

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 BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS

RULE CITATION: 21 NCAC 64 .0206, 0219, and .0307

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

Unclear or ambiguous

Unnecessary

X Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

These rules each cite an adoption date of December 12, 2013. That is prior to the end of the required 60 day comment period, which ended Saturday, December 14, 2013. The agency must "re-adopt" the rules after the comment period ended.

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AGENCY: NC BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS

RULE CITATION: 21 NCAC 64 .0219

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

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

It is unclear in (d) lines 24 and 25, what patient site requirements are referred to. It seems as if a number of choices are possible: the statutory licensing and rule requirements of this state if the patient is physically located in this state when the telepractice services are provided; another state's statutory licensing and rule requirements if the patient is there and there are analogous licensing or statutory requirements; or a standard found in a trade or industry practice standard. It is also not clear when two different jurisdictions are involved and there might be a discrepancy in the requirements, which requirements the provider must follow. The agency should make clear what requirements it is referring to.

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AGENCY: NC BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS

RULE CITATION: 21 NCAC 64 .0307

RECOMMENDED ACTION:

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

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

COMMENT:

This rule requires practitioners to make their conduct adhere to the Code of Ethics of American Speech and Hearing Association, "except as the provisions of such code . . . may be inconsistent and in conflict with the provisions of this Article." That makes it unclear to those who must follow or interpret this rule which provisions are "inconsistent and in conflict with . . . this Article."

It is also not abundantly clear what is meant by "this Article" since that is not a term used to define any portion of the NCAC. It is unclear whether it refers to this rule alone; the section the rule is in; the entire chapter; perhaps certain, selected rules; or even not the rules in "this Article" but the statutory requirements in the licensing act, Article 22 of the NC General Statutes.

The rule is also vague because in line 7 the rule refers to provisions of a code of ethics that may be "inconsistent and in conflict" with the provisions of this article. Something could easily be "inconsistent" and "in conflict" with something else. But in that case being "in conflict" would probably be sufficient. However I could also envision the possibility that a provision of that code could be "inconsistent" with your rules without necessarily being "in conflict" with it.