



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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

March 17, 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, .0206, and .0207

Dear Ms. Baker:

At its meeting on March 16, 2017, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.9. Please note that the Rules Review Commission did approve Rules 10A NCAC 27G .6702 and 27H .0201.

The Rules Review Commission objected to 10A NCAC 27H .0202 finding that the Commission for MH/DD/SAS lacks the authority to set the employment requirements for individuals in requiring that forensic evaluators be employed or under contract with an LME-MCO. The Rules Review Commission also objected to this Rule as being unclear or ambiguous as it is unclear what the "Pre-Trial Evaluation Center" is, how the Secretary is to make the determination, and how the public will be made aware of what this is.

The Rules Review Commission objected to 10A NCAC 27H.0203 finding that the Commission for MH/DD/SAS lacks the authority to set the employment requirements for individuals in requiring that forensic evaluators be employed by or under contract with an LME-MCO. The Rules Review Commission also objected to this Rule finding that it is unclear or ambiguous. Specifically, the Rules Review Commission objected as Paragraph (a) contains a reference to an "applicant," but there is no information contained within the Rule as submitted to say what the "applicant" will need to do to apply to be certified as a forensic evaluator, to whom the applicant will apply, what the application process is, and the timing of the training requirements. The Rules Review Commission further found that it is unclear how the LME-MCO will determine whether the evaluator has expertise as set forth in Paragraph (b).

The Rules Review Commission objected to 10A NCAC 27H .0204 finding that the Commission for MH/DD/SAS lacks the statutory authority to promulgate rules regarding the contents of the report.

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The Rules Review Commission objected to 10A NCAC 27H .0205 for lack of statutory authority and as being unclear or ambiguous. In objecting to this Rule, the Rules Review Commission found that the Commission for MH/DD/SAS lacks the statutory authority to promulgate rules regarding LME-MCOs oversight of forensic evaluators. The Rules Review Commission also found the following were unclear or ambiguous:

- In (a), it is unclear what is meant by “sufficient.”
- In (b), it is unclear as to how expertise of an evaluator is to be conveyed to the LME-MCO. Rule .0205 indicates that it will be self-reporting by the evaluator; however, Rule .0203 indicates that the LME-MCO is required to determine the expertise of the evaluator. It is unclear whether these two provisions conflict with each other or whether they are different processes.
- In (e), it is unclear as to what information is required to be maintained in the log.

It is noted that there is a specific reference to a forensic evaluator being employed by an LME-MCO in (b) of this Rule. Please note that this provision was specifically objected to as indicated above with regard to .0202 and .0203.

The Rules Review Commission objected to 10A NCAC 27H .0206 for lack of statutory authority and as being unclear or ambiguous. In objecting to this Rule, the Rules Review Commission found that the Commission for MH/DD/SAS lacks the authority to delegate the termination of certifications to LME-MCOs. The Rules Review Commission further found that it is unclear what the responsibilities and duties of the LME-MCOs would be in accordance with this Rule.

The Rules Review Commission also objected to 10A NCAC 27H .0207 finding that the Commission for MH/DD/SAS lacks the statutory authority to specify the requirements of the evaluation report. The Rules Review Commission also found that the Commission for MH/DD/SAS lacks the statutory authority to limit a recommendation by a forensic evaluator for a full evaluation at the Pre-Trial Evaluation Center only if the defendant is charged with a felony.

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
Commission Counsel



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March 16, 2017

Sent via email: CWilkins@bws-law.com
Charles Wilkins Rulemaking Coordinator
Board of Massage and Bodywork Therapy
Broughton, Wilkins, Sugg & Thompson PLLC
Post Office Box 2387
Raleigh, North Carolina 27602

Re: Rules 21 NCAC 30 .0903, .0906

Dear Mr. Wilkins:

At its March 16, 2017 meeting, the Rules Review Commission objected to the above-identified rules in accordance with G.S. 150B-21.9.

The Commission objected to 21 NCAC 30 .0903 based on lack of statutory authority. The Board of Massage and Bodywork Therapy lacks the statutory authority to make by rule an exception to the public records law of North Carolina. Without a specific statutory grant from the General Assembly, the materials generated or obtained by the Board in conducting an investigation are public records.

The Commission objected to 21 NCAC 30 .0906 based on lack of statutory authority and unclear or ambiguous language. The Board of Massage and Bodywork Therapy lacks the statutory authority to summarily suspend an occupational license based the cited authority in the Rule as filed with the Rules Review Commission. Further, the findings required by the Board that would lead to the immediate suspension of licensure are unclear or ambiguous as provided in the Rule.

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.

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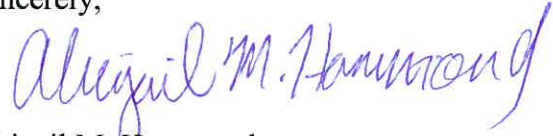
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An Equal Employment Opportunity Employer

Sincerely,



Abigail M. Hammond
Commission Counsel

cc: Elizabeth Kirk, Administrative Director
Sent via email: admin@bmbt.org



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March 16, 2017

Sent via email: info@ncbpe.org
Tracy Steadman, Rulemaking Coordinator
Board of Podiatry Examiners
1500 Sunday Drive, Suite 102
Raleigh, North Carolina 27607-5151

Re: Rules 21 NCAC 52 .0201, .0207

Dear Ms. Steadman:

At its March 16, 2017 meeting, the Rules Review Commission objected to the above-identified rules in accordance with G.S. 150B-21.9.

The Commission objected to these rules for failure to comply with Part 2 of the Administrative Procedure Act, G.S. 150B. The Board of Podiatry Examiners submitted two permanent rules, 21 NCAC .0201, .0207, that differed substantially from the proposed text published in the December 15, 2016 31:12 Register. Therefore, the Board of Podiatry Examiners failed to comply with G.S. 150B-21.2(g).

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,

Abigail M. Hammond
Commission Counsel

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