



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

September 23, 2019

John Maddrey
NC Department of Administration
Sent via email only to: John.Maddrey@doa.nc.gov

Re: Objection to Rule 01 NCAC 05B .1520

Dear Mr. Maddrey:

At its meeting on September 19, 2019, the Rules Review Commission objected to the above-captioned Rule in accordance with G.S. 150B-21.10 for lack of statutory authority and ambiguity.

The Commission objected to this Rule for lack of statutory authority as none of the cited authority in the history note of this Rule provides the Department authority to promulgate rules regarding the “debarment” of a vendor as eligibility and ineligibility requirements for vendors are specifically set forth in Statute. Specifically, G.S. 143-59.1 and 143-59.2 address eligibility of vendors. G.S. 143-59.1 sets forth eligibility requirements for foreign vendors. G.S. 143-59.2 indicates when vendors are prohibited from contracting with the State. Because none of the cited authority in the History Note of this Rule gives specific authority regarding debarment or eligibility requirements of vendors, the Commission determined that the agency does not have the authority to create additional grounds for debarment and ineligibility beyond the circumstances set forth in Statute.

Additionally, the Commission objected to this Rule for ambiguity. Specifically, Paragraph (a) of this Rule states that the “SPO may debar the vendor from receiving an award under a State Contract or conducting further business with the State for up to a one year term in accordance with this Rule.” However, while this Rule does provide circumstances upon which this determination may be applicable, this Rule does not provide factors that the SPO is to use in determining whether and for how long a Vendor will be debarred.

Further, it is unclear in Subparagraph (b)(1) what “deliberate failure without good cause” means and how it is to be determined.

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Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amber C. May", with a stylized flourish at the end.

Amber C. May
Commission Counsel

cc: Shanon Gerger



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September 19, 2019

Jeff Gray, Rulemaking Coordinator
Private Protective Services Board
Sent via email only: jgray@bdixon.com

Re: Objection to Rules 14B NCAC 16 .0804, .0901, and .0909
Extension of the Period of Review of 14B NCAC 16 .0110, .0805, .0806, .0807,
.0808, .0809, .0904, and .0906.

Dear Mr. Gray:

At its meeting today, the Rules Review Commission objected to Rules 14B NCAC 16 .0804, .0901, and .0909 in accordance with G.S. 150B-21.10.

The Commission objected to Rule 14B NCAC 16 .0804 for lack of statutory authority and ambiguity. Specifically, the Commission found that Paragraph (a) of the Rule states that there shall be "such further investigation of the applicant as deemed necessary." The Rule does not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the Rule states that any denial of the registration by the Director will be subject to review of the Board. However, G.S. 74C-13(f) requires the Board to determine whether to issue or deny an applicant for a firearm registration permit. The agency did not cite to any authority for the Director to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph.

The Commission objected to Rules 14B NCAC 16 .0901 and .0909 for lack of statutory authority. Specifically, both rules require applicants seeking licensure pursuant to G.S. 93B-15.1 (military trained applicants and spouses of those individuals) to submit application fees. The assessment of an application fee against those individuals is forbidden by G.S. 93B-15.1(k). The Commission found that the agency does not have authority to charge these fees in either rule.

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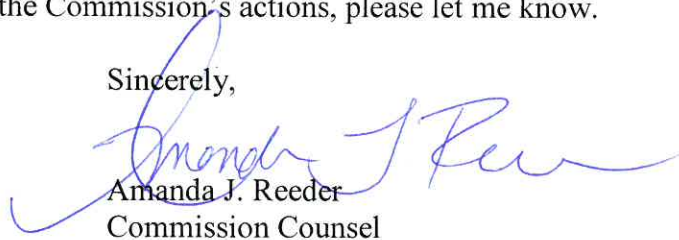
Please respond to the objections in accordance with the provisions of G.S. 150B-21.12.

In addition, the Rules Review Commission extended the period of review for 14B NCAC 16 .0110, .0805, .0806, .0807, .0808, .0809, .0904, and .0906 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the Requests for Technical Changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel

cc: Phillip Stephenson
Charles McDarris



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September 23, 2019

Lynda Elliott
NC Board of Cosmetic Art Examiners
Sent via email only to: lelliott@nccosmeticarts.com

Re: Objection to Rules 21 NCAC 14H .0101 and .0102

Dear Ms. Elliott:

At its meeting on September 19, 2019, the Rules Review Commission objected to the above-captioned Rules in accordance with G.S. 150B-21.10.

The Commission objected to the above referenced Rules for lack of statutory authority as the only cited authority has been repealed.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber C. May
Commission Counsel

cc: Stefanie Kuzdrall

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September 19, 2019

Doug Bocker, Rulemaking Coordinator
North Carolina Board of Dental Examiners
Sent via email only: doug@brockerlawfirm.com

Re: Extension of the Period of Review for Rules 21 NCAC 16V .0101 and .0102

Dear Mr. Bocker:

At its meeting this morning, the Rules Review Commission extended the period of review for Rules 21 NCAC 16V .0101 and .0102 at the request of the agency. Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley B. Snyder
Commission Counsel

Cc: Dauna Bartley, The Brocker Law Firm

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September 19, 2019

Sue Hodgins, Rulemaking Coordinator
North Carolina State Board of Opticians
Sent via email only: shodgin@ncopticiansboard.org

Re: Extension of the Period of Review for Rules 21 NCAC 40 .0104, .0108, .0209, .0314, .0319, and .0325 and Objection to Rules 21 NCAC 40 .0109, .0321, and .0323

Dear Ms. Hodgins:

At its meeting this morning, the Rules Review Commission extended the period of review for Rules 21 NCAC 40 .0104, .0108, .0209, .0314, .0319, and .0325 at the request of the agency. Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rules or call a public hearing on the same within 70 days.

In addition, the Commission objected to Rules 21 NCAC 40 .0109, .0321, and .0323 in accordance with G.S. 150B-21.12 as follows:

- The Commission objected to Rule .0109 for lack of statutory authority, ambiguity, and necessity. Specifically, the Commission objected to Paragraph (b) for lack of statutory authority for use of the language “eligible to vote;” Paragraph (d) for ambiguity related to the make-up of the Election Committee; Paragraph (e) for ambiguity, lack of statutory authority, and necessity related to the nomination process; and Paragraph (f) for lack of statutory authority and necessity for requiring the governor to make appointments to Board vacancies.
- The Commission objected to Rule .0321 for lack of statutory authority and ambiguity. Specifically, the Commission objected to ambiguity for failure to list the Board’s factors for determining or provide a list of the “minimum equipment specified by the Board,” the “curriculum approved by the board,” “any test required by the Board,” and for failure to delineate the scope or purpose of the on-site inspection requirement. The Commission objected for lack of statutory authority for failure to limit the Board’s inspections to ensuring compliance with a training program.

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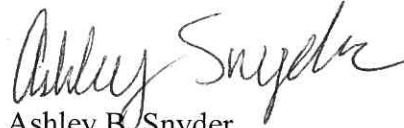
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- The Commission objected to Rule .0323 for ambiguity. Specifically, the Rule is unclear because it does not provide any guidance regarding under what circumstances the Board will conduct a background check. Additionally, the use of the term “applicants” is ambiguous.

Please respond to these objections in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Snyder", written in a cursive style.

Ashley B. Snyder
Commission Counsel

cc: Catherine Lee; Nichols, Choi & Lee, PLLC