

Burgos, Alexander N

Subject: FW: [External] FW: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

From: Debbie Nowell <Debbie@ncl-law.com>

Sent: Thursday, June 9, 2022 11:08 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dr. Joe Siragusa <dr.joe@ncchiroboard.com>; Anna Choi <Anna@ncl-law.com>

Subject: RE: [External] FW: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

Yes, please send to Dana.

Thanks,

Debbie Nowell

Legal Administrator

Nichols, Choi & Lee, PLLC

4700 Homewood Court

Suite 220

Raleigh, NC 27609

www.ncl-law.com



919.341.2636 **main**

919.341.2722 **direct**

919.647.4485 **fax**

7 **extension**

debbie@ncl-law.com **email**

Confidentiality Notice:

The information transmitted is intended only for the person or entity to which it is addressed and may contain material which is confidential, proprietary, privileged and/or otherwise legally exempt from disclosure. If you are not the intended recipient, any review, retention, copying, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by person or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material and any attachments from your computer and network. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, June 9, 2022 10:59 AM

To: Debbie Nowell <Debbie@ncl-law.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dr. Joe Siragusa <dr.joe@ncchiroboard.com>; Anna Choi <Anna@ncl-law.com>

Subject: RE: [External] FW: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

Hi all,

Thanks for sending this over. The rule looks great, and I will recommend approval to RRC next week.

If I have your OK, I will send this over to Dana for filing.

Thanks,
Brian

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

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Debbie Nowell <Debbie@ncl-law.com>
Sent: Thursday, June 9, 2022 10:50 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dr. Joe Siragusa <dr.joe@ncchiroboard.com>; Anna Choi <Anna@ncl-law.com>
Subject: [External] FW: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi Brian,

I am submitting on behalf of the Board of Chiropractic Examiners Rule .0217 with technical changes made.

Please let me know if you need anything else.

Thanks,

Debbie Nowell
Legal Administrator

Nichols, Choi & Lee, PLLC
4700 Homewood Court
Suite 220
Raleigh, NC 27609
www.ncl-law.com


919.341.2636 **main**
919.341.2722 **direct**
919.647.4485 **fax**
7 **extension**
debbie@ncl-law.com **email**

Confidentiality Notice:

The information transmitted is intended only for the person or entity to which it is addressed and may contain material which is confidential, proprietary, privileged and/or otherwise legally exempt from disclosure. If you are not the intended recipient, any review, retention, copying, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by person or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material and any attachments from your computer and network. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

21 NCAC 10 .0217 is adopted with changes as published in 36:11 NCR 970-972 as follows:

21 NCAC 10 .0217 PROFESSIONAL ENTITIES

(a) A chiropractor who seeks to deliver chiropractic services through a professional corporation or professional limited liability company shall first obtain Board ~~approval for such entity's approval.~~ Prior to approval, the entity shall submit its Articles of Incorporation/Organization to the Board for the purpose of verifying the legal name of the entity. prior to filing such Articles with the Secretary of State.

(b) No proper names of persons other than licensees may be included in the name and all professional entities must include the word "Chiropractor," "Chiropractic," or the name of a licensed chiropractor who is an owner of the professional entity. The name of a professional entity shall not be false or misleading. For the purposes of this rule, "misleading" is defined as possessing the capacity or tendency to create a mistaken understanding or ~~impression.~~ Misleading includes impression including a name that implies services beyond the scope of practice set forth in Art. 8, Chapter 90 of the NC General Statutes. Statutes, or a name that is identical or similar in name to an existing registered business entity.

(c) ~~The professional entity may not be identical or so similar in name to an existing registered business entity as to be misleading.~~ Business entities organized for the ~~primary~~ purpose of providing professional chiropractic services shall not contain the name of an individual unless:

- (1) The named individual is licensed under this statute; or
- (2) The named individual is either a deceased or retired owner of the business, provided that the professional entity has permission to use the name of the deceased or retired owner. Permission shall be obtained from any person or legal entity who has authority to act on behalf of the deceased or retired owner.

(d) The professional entity shall specify its business structure in all printed material and social media by use of the designation "P.C.," "P.A.," or "P.L.L.C."

(e) If a living owner of a professional entity whose surname appears in the entity name becomes a "disqualified person" as defined in G.S. 55B-2, the name of the professional entity shall be changed to comply with G.S. 55B.

