and
70 telephone billing. During activation of the state emergency operations center provides support to the logistics
71 section in support of the State Emergency Response Team (SERT). Finance is responsible for processing invoices
72 from vendors for payment and forwarding to department account payable, reviewing and approving procurement
73 transactions, monitors the application, submission and closeout of grants awarded to the division, works with the
74 department budget controller sections on issues. During activation of the state emergency operations center collects
75 and provides financial information to the State Emergency Response Team (SERT), Governor's Office and other
76 state agencies. Responsible for submitting division expenditures to the Federal Emergency Management Agency
77 (FEMA) for federally declared disasters.

78 (i) The function of the public affairs office is to work to ensure the people of North Carolina are informed and
79 knowledgeable about programs, events and conditions affecting their safety and well-being. The staff works to
80 provide timely and accurate information to news media and to inform the general public of emergency action steps
81 to be taken during natural or man-made disasters. The members of the public affairs office respond to media
82 inquiries, write speeches and press releases, and produce educational materials. Public affairs staff members are
83 available for duty 24 hours a day, seven days a week assisting members of the news media either by phone or at the
84 scenes of incidents. When necessary, public affairs staff prepares and distribute news releases and arrange for news
85 conferences. The public affairs staff sets up a joint information center (JIC) for actual events and drills—to include
86 those relating to the three nuclear plants in North Carolina and one just beyond the border in South Carolina.

87 (j) The state is divided into ~~six~~ three branches and fifteen geographical areas, each branch is headed by a branch
88 manager and each area ~~of which~~ is headed by an area coordinator who, coordinates the state response to
89 emergencies, provides assistance and guidance to local officials and ~~coordinators~~ coordinates in planning and testing
90 plans for emergency services during times of disaster. During disasters, the branch offices serve as regional
91 coordination centers; receiving resource requests, deploying regional assets and tracking state resources to support
92 local government.

93
94 *History Note: Authority G.S. 143B-10; 143B-474 143B-601; 166A-5 166A-19.12;*
95 *Eff. December 1, 1979;*
96 *Amended Eff. July 1, 1983;*
97 *Transferred from 14A NCAC 04 .0104 Eff. June 1, 2013.*
98 *Eff. _____.*



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June 21, 2016

Dennis Seavers
Executive Director
Board of Barber Examiners
Sent via email to dseavers@ncbarbers.com

Re: Objection to Rules:

21 NCAC 06B .0101, .0103, .0105, .0301, .0302, .0305, .0308, .0503, .0505;
21 NCAC 06C .0202, .0203, .0501, .0909;
21 NCAC 06F .0116;
21 NCAC 06G .0106;
21 NCAC 06H .0102;
21 NCAC 06I .0101, .0105;
21 NCAC 06J .0101;
21 NCAC 06K .0104;
21 NCAC 06L .0118, .0119;
21 NCAC 06N .0103, .0104, .0106, .0108, .0110;
21 NCAC 06O .0120; and
21 NCAC 06Q .0101, .0103, .0104

Extension of the Period of Review for Rule 21 NCAC 06F .0110.

Dear Mr. Seavers:

At its meeting on June 16, 2016, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10(2). It also extended the period of review for Rule 21 NCAC 06F .0110 pursuant to G.S. 150B-21.10(3).

The Commission objected to Rules 06B .0101 and .0103 based upon lack of statutory authority and ambiguity. The Commission found that the Board does not have authority to require a petitioner for rulemaking to include a summary of the contents rather than the draft required by G.S. 150B-21.2, and to ask for the effects on existing practices. Further, the Rules were unclear as written as to the effects of a rule on existing practices and what "existing practices in the area involved" means.

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The Commission objected to Rule 06B .0105 based upon ambiguity. The Commission found that the language in Paragraph (a) is unclear regarding how the Chairman will determine whether the additional information or recommendations will be deemed relevant. It is also unclear what the “public interest” standard is or entails. Further, there is no guidance in the Rule on how “public interest’ will be determined.

The Commission objected to Rule 06B .0301 based upon a lack of necessity. The Rule stated that unless otherwise noticed, the rulemaking hearing will be held at the Board’s office. However, G.S. 150B-21.2(c)(5) requires the Notice of Text for permanent rules to state the “place of any public hearing.” G.S. 150B-21.1(a)(4) requires a notice of public hearing to be posted on the OAH website for temporary rules. Therefore, the rule is not necessary, as the APA will control regarding rulemaking public hearing notices.

The Commission objected to Rule 06B .0302 based upon a lack of statutory authority. The language in the Rule encourages individuals to take an action. It does not set any standard. Further, G.S. 150B-21.1 and 21.2 set forth the timeframes for public hearings. This Rule appears to contradict those statutory timeframes.

The Commission objected to Rule 06B .0305 for lack of statutory authority and ambiguity. The Rule appears to state that the Board will accept written comments but the Rule shortens the timeframe for submitting written comments set forth in G.S. 150B.

The Commission objected to Rule 06B .0308 for ambiguity and lack of statutory authority and necessity. The Rule appears to recite G.S. 150B-21.2(h) and is therefore unnecessary. It is unclear to what types of rules (permanent or temporary) that this Rule will apply to. Further, the final sentence of the Rule is unclear as written. It allows the submission of the request prior to the hearing, but G.S. 150B-21.2(h) states that the request must be made after adoption. The agency lacks statutory authority to make the deadline earlier than the statute sets forth.

