

Burgos, Alexander N

Subject: FW: [External] RRC Review of NC Board of Examiners in Optometry Rules

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, February 15, 2023 9:32 AM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Janice Peterson <janice@ncoptometry.org>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

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Will do. Thanks.

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, February 15, 2023 9:31 AM
To: Johnny Loper <jloper@loper-law.com>
Cc: Janice Peterson <janice@ncoptometry.org>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

I'm available from 9:45 to 11:30. Just give me a call when you're ready. (984) 236-1938

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, February 15, 2023 9:26 AM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Janice Peterson <janice@ncoptometry.org>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

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Thanks. Let me know when it would be a good time to talk.

Johnny

Burgos, Alexander N

Subject: FW: [External] RRC Review of NC Board of Examiners in Optometry Rules

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Tuesday, February 14, 2023 9:49 PM

To: Johnny Loper <jloper@loper-law.com>

Cc: Janice Peterson <janice@ncoptometry.org>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] RRC Review of NC Board of Examiners in Optometry Rules

Johnny,

That suggestion was thrown together without regard for correct formatting or previous changes. We can talk in the morning to straighten it out. Thank you for constructively working on this. It is much appreciated.

Lawrence R. Duke

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1938

Lawrence.Duke@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.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0101

DEADLINE FOR RECEIPT: Monday, February 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On the "Submission for Permanent Rule" Form, box 9B, what is stated does not appear to apply to the submitted rule. An explanation is necessary and must be related to this Rule.

The format of the Rule submission is not correct. There are templates, instructions, and examples to be found at <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators>.

As the "Rule" text does not directly or substantially affect procedural or substantive rights or duties of a person not on the Board or employed by the Board, how is this a Rule? Paragraph (a) is questionable, so please explain how this is a Rule. Paragraph (b) does not appear to be a Rule. N.C. Gen. Stat. § 150B-2(8a) has the definition of Rule.

Board response: A "rule" is any agency, regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly...or that describes the procedure or practice requirements of an agency." (Emphasis added.) The Optometry Act, in N. C. Gen. Stat. § 90-118(a) and (b), requires that the Board grant licenses only to "applicants who are graduates of an accredited optometry institution...recognized and approved as such by the said Board." This is literally a "practice requirement" of this agency. Even if this were to be considered to be a statement regarding the "internal management of [the] agency" it clearly affects the "procedural or substantive rights" of persons not employed by the agency—potential licensees. See the discussion of "license as property right" below.

Subsection (a) of this rule both interprets and implements the legislative directive found in G.S. 90-118(a) by identifying those schools (or providing the means to identify those schools) whose programs in optometric education the Board deems to be sufficiently strong to justify their graduates being able to request licensure in North Carolina.

Subsection (b) of this Rule is an extension of subsection (a) and, while it could be considered a "standard" within the definition of "Rule", it is also "interpretive" in that it identifies the criteria (or standard) upon which decisions regarding "accreditation" will be made for the purpose of qualifying prospective licensees for actual licensure.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: February 6, 2023

Burgos, Alexander N

Subject: FW: [External] RRC Review of NC Board of Examiners in Optometry Rules

From: Johnny Loper <jloper@loper-law.com>
Sent: Tuesday, February 14, 2023 4:36 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

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Understood, and again, many thanks for the assistance, Lawrence.

Johnny

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Tuesday, February 14, 2023 4:35 PM
To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

Johnny,

I looked at G.S. 90-121.2 closely and agreed with your assessment of the Board's right to impose additional hours of continuing education as a punitive measure. The discretionary nature of "may" is slightly discomfoting, but it seems to be within the Board's power. Therefore, I am fine with the last version Ms. Peterson had sent this past Friday.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Johnny Loper <jloper@loper-law.com>
Sent: Tuesday, February 14, 2023 4:26 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

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Lawrence:

Thanks for this. Great timing....I was just typing an email asking if you had any additional thoughts on this subject.

I know that there was at least one other proposed rule amendment you had questions about— 42B .0303. Will you be providing additional comments on that proposed rule prior to the meeting? (I think that is the only other item you and I had exchanged communications about.)

Again, thanks for your assistance.

Johnny

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Tuesday, February 14, 2023 4:12 PM

To: Janice Peterson <janice@ncoptometry.org>

Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RRC Review of NC Board of Examiners in Optometry Rules

Janice,

Thank you for sending these. Please see attached responses and suggested language for 42D .0102. If you have any questions, please let me know.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

1 21 NCAC 42D .0102 is adopted with changes as published in 37:09 NCR 656-752 as follows:

2
3 **21 NCAC 42D .0102 FUNCTION**

4 ~~(a) [Paraoptometric personnel, whether designated as optometric assistants, optometric technicians, or otherwise,~~
5 ~~perform] The optometric technician performs those [administrative, technical, and clinical] functions within the scope~~
6 ~~of [their] his training, as directed by and assigned to him by an optometrist, so long as those functions are and at the~~
7 ~~specific direction and under the personal supervision of the licensee. [Such functions include but are not limited to~~
8 ~~dispensary activities, testing, and optometric procedures.]~~

9 ~~(b) The optometric assistant performs as an assistant to an optometrist and carries out verbal or written instructions~~
10 ~~in assisting in patient care.~~

11 ~~(c) The optometric laboratory assistant performs at the direction of an optometrist those functions directly related to~~
12 ~~the fabrication of lenses and frames, frame selection, and the dispensing thereof.~~

13 ~~(a) For the purposes of this Rule, “paraoptometric personnel” means an optometric assistant, optometric technician,~~
14 ~~or similarly titled position who qualifies by training and experience to perform duties of an administrative, technical,~~
15 ~~or clinical nature and is directed and supervised by a licensed optometrist.~~

16 ~~(b) Paraoptometric personnel shall perform his or her functions within the scope of his or her training, as directed by~~
17 ~~and assigned by an optometrist, so long as those functions are at the specific direction and under the personal~~
18 ~~supervision of the licensee.~~

19
20 *History Note: Authority G.S. 90-115.1(6); 90-117.5;*

21 *Eff. February 1, 1976;*

22 *Readopted Eff. May 30, 1978;*

23 *Amended Eff. June 1, 1989; September 30, 1981;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*
25 *~~2015.~~ 2015;*

26 *Amended Eff. March 1, 2023.*

Additionally, it is important to recognize for context that a licensee or potential licensee has a property interest in his or her license, and that property interest is protected by both substantive and procedural rights built into the Optometry Act. For example, that property right gives the prospective licensee or licensee the right to a hearing to challenge the Board's action in refusing to grant a license or in suspending or revoking a license to practice optometry. Because the language in subsections (a) and (b) directly affect both a substantive property right (a professional license) and the manner in which that license may be granted or denied (procedure), we believe the proposed Rule fits the definition of a Rule contained in G.S. 150B-2(8)(a).

RRC Response: Paragraph (b) states: "The Board may request a copy of the Accreditation Council of on Optometric Education's accreditation report on each school or college recognized and approved by the Board and for each school or college which has requested recognition and approval or for which the Board is considering recognition and approval." This only states what the Board "may" do as far as requesting a report. Whether or not the Board "may" request a report on an optometry school has no effect on the regulated public or on the licenses of optometrists. It is a statement of internal policy, which does not qualify as a rule. Each paragraph must qualify as a rule independent of the other paragraphs. Otherwise, they should be removed.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42D .0102

DEADLINE FOR RECEIPT: Monday, February 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On the "Submission for Permanent Rule" Form, box 9B, what is stated does not appear to apply to the submitted rule. An explanation is necessary and must be related to this Rule.

The format of the Rule submission is not correct. There are templates, instructions, and examples to be found at <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators>

This Rule effectively repeats the definition from 42D .0101. Is this necessary?

Using "whether..." is ambiguous and unclear. Please delete this phrase or rephrase.

The use of "their" is incorrect. Please change to "his or her".

Delete "by" in "as directed by".

The "so long as" and "include but are not limited to" phrases are unclear and ambiguous. Delete or rephrase. Can this be stated more clearly using an active verb? Do these "requirements" directly or substantially affect the procedural or substantive rights or duties of those whom you are attempting to regulate? It does not seem so.

Board response: As indicated in the Board's response to RRC Counsel's comments regarding Rule 42B .0101, a licensee has a property right in his or her license. Any requirement, prohibition, or restriction on the licensee's license to practice impacts that property right. This rule places restrictions and imposes duties or requirements upon those licensees who use paraoptometric personnel. The rule requires that the optometrist assure that those paraoptometric personnel have been appropriately educated, properly trained by the licensee or other appropriate professionals, that such personnel have sufficient experience in the task or procedure he or she is undertaking, and that the licensee provide the appropriate level of supervision for the specific paraoptometric personnel and the task or procedure at hand. This seems to us to be a sufficient requirement or restriction on the licensee's ability to practice to implicate the licensee's substantive and procedural rights under his or her license to practice.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: February 6, 2023

RRC Response: Please see attached suggested language. The formatting is incorrect and will need to be fixed on your end, but I thought you may want to retain the language highlighted in blue.

Please retype the rule accordingly and resubmit it to our office electronically.