(f) A professional entity shall not change its name or operate under an assumed name without first applying to the Board for a determination that the proposed name meets the requirements of this Rule. Requests for name changes and requests to operate under an assumed name shall be submitted in writing to the Board. Requests shall contain the following:

- (1) Name, email address, and phone number of the requesting person;
- (2) Name, email address, and phone number of the incorporating licensee;
- (3) Requested name of the professional corporation; and
- (4) Mailing address of the professional corporation.

Use of an assumed name that has not been registered pursuant to Art. 14A of G.S. 66 shall be prima facie evidence of using a misleading name.

1 *History Note:* *Authority G.S. 90-142(2); 90-154(b)(9); 90-154.2; 90-157.3; 55B-5; 55B-12;*
2 *Eff. July 1, 2022.*

Burgos, Alexander N

Subject: FW: [External] RE: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

From: Anna Choi <Anna@ncl-law.com>

Sent: Tuesday, June 7, 2022 5:46 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] RE: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

Likewise, thank you for your time. I have responded in red below. Please let me know if you have any follow up questions or comments.

Anna

Anna Baird Choi

Nichols, Choi & Lee, PLLC

4700 Homewood Court, Suite 220

Raleigh, NC 27609

www.ncl-law.com

919.341.2636 phone

919.647.4485 fax

anna@ncl-law.com

Confidentiality Notice:

The information transmitted is intended only for the person or entity to which it is addressed and may contain material which is confidential, proprietary, privileged and/or otherwise legally exempt from disclosure. If you are not the intended recipient, any review, retention, copying, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by person or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material and any attachments from your computer and network. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Tuesday, June 7, 2022 3:27 PM

To: Anna Choi <Anna@ncl-law.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

Hi Anna,

Thanks for making time to talk to me today about your rule. It was a pleasure, and I'm glad we were able to settle most of the issues here.

As we discussed, I think the three statutes you mentioned in your written response—90-154(b)(9), 90-142, and 50B-5—provide sufficient statutory authority to regulate the names of professional entities to prohibit misleading names and misleading assumed names. Adding them to your History Note will take care of my concerns. **The additional statutory cites will be added to the revised draft**

Although I believe you do have the statutory authority under the statutes listed above, I did have one last question as to whether the Board understood if the changes to G.S. 90-154(b) in SL 2021-120 were made with the specific intent of prohibiting the Board from regulating in this manner, and as we discussed, you will check with the Board and let me know. **I contacted the Board's Executive Director, Dr. Joe Siragusa, who informed me that the Board asked to have the language re: false advertising removed, including removal of the language that required a disclaimer on advertising, the reason being that the Board felt that the general prohibition against "fraud, deception, or misrepresentation" would still allow such enforcement and the previous language (now removed) was inconsistent and onerous compared with the language used to regulate other professions.**

With respect to (a), thank you for clarifying the licensing process (that both individuals and corporate entities must be licensed by the Board), and letting me know the Board is only asking for the articles in order to verify the legal name of the proposed entity. Adding the language "for the purpose of verifying the legal name of the entity" to the end of the sentence ending on line 6 will clarify the purpose of the requirement and satisfies my concern that the Board was seeking to approve the articles before filing with the SOS. **This will be added.**

As to my question regarding a potential conflict between (b) and G.S. 90-154.2(4), upon further review there is no conflict, and no changes will be necessary.

I'm also fine with the phrase "scope of practice" in (b), line 11, as long as the regulated public understands what this encapsulates, and as you've said, they do. **Correct**

In (c)(2), line 18, you agreed that adding the phrase "...from any person or legal entity who has authority to act on behalf of the deceased or retired owner" to the end of (c)(2) would be fine, and that satisfies my concerns there. **This will be added.**

The only outstanding issue we need to resolve concerns the definition of "misleading." Just after we hung up, it occurred to me that part of the issue is that the definition is spread between two subparagraphs. Would the following formulation work for you?

(b) No proper names of persons other than licensees may be included in the name and all professional entities must include the word "Chiropractor," "Chiropractic," or the name of a licensed chiropractor who is an owner of the professional entity. The name of a professional entity shall not be false or misleading. For the purposes of this rule, "misleading" is defined as possessing the capacity or tendency to create a mistaken understanding or impression **that the entity is duly licensed to practice chiropractic. Misleading includes including** a name that implies services beyond the scope of practice set forth in Art. 8, Chapter 90 of the NC General Statutes, **or a name that is identical or similar in name to an existing registered business entity.**

(c) ~~The professional entity may not be identical or so similar in name to an existing registered business entity as to be misleading.~~ Business entities organized for the primary purpose of providing professional chiropractic services shall not contain the name of an individual unless:

- (1) The named individual is licensed under this statute; or

- (2) The named individual is either a deceased or retired owner of the business, provided that the professional entity has permission to use the name of the deceased or retired owner.

I believe this edit will work for my client. I will follow-up with you if it does not.

Let me know If this captures the intent of the Board and does not change the intended meaning. If so, I have no further issues, and can recommend approval of your rules next week.

Thanks!

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

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

Burgos, Alexander N

From: Liebman, Brian R
Sent: Tuesday, June 7, 2022 3:27 PM
To: Anna Choi
Cc: Burgos, Alexander N
Subject: RE: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

Hi Anna,

Thanks for making time to talk to me today about your rule. It was a pleasure, and I'm glad we were able to settle most of the issues here.

As we discussed, I think the three statutes you mentioned in your written response—90-154(b)(9), 90-142, and 50B-5—provide sufficient statutory authority to regulate the names of professional entities to prohibit misleading names and misleading assumed names. Adding them to your History Note will take care of my concerns.

Although I believe you do have the statutory authority under the statutes listed above, I did have one last question as to whether the Board understood if the changes to G.S. 90-154(b) in SL 2021-120 were made with the specific intent of prohibiting the Board from regulating in this manner, and as we discussed, you will check with the Board and let me know.

With respect to (a), thank you for clarifying the licensing process (that both individuals and corporate entities must be licensed by the Board), and letting me know the Board is only asking for the articles in order to verify the legal name of the proposed entity. Adding the language "for the purpose of verifying the legal name of the entity" to the end of the sentence ending on line 6 will clarify the purpose of the requirement and satisfies my concern that the Board was seeking to approve the articles before filing with the SOS.

As to my question regarding a potential conflict between (b) and G.S. 90-154.2(4), upon further review there is no conflict, and no changes will be necessary.

I'm also fine with the phrase "scope of practice" in (b), line 11, as long as the regulated public understands what this encapsulates, and as you've said, they do.

In (c)(2), line 18, you agreed that adding the phrase "...from any person or legal entity who has authority to act on behalf of the deceased or retired owner" to the end of (c)(2) would be fine, and that satisfies my concerns there.

The only outstanding issue we need to resolve concerns the definition of "misleading." Just after we hung up, it occurred to me that part of the issue is that the definition is spread between two subparagraphs. Would the following formulation work for you?

(b) No proper names of persons other than licensees may be included in the name and all professional entities must include the word "Chiropractor," "Chiropractic," or the name of a licensed chiropractor who is an owner of the professional entity. The name of a professional entity shall not be false or misleading. For the purposes of this rule, "misleading" is defined as possessing the capacity or tendency to create a mistaken understanding or impression that the entity is duly licensed to practice chiropractic. Misleading includes including a name that implies services beyond the scope of practice

set forth in Art. 8, Chapter 90 of the NC General Statutes, or a name that is identical or similar in name to an existing registered business entity.

~~(c) The professional entity may not be identical or so similar in name to an existing registered business entity as to be misleading.~~ Business entities organized for the ~~primary~~ purpose of providing professional chiropractic services shall not contain the name of an individual unless:

- (1) The named individual is licensed under this statute; or
- (2) The named individual is either a deceased or retired owner of the business, provided that the professional entity has permission to use the name of the deceased or retired owner.

Let me know if this captures the intent of the Board and does not change the intended meaning. If so, I have no further issues, and can recommend approval of your rules next week.

Thanks!

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

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Liebman, Brian R
Sent: Wednesday, June 1, 2022 1:06 PM
To: dr.joe@ncchiroboard.com
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Board of Chiropractic Examiners Request for Changes - June 2022 RRC Meeting

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board of Chiropractic Examiners for the June 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 16, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite 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 invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, June 10, 2022.

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

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.