The Commission objected to Rule 06B .0503 for ambiguity. Specifically, G.S. 150B-4 requires agencies to prescribe in rule the circumstances in which declaratory rulings shall or shall not be issued. This Rule does not set any standards, but instead states that the agency may refuse to do so when the Board believes “for good reason” that the issuance is “undesirable.” As written, this Rule does not establish any circumstances when it will or will not issue the ruling, nor does it give any guidance on when this will occur.

The Commission objected to Rule 06B .0505 for ambiguity. As written, this Rule is unclear as to what the procedure is, what it will consist of, and who will determine what is required to make a decision as to what is “appropriate in a particular case.”

The Commission objected to Rule 06C .0202 for ambiguity. It does not set a standard – it simply encourages individuals to do something. Also, the Rule is unclear as written, as the rule does not offer guidance to what informal resolution the Board is referring to, or how one avails himself or herself of this remedy.

The Commission objected to Rule 06C .0203 based upon a lack of statutory authority. Specifically, the Board does not have the authority to require informal resolution before the filing of a contested case petition.

The Commission objected to Rule 06C .0501 based upon a lack of necessity, as the Rule essentially recites G.S. 150B-38.

The Commission objected to Rule 06C .0909 based upon a lack of necessity, as the Rule essentially recites G.S. 150B-40(e) and Rule 21 NCAC 06C .0601.

The Commission objected to Rule 06F .0116 and Rule 06Q .0103 based upon a lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require individuals seeking licensure from the Board to report that they are registered sex offenders, or to deny or revoke licensure due to being on the Registry. In light of these objections, the Commission extended the period of review for Rule 06F .0110, which may need to be rewritten as part of the Board's response to these objections.

The Commission also objected to Rule 06Q .0103 for a lack of statutory authority to abrogate G.S. 93B-8.1.

The Commission objected to Rule 06G .0106 based upon a lack of authority for the Board to require barbers to have five years of experience in order to qualify as barber instructors.

The Commission objected to Rule 06H .0102 for a lack of statutory authority, as the Commission found that the Board has no statutory authority to set the student-instructor ratio below that set forth in statute. In addition, the Commission found that the Board lacks authority to require a nonprofit school to be established within a State university or community college.

The Commission objected to Rule 06I .0101 based upon ambiguity. The Commission found that the phrase "substantially similar standards" is unclear as written, as the Rule neither defines the standards nor sets forth how they will be determined.

The Commission objected to Rules 06I .0105, 06J .0101, 06K .0104, 06N .0104, and 06N .0106 for a lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require applicants for licensure or certification to have high school diplomas or GED certificates.

The Commission objected to Rule 06L .0118, as the Commission found that the Board lacks statutory authority to state in Paragraph (f) of the Rule that violation of Chapter 86A or any administrative rule adopted by the Board or operation of a shop that receives a failing grade shall be sufficient cause for revoking or suspending the permit. G.S. 86A-18 states that the Board may revoke or suspend the permit for violation provided the Board has previously given two written warnings to the individual committing the violation. Therefore, the Commission found that the agency is without authority to

revoke a permit for failure to comply with this Rule unless the statutorily mandated two written warnings are issued first.

The Commission objected to Rule 06L .0119 because the Rule was unclear as written. As stated in the Staff Opinion issued on May 25, 2016, it included many terms that were not defined and were unclear in the context of the Rule.

The Commission objected to Rule 06N .0103 for a lack of statutory authority to charge a fee whenever a shop hires a new manager.

The Commission objected to Rule 06N .0108 based upon a lack of statutory authority to create a special class of out-of-state individuals seeking certification as apprentices.

The Commission objected to Rule 06N .0110 based upon a lack of statutory authority. Specifically, the Commission found that the Board does not have authority to charge a fee when someone is employed by a barber school to be the manager.

The Commission objected to Rule 06O .0120, finding the Board lacked statutory authority to create a civil penalty under the circumstances stated in the Rule. G.S. 86A-27 allows the Board to impose civil penalties for violation of the laws in G.S. 86A or any rules adopted by the Board. However, there are no cited any laws or rules that form the basis of the violations contained in this Rule.

The Commission objected to Rule 06Q .0101 based upon a lack of statutory authority. Specifically, the Commission found that the Board does not have authority to restrict the use of a barber pole to only licensees. In addition, the Board does not have authority to require an individual to “positively identify” a barber before having his or her hair cut.

The Commission objected to Rule 06Q .0104 based upon a lack of authority and ambiguity. Paragraphs (a) and (b) conflict with each other, and the application of the Rule is unclear. In addition, the Rule states that the Board will not act until it is satisfied with the individual’s qualifications, but the Rule does not state how satisfaction will be achieved. In addition, the Rule appears to add requirements to G.S. 86A-3, which states there are four criteria for receiving a barber certificate. The Board does not have authority to add to the statutory criteria.

For the Rules that were objected to, please respond to this letter in accordance with the provisions of G.S. 150B-21.12.

Regarding Rule 21 NCAC 06F .0110, pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Amanda J. Reeder". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Amanda J. Reeder
Commission Counsel