



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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

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

June 21, 2012

Meghan Lamphere
2708 Mail Service Center
Raleigh, NC 27699-2708

Re: 10A NCAC 13D .2701

Dear Ms. Lamphere:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned Rule in accordance with G.S. 150B-21.10.

The Commission objected to this Rule based on lack of statutory authority and ambiguity. There is no authority cited for the provisions in (b) and (c) requiring certain credentials or training in order to function in certain required capacities in the facility.

In (b) the facility must have someone with a certain credential to function as a "director of food service," a position the facility must have in order to be licensed. If the person does not have the credential at the time of hiring, then he or she must begin specified training in order to function in that position. There is no authority cited for the agency to require either a licensed or credentialed individual or someone undergo certain training to continue in that position.

In (c) the facility must "employ a licensed dietitian/nutritionist on at least a consultant basis." There is no authority cited for requiring a licensed individual to be employed for a certain position.

Note that the agency has the authority to require a "food service supervisor" for a nursing home facility. And the agency is free to write the requirements or definition of that person so that under the Chapter 90, Article 25, "Dietetics/Nutrition" the person filling that position would be required to be a licensed individual. But the agency is not free to set the qualifications on its own.

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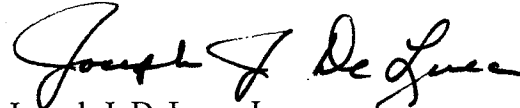
Civil Rights
Division
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An Equal Employment Opportunity Employer

It is unclear what is required by (d). The rule requires the dietitian to "assure the following parameters of nutrition have been addressed and ... interventions by the facility have been met." However it is unclear how the items in (1) – (6), e.g., "laboratory values," are "parameters of nutrition" and how those parameters would lead to "recommended successful interventions by the facility."

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 action, please let me know.

Sincerely,

A handwritten signature in black ink, reading "Joseph J. DeLuca, Jr." in a cursive style.

Joseph J. DeLuca, Jr.
Commission Counsel

JJD:jbe

1 10A NCAC 13D .2701 is adopted as published in NCR 26:15, pp. 1077-1081, as follows:

2
3 **10A NCAC 13D .2701 PROVISION OF NUTRITION AND DIETETIC SERVICES**

4 (a) ~~The A~~ facility shall ensure that each patient is provided with a palatable diet that meets his or her daily
5 nutritional and specialized nutritional needs.

6 (b) The facility shall designate a person to be known as the director of food service who shall be responsible for the
7 facility's dietetic service and for supervision of dietetic service personnel. If this person is not a dietitian, licensed
8 dietitian/nutritionist or a registered dietitian with the Commission on Dietetic Registration, he or she shall meet the
9 criteria for membership in the Dietary Managers Association which is hereby incorporated by reference including
10 subsequent amendments and editions. Copies of criteria may be obtained from the Dietary Managers Association,
11 406 SurrySurrey Woods Drive, St. Charles , IL 60174 at no cost. or it can be accessed online at
12 www.DMAonline.org. If the course has not been completed, this person shall be enrolled in a course and making
13 satisfactory progress for completion within the time limit specified by course requirements. a Certified Dietary
14 Manager who is certified by the Certifying Board of the Dietary Managers, Dietetic Technician Registered, who is
15 registered by the Commission on Dietetic Registration of the American Dietetic Association, or an individual who
16 has met the academic requirements as referenced in G.S. 90-357(3)b.1., c.1. and d., then the person shall enroll in a
17 course of study to obtain these qualifications and make satisfactory progress for completion within the time limit
18 specified by course requirements.

19 (c) If the food service supervisor is not a dietitian, the facility shall employ a licensed dietitian/nutritionist ~~dietitian~~
20 on at least a consultant basis. The consultant shall submit written reports of clinical and food service operation
21 recommendations to the administrator and food service supervisor.

22 (d) The dietitian shall spend sufficient time in the facility to assure the following parameters of nutrition have been
23 addressed and that recommended successful interventions by the facility have been met:

- 24 (1) An analysis of weight loss or gain;
25 (2) Laboratory values;
26 (3) Clinical indicators of malnutrition;
27 (4) Drug therapy that may contribute to nutritional deficiencies;
28 (5) The amount of meal and supplement consumed to meet nutritional needs;
29 (6) Increased nutritional needs related to disease state or deterioration in physical or mental status, i.e.,
30 decubitus, low protein status, inadequate intake, or nutrition provided via enteral or parenteral
31 route.

32 (e) There shall be sufficient dietetic personnel employed ~~competent~~ to meet the nutritional needs of all patients in
33 the areas of therapeutic diets, food preparation and service, principles of sanitation, and resident's rights as related to
34 food services.

35 (f) The facility shall ensure that menus are followed which meet the nutritional needs of patients in accordance with
36 the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National
37 Academy of Sciences which are incorporated by reference, including subsequent amendments. Copies of this

publication can ~~may~~ be obtained by contacting The National Academy Press, ~~2101 Constitution Avenue N.W.,~~
~~Lockbox 285, Washington, D.C., 20055.~~ 500 Fifth St. N.W., Washington, D.C. 20001 or accessing it at
http://www.nap.edu/catalog.php?record_id=1349. ~~Cost of this publication is eighteen dollars and ninety five cents~~
~~(\$18.95) and includes shipping and handling.~~ Menus shall:

- (1) be planned at least 14 days in advance,
- (2) provide for substitutes of similar nutritive value for patients who refuse food that is served, and
- (3) be provided to patients orally or written through such methods as ~~posting,~~ posting and daily
announcements, periodic newsletters, etc. announcements.

