

## 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: North Carolina Sheriff's Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .1901

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*This Rule purports to establish the procedure for licensure by endorsement for individuals seeking licensure or certification from the Commission based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) or who are military spouses must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials or prior experience of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a)]*

*I have two concerns with this Rule as written. First, in Subparagraph (a)(1)(A), the Commission is proposing to grant the license if the military trained applicant has been awarded a Military Occupational Specialty (MOS) that is substantially equivalent to or exceeds NC training requirements or has completed a military program of training, completed testing or equivalent training. G.S. 93B-15.1(a) requires that the applicant have an MOS and has done the following at a*

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Commission Counsel

*level that meets or exceeds NC requirements: 1) completed military training; 2) completed testing or equivalent training and experience as determined by the agency; and 3) performed in the MOS.*

*I do not believe that the agency has the authority to lower the statutory requirements for the military trained applicant as proposed in Subparagraph (a)(1)(A).*

*Further, this Rule is unclear in what is required as the agency determined equivalent of training and how the agency will determine equivalence. I believe the statute allows the agency to determine the equivalent experience, but it is not clear in the Rule text how the agency intends to actually do this.*

**§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.**

(a) **Notwithstanding any other provision of law**, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) **Has been awarded a military occupational specialty and has done all of the following** at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: **completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.**
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) **Can demonstrate competency in the occupation through methods as determined by the Board**, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless

of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1.)