

## Burgos, Alexander N

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**Subject:** FW: [External] RE: NCBENHA Request for Changes - April 2023 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Thursday, April 13, 2023 1:58 PM  
**To:** nhaboard@ncbenha.org  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

My pleasure. See you next week.

Best,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** [nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org) <[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)>  
**Sent:** Thursday, April 13, 2023 11:48 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

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Thanks SOOO Much Brian!

Martha

*Martha N. Bell*

**Executive Director**

**NC State Board of Examiners for  
Nursing Home Administrators  
3733 National Drive, Suite 110  
Raleigh NC 27612  
919-571-4164  
[www.ncbenha.org](http://www.ncbenha.org)**

parties by an authorized state official.

## Burgos, Alexander N

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**Subject:** FW: [External] RE: NCBENHA Request for Changes - April 2023 RRC  
**Attachments:** 21 NCAC 37D .0604.docx

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Thursday, April 13, 2023 11:41 AM  
**To:** nhaboard@ncbenha.org  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

Martha,

OK, all fixed. See attached for the new final version. I hope you don't mind, but I reworded the "scaled scores" part a little as well, just for clarity. Let me know if this is good to go, and I'll have it filed and added to our online agenda.

Best,  
Brian

Brian Liebman  
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**From:** [nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org) <[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)>  
**Sent:** Thursday, April 13, 2023 11:10 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC  
**Importance:** High

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Brian:

I hate to even email you concerning this. If it is too late, we will follow through with the URL that we gave originally. They have just posted the new website and here is the new URL to go into the Exam Candidate Handbook for the scale scoring information. <https://www.nabweb.org/seeking-licensure/exam-candidate-handbook> You tell me how you want to handle this. We can change it with the codifier after it gets approved or can you change it for next weeks review?? Sorry about this. I just happened onto the website yesterday and saw that it already changed prior to the National Board saying it would.

Sorry to be such a pest, but this was not in my control.

Sincerely,  
Martha

*Martha N. Bell*

**Executive Director**

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**[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)**

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: NCBENHA Request for Changes - April 2023 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, April 10, 2023 11:33 AM  
**To:** nhaboard@ncbenha.org  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

It was a nice, productive long weekend. Did a lot of spring cleaning that was getting overdue.

As for the rules, I think you're good. I sent the rules on to Dana and Alex for filing, so you're all done. Let me know if you or anyone else from the Board would like to appear at next week's meeting virtually, and I'll have Alex send you an e-vite. Otherwise y'all are free to attend the meeting in person on 4/20.

Best,  
Brian

Brian Liebman  
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**From:** [nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org) <[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)>  
**Sent:** Monday, April 10, 2023 11:26 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC  
**Importance:** High

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Thanks Brian! They look great! Let me know if you need me to do anything else.

A close family friend passed. It was a very nice tribute to her. I appreciate your thoughts.

Easter was great especially since the rain stopped. I hope you had a wonderful long weekend even in the rain.

Sincerely,  
Martha

*Martha N. Bell*

**Executive Director**

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## Burgos, Alexander N

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**Subject:** FW: [External] RE: NCBENHA Request for Changes - April 2023 RRC  
**Attachments:** 21 NCAC 37D .0604.docx; 21 NCAC 37D .0605.docx

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, April 10, 2023 10:02 AM  
**To:** nhaboard@ncbenha.org  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

Hi Martha,

I'm very sorry for your loss. I hope it wasn't anyone too close who passed.

As for your rules, I fixed the spacing on Rule .0604, and highlighted the changed text. Also for .0605, for a repeal you delete all the text, so I've done that. I've attached both here, so you can see the changes. Everything looks good, and I will recommend approval of all three rules, as amended.

Once you've had a chance to look, let me know if you're OK with me sending these on to Dana for filing.

Hope you had a great Easter as well!  
Brian

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**From:** [nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org) <[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)>  
**Sent:** Wednesday, April 5, 2023 5:56 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC  
**Importance:** High

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Brian:

Please see attached the rewritten rules. Let me know if you have any more questions or concerns. I am out of town at a funeral tomorrow and of course Friday as well. I look forward to hearing back from you concerning the rewrites. The .0604 Rule wouldn't type correctly on my computer – I tried retyping it several times and it kept giving me weird spacing.

Have a wonderful long Easter weekend. 😊

Sincerely,  
Martha

*Martha N. Bell*

**Executive Director**

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[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)**



1 21 NCAC 37D .0604 is adopted with changes as published in 37:13 NCR 936-937 as follows:

2

3 **21 NCAC 37D .0604 GRADE REQUIRED**

4 Every candidate for a nursing home administrator's license shall be required to pass the licensing examinations ~~with a~~  
5 ~~grade of at least 75 percent.~~ in accordance with the National Association of Long Term Care Administrator Boards  
6 standards which are referenced in the NAB Exam Candidate Handbook under Scaled Scores  
7 [https://www.nabweb.org/filebin/pdf/Reference\\_Documents/NAB\\_Exam\\_Candidate\\_Handbook\\_Nov\\_2022.pdf](https://www.nabweb.org/filebin/pdf/Reference_Documents/NAB_Exam_Candidate_Handbook_Nov_2022.pdf)

8

9 *History Note: Authority G.S. 90-285;*

10 *Eff. February 1, 1976;*

11 *Readopted Eff. October 1, 1977; December 15, 1977;*

12 *Amended Eff. May 1, 1989;*

13 *Transferred and Recodified from 21 NCAC 37A .0801 Eff. April 1, 1996;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*  
15 *22, ~~2014~~, 2014;*

16 *Amended Eff May 1, 2023.*

17

1 21 NCAC 37D .0605 proposed to be amended as published in 37:13 NCR 936-937 is now repealed as follows:

2

3 **21 NCAC 37D .0605 SUBJECT AREAS**

4

5 *History Note: Authority G.S. 90-278; 90-285;*

6 *Eff. February 1, 1976;*

7 *Readopted Eff. October 1, 1981; December 15, 1977;*

8 *Amended Eff. August 2, 1993;*

9 *Transferred and Recodified from 21 NCAC 37A .0701 Eff. April 1, 1996;*

10 *Amended Eff. July 1 2004; July 1, 2000; April 1, 1996;*

11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September*

12 *22, ~~2014~~, 2014;*

13 *Repealed Eff. May 1, 2023.*

14

## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Tuesday, April 4, 2023 3:35 PM  
**To:** nhaboard@ncbenha.org  
**Cc:** Burgos, Alexander N  
**Subject:** RE: [External] RE: NCBENHA Request for Changes - April 2023 RRC

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Completed

Hi Martha,

Just to confirm what I said on the phone, with respect to the URL, any changes to that don't have to go through rulemaking should the NAB change their website around. Once the URL is in the rule, you can make changes to the URL pursuant to 150B-21.5(a)(4) by requesting the Codifier make the change.

As for Rule .0605, sounds like a plan to go ahead and repeal.

Finally, if you need additional time, that's fine, let's shoot for Monday, 4/10 at 12 PM.

Have a happy Easter and great weekend!

Brian

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**From:** nhaboard@ncbenha.org <nhaboard@ncbenha.org>  
**Sent:** Tuesday, April 4, 2023 2:36 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Subject:** [External] RE: NCBENHA Request for Changes - April 2023 RRC

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Brian:

I left a message a little earlier and I do need a little more time if I can have it. I have been in touch with our National Board and they have a new website being introduced in the next month and I do not know if the URL will stay the same. What we want to avoid is that anytime that they change something on the website (like move it around to a different section) that we do not have to change our rule. So I am trying to figure a way to write the rule so that they visit the NAB website and then tell them where to look for the information. I think on the rule with the Subject Areas I

want to keep the rule but also guide them to the NAB website as well unless you just think we need to go ahead and repeal it.

Sincerely,  
Martha

*Martha N. Bell*

**Executive Director**

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[nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)**

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Friday, March 31, 2023 11:45 AM  
**To:** [nhaboard@ncbenha.org](mailto:nhaboard@ncbenha.org)  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: NCBENHA Request for Changes - April 2023 RRC

Martha,

As we discussed in our phone call earlier, I think the best solution for Rule .0604 is to incorporate the guidelines from the NALTCAB into your rule by reference, under G.S. 150B-21.6, as it seems like they have a unique way of scoring the test. Given the less than helpful layout of their website, once you locate the document, please provide the most precise link to it that you can, so your regulated public doesn't get lost looking for it as apparently we both have.

I found an example of a good incorporation by reference at 21 NCAC 06V .0101(d):

(d) Laser, pulsed-light, and light-based devices shall be maintained and operated in accordance with Occupational Safety and Health Administration (OSHA) standards, which are incorporated herein by reference, including subsequent amendments or editions and may be accessed at no cost at <https://www.osha.gov/SLTC/laserhazards>.

Also see G.S. 150B-21.6:

**§ 150B-21.6. Incorporating material in a rule by reference.**

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Repealed by Session Laws 1997-34, s. 5.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material.

With respect to Rule .0605, because your rule is just informational, and isn't actually requiring anything of your regulated public, as we discussed the best route is to repeal it. Because the rule doesn't currently have an effect as written, it is OK to just reformat it as a repeal and submit it with your other rules when you send them back to me. That won't be a substantial change under 150B-21.2(g), and I'll recommend approval of the repeal to the Commission.

Hope that helps!  
Brian

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**From:** Liebman, Brian R  
**Sent:** Tuesday, March 21, 2023 4:43 PM  
**To:** [nboard@ncbenha.org](mailto:nboard@ncbenha.org)  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** NC BENHA Request for Changes - April 2023 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board for the April 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, April 20, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules to me via email, no later than 5 p.m. on Tuesday, April 4, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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