(g) Food must be prepared to conserve its nutritive value and appearance.

(h) Food shall be served at the preferred temperature as discerned by the resident and customary practice, in a form
to meet the patient's individual needs and with assistive devices as dictated by the patient's needs. Hot foods shall
leave the kitchen (or steam table) above ~~140~~ 135 degrees F; and cold foods below 41 degrees F; F. and freezer
temperatures at 0 degrees F or below. The freezer must keep frozen foods frozen solid.

(i) If patients require assistance in eating, food shall be maintained at the appropriate temperature until assistance is
provided.

(j) All diets, including enteral and parenteral nutrition therapy, shall be as ordered by the physician or other legally
authorized person, and served as ordered.

(k) At least three meals shall be served daily to all patients in accordance with medical orders.

(l) No more than 14 hours shall elapse between an evening meal containing a protein food and a morning meal
containing a protein food.

(m) Hour-of-sleep (hs) nourishment shall be available to patients upon request or in accordance with nutritional
plans.

(n) Between meal fluids for hydration shall be available and offered to all patients in accordance with medical
orders.

(o) The facility shall have a current online or hard copy nutrition care manual or handbook approved by the
dietitian, medical staff and the Administrator which shall be used in the planning of the regular and therapeutic diets
and be accessible to all staff.

(p) Food services shall comply with Rules Governing the Sanitation of Restaurants and Other Foodhandling
Establishments (15A NCAC 18A .1300) as promulgated by the Commission for Public Health which is are
incorporated by reference, including subsequent amendments, assuring storage, preparation, and serving of food
under sanitary conditions. Copies of these Rules can be ~~obtained, at no charge, by contacting the N.C. Department~~
~~of Environment and Natural Resources, Division of Environmental Health Services, 1630 Mail Service Center,~~
~~Raleigh, NC 27699-1630. accessed online at http://www.deh.enr.state.nc.us/rules.htm.~~

History Note: Authority G.S. 131E-104; 90-368(4)

RRC objection due to lack of statutory authority Eff. July 13, 1995;

Eff. January 1, 1996. 1996;



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June 21, 2012

Chris Hoke, JD
Commission for Public Health
1931 Mail Service Center
Raleigh, NC 27699-1931

Re: 15A NCAC 18A .2653

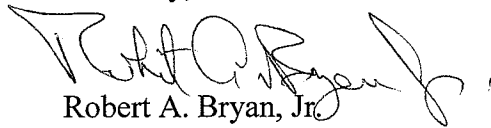
Dear Mr. Hoke:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10.

Item 11, by using "and" and "or" in a list, is ambiguous on its face. It is not clear if it means (1) (2) and (3), or (4); (1) (2), and (3) or (4); or something different.

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 action, please let me know.

Sincerely,



Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

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June 21, 2012

Cathe Evans
Board of Architecture
127 W. Hargett Street #304
Raleigh, NC 27601

Re: 21 NCAC 02 .0204

Dear Ms. Evans:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10.

In Paragraph (c), it is not clear what is meant by "properly described and identified." This objection applies to existing language in the Rule.

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 action, please let me know.

Sincerely,

Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

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June 21, 2012

E. Ann Christian
Board of Athletic Trainer Examiners
P. O. Box 2455
Raleigh, NC 27602

Re: 21 NCAC 03 .0201

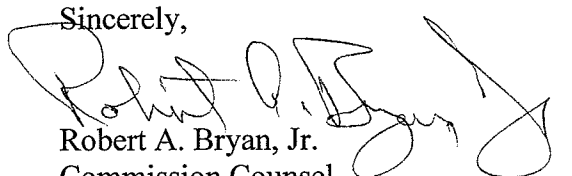
Dear Ms. Christian:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10.

In (4), it is not clear how the Board will determine what is a reasonable charge for duplication services and materials. It is also not clear that the charge will not exceed the "actual cost" for making copies as prohibited by G.S. 132-6.2(b).

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 action, please let me know.

Sincerely,



Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

Administration
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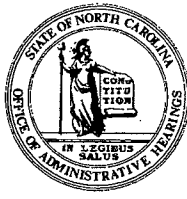
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June 21, 2012

Delores A. Joyner
State Personnel Commission
116 West Jones Street
Raleigh, NC 27603

Re: 25 NCAC 01B .0437, .0438

Dear Ms. Joyner:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0437 based on ambiguity. In Paragraph (c), it is not clear what is meant by "good cause shown." The definition in 25 NCAC 01B is not relevant to the use of the term in this Rule. This objection applies to existing language in the Rule.

The Commission objected to Rule .0438 based on lack of statutory authority. In Paragraphs (a) and (b), there is no authority cited for and award of costs. G.S. 126-4(11) allows an award of witness fees and attorney fees only. In Part (b)(1)(A), there is no authority cited for the State Personnel Commission to award witness fees or legal fees where an Administrative Law Judge finds discrimination, harassment, or orders reinstatement or back pay. G.S. 150B-33(b)(11) gives that authority to the Administrative Law Judge. For contested cases filed on or after January 1, 2012, the Commission no longer hears cases. G.S. 126-4(11) thus no longer applies once a case reaches the Administrative Law Judge level. This objection applies to existing language in the Rule.

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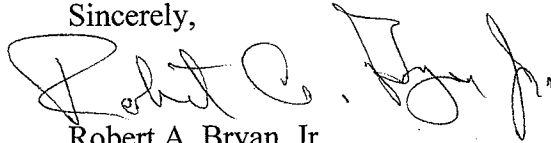
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Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bryan, Jr.", written in a cursive style.

Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc