RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32N .0107

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 X Unnecessary

 Failure to adopt the rule in accordance with the APA

 Extend the period of review

COMMENT:

*Paragraph (e) appears to be unnecessary as written. This is a paragraph addressing a situation where the board finds “that the public health, safety, or welfare requires emergency action” as provided for in G.S. 150B-3(c). However there is no provision for any expedited timetable where the board chooses to request information or documentation from the licensee rather than avail itself of the authority to summarily suspend the license. The substantive provisions of this paragraph require a licensee to respond and provide “the requested information or documents ... in the time and manner provided herein.” The only time and manner that seems to be provided is the “time and manner provided herein” which is only found elsewhere within this rule and is the same time and manner provided in the other situations covered.*

*If the board wishes to provide any sort of opportunity for a licensee to respond to a complaint – which could result in a summary license suspension – that is different from the other provisions in this rule then it should make that clear. If it wishes to allow a licensee the same time limits to respond to that same complaint, then the provision is unnecessary.*