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Friday, February 10, 2023 12:12 PM

To: Janice Peterson <janice@ncoptometry.org>

Cc: Johnny Loper <jloper@loper-law.com>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Yes, you simply edit the form accordingly. For this change, my understanding is that you do not need to go through the comment period, notice of text, etc.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, February 9, 2023 5:06 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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Many thanks, Lawrence. We appreciate the assistance.

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, February 9, 2023 5:04:36 PM
To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Johnny,

I enjoyed getting to speak with you this afternoon. To answer your question as to how to format 42D .0101 as a repeal, please see attached document. Once you have new language for 42D .0102 that incorporates the definition, send it to me and I can give you feedback. One suggestion as to language for paraoptometric personnel's functions: "Examples of this are dispensary activities, testing, and optometric procedures."

Let me know if you have any more questions.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, February 9, 2023 3:06 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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I'll call you at 3:30.

Thanks.

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Thursday, February 9, 2023 2:59 PM

To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>

Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

3:30 is great if it still works for you.

Lawrence R. Duke
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1938
Lawrence.Duke@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Janice Peterson <janice@ncoptometry.org>

Sent: Thursday, February 9, 2023 2:06 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Johnny Loper <jloper@loper-law.com>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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Mr. Duke,

Just double-checking (and not nitpicking) because I'm diligently trying to format properly. I am a bit befuddled regarding the formatting rules and the example of the properly formatted 21 NCAC 42M .0101 that you generously sent. In that rule the numbers that are added and rearranged are strikethroughs and not highlighted. Is that correct? Also, "2015." in the history note is highlighted and a strikethrough. Since "2015;" is added, should that be highlighted and underlined?

I am using your example to properly format the other rules and hope to correctly submit them to you.

Again, thank you.

Janice K. Peterson,
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160

Fax: (910) 285-4546

janice@ncoptometry.org

nd attachment(s).

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Thursday, February 9, 2023 12:09 PM

To: Janice Peterson <janice@ncoptometry.org>

Cc: Johnny Loper <jloper@loper-law.com>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Yes, you are correct.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

From: Janice Peterson <janice@ncoptometry.org>

Sent: Thursday, February 9, 2023 12:04 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Johnny Loper <jloper@loper-law.com>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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Mr. Duke,

Sorry to both again...one other question regarding formatting the rules. For the rules that have been changed from what was published in the Register, should the introductory statement read amended "with changes"?

Thank you.

Janice K. Peterson,
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160

Fax: (910) 285-4546

janice@ncoptometry.org

On Thu, Feb 9, 2023 at 11:52 AM Janice Peterson <janice@ncoptometry.org> wrote:

Thank you, again, Mr. Duke

My concern was since we were rearranging the list to make it alphabetized, if that meant the entire list should be highlighted.

I appreciate your continued assistance.

Janice K. Peterson,
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160

Fax: (910) 285-4546

janice@ncoptometry.org

On Thu, Feb 9, 2023 at 10:55 AM Duke, Lawrence <lawrence.duke@oah.nc.gov> wrote:

il(s) and attachment(s).

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, February 9, 2023 12:11 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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

If 3:30 is more convenient for you, I'll give you a call then.

Thanks.

Johnny

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, February 9, 2023 12:09 PM
To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

That would be fine. Can we plan on 3:30 or 4?

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, February 9, 2023 11:30 AM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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Lawrence:

Would you have a few minutes after 3:00 or so today to give me some additional guidance on how to comply with your instructions and comments on the proposed rules? I'd like to do this to make sure what we do in terms of revisions is responsive and complete. We don't engage in rulemaking very often, and I haven't been involved in a while, so I'm rusty on format and procedure.

Many thanks.

Johnny

Johnny M. Loper
Loper Law, PLLC
1212 Briar Patch Lane
Raleigh, NC 27615

919-390-7749 (DD)

919-390-3342 (F)

jloper@loper-law.com

f the email(s) and attachment(s).

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM
Attachments: 21 NCAC 42M .0101 - EXAMPLE OF FORMATING REQUIREMENTS.docx

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, February 9, 2023 10:56 AM
To: Janice Peterson <janice@ncoptometry.org>
Cc: Johnny Loper <jloper@loper-law.com>; William B. Rafferty, O.D. <exdir@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Ms. Peterson,

Please see attached example of correct formatting. I have taken the liberty of correcting 42M .0101 for this example. You are welcome to use this document; please resave it with a new name if you do.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

1 21 NCAC 42M .0101 is amended as published in 37:09 NCR 656-752 as follows:

2

3 **21 NCAC 42M .0101 DEFINITIONS**

4 As used in this Subchapter:

5 (4)(1) An ~~institution~~ "institution" is a school or college of optometry approved by the Board in accordance
6 with Rule 21 NCAC 42B .0101.

7 (3)(2) A ~~preceptee~~ "preceptee" is an individual who is still enrolled as a student in a school or college of
8 optometry approved by the Board and whose clinical training is continuing under the auspices and
9 control of the institution in which he ~~or she~~ is enrolled and under the ~~personal~~ supervision of the
10 preceptor to which he ~~or she~~ has been assigned by his ~~or her~~ institution.

11 (2)(3) A ~~preceptor~~ "preceptor" is an optometrist, duly licensed in the State of North Carolina, credentialed
12 by the institution(s) for which he is serving as preceptor and who has been approved by the Board
13 to act as such and under whose supervision a preceptee serves.

14 (1)(4) A ~~preceptorship~~ "preceptorship" is a course of study in which students enrolled in a school approved
15 pursuant to Rule 21 NCAC 42B .0101 receive part of their clinical training in a private practice
16 setting outside the direct confines of the educational institution and whose training is continuing
17 under the auspices and overall responsibility of the institution in which he ~~or she~~ is enrolled and
18 under the supervision of a preceptor credentialed by the institution for which he ~~or she~~ is acting as
19 a preceptor and whose credentials have been approved by the board.

20

21 *History Note: Authority G.S. 90-115.1(3); 90-117.5;*

22 *Eff. April 1, 1993;*

23 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*

24 ~~2015~~ 2015;

25 *Amended Eff. March 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Wednesday, February 8, 2023 10:29 AM

To: Janice Peterson <janice@ncoptometry.org>

Cc: jloper@loper-law.com; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; William B. Rafferty, O.D. <exdir@ncoptometry.org>

Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Ms. Peterson,

Thank you for reaching out with your question. On the form that is submitted with each rule there is a box #9. In that box you have several choices under "What prompted this action?" One must be ticked. Then, below that is "9B. Explain." That is where an explanation for the rule change is needed. In that box, give the reasons for the particular amendments to that rule. Then, resubmit the forms along with the rules (once you have made the requested changes). Include your responses to my requests, if any, with that packet when resubmitting the forms and rules.

If you have any further questions, please let me know.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

From: Janice Peterson <janice@ncoptometry.org>

Sent: Tuesday, February 7, 2023 4:05 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: jloper@loper-law.com; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; William B. Rafferty, O.D. <exdir@ncoptometry.org>

Subject: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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Good afternoon, Mr. Duke

We are in the process of reviewing your explanations and comments in your email which we received yesterday. You asked several times that we provide an explanation. Is there a place on the submission form where we should enter that; do we send you an email with the explanation; or what is the preferable way to respond?

Thank you.

Janice K. Peterson,
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160

Fax: (910) 285-4546

janice@ncoptometry.org

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Burgos, Alexander N

From: Johnny Loper <jloper@loper-law.com>
Sent: Monday, February 6, 2023 4:34 PM
To: Duke, Lawrence; janice@ncoptometry.org
Cc: Burgos, Alexander N
Subject: Re: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Follow Up Flag: Follow up
Flag Status: Flagged

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Got it. Thanks. I'll make sure the Rules are sent promptly.

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Monday, February 6, 2023 4:30:31 PM
To: Johnny Loper <jloper@loper-law.com>; janice@ncoptometry.org <janice@ncoptometry.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

You are welcome to attend in person or virtually.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Johnny Loper <jloper@loper-law.com>
Sent: Monday, February 6, 2023 4:29 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; janice@ncoptometry.org
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

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No problem, and thanks.

Can a board representative attend in person, or should I/we attend virtually?

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Monday, February 6, 2023 4:27:47 PM
To: Johnny Loper <jloper@loper-law.com>; janice@ncoptometry.org <janice@ncoptometry.org>

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

Subject: RE: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Please forgive my oversight, I did not attach the file.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Duke, Lawrence

Sent: Monday, February 6, 2023 4:27 PM

To: jloper@loper-law.com; janice@ncoptometry.org

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

Subject: RRC Review of NC Brd. of Examiners in Optometry Rules - 21 NCAC 42BDM

Good evening,

I'm the attorney who reviewed the Rules submitted by the NC State Board of Examiners in Optometry for the February 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, February 16, 2023, 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 Board 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 Monday, February 13, 2023.

In the meantime, please let me know if you have any questions or concerns about these changes.

Thanks,

Lawrence Duke



Council to the North Carolina Rules Review Commission
Office of Administrative Hearings
Lawrence.Duke@oah.nc.gov
(984) 236-1938

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