

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, June 19, 2024 5:37 PM
To: Wally Lovejoy
Cc: Joe Neville; Burgos, Alexander N
Subject: RE: [External] Review of rule adopted by the Board of Examiners in Optometry - 21 NCAC 42D .0102

Thank you for your email.

Pursuant to 26 NCAC 05 .0106, oral presentations shall not exceed 5 minutes. For your convenience, the Rules Review Commission's rules can be found [here](#) which I commend to your reading.

As to why the Board held closed sessions, that is a question best directed to the Board and the question appears to exceed the Rules Review Commission's (RRC) scope of review.

I would also add, respectfully, that most of the issues raised in the June 19, 2024 letter concern policy which, too, exceeds the scope of the RRC's review. Further, the RRC historically has reviewed the "reasonably necessary" prong of G.S. 150B-21.9 narrowly such that it does not wander into consideration of the quality or efficacy of the rule.

That having been said, I am considering the few relevant issues raised and will advise my client accordingly.

Again, thank you for your email.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Wally Lovejoy <wally.lovejoy@gmail.com>
Sent: Wednesday, June 19, 2024 3:01 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Joe Neville <joebneville@gmail.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Review of rule adopted by the Board of Examiners in Optometry - 21 NCAC 42D .0102

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I look forward to being able to provide comments; I will keep it short.
Can you advise if there is a time limit, and whether to expect questions?

Also. I have reviewed the May 7 and the May 16 Board of Optometry minutes.
I was surprised that the entire discussion of the proposed rule in both meetings was in closed session.

Do you happen to know why there was not a public discussion of the revisions made at that time?
Several of the concerns and recommendations that have been made in public comments were never addressed by the Board publicly and we are unable to understand the Board's decision to impose the COPT/COT certification requirement.
Had there been public comment, I believe that the Board would have had the opportunity to learn more about the significant costs and other problems with the rule as adopted that day.

Wally Lovejoy
513-702-6903

On Jun 19, 2024, at 1:18 PM, Peaslee, William W <bill.peaslee@oah.nc.gov> wrote:

Received. Thank you.

William W. Peaslee
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From: Wally Lovejoy <wally.lovejoy@gmail.com>
Sent: Wednesday, June 19, 2024 12:46 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Joe Neville <joebneville@gmail.com>
Subject: [External] Review of rule adopted by the Board of Examiners in Optometry - 21 NCAC 42D .0102

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Mr. Peaslee, I am the chairman of the National Association of Retail Optical Companies.

I would like to speak briefly during the meeting Wednesday June 26 at 10 AM in opposition to the rule noted above, specifically the sections (d) and (e) related to the requirement for certification at an advanced level for assistants who are working without the physical presence of an optometrist.

Our organization is submitting written comments today, and I will summarize those comments and attempt to answer any questions from the Rules Review Commission.

Thank you.
Sincerely,

Wally Lovejoy
513-702-6903

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, June 19, 2024 1:58 PM
To: Burgos, Alexander N
Subject: FW: [External] RE: 21 NCAC 42D .0102 NCRMA comments

William W. Peaslee
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From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, June 19, 2024 1:39 PM
To: andye <andye@ncrma.org>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Janice Peterson <janice@ncoptometry.org>; exdir@ncoptometry.org
Subject: [External] RE: 21 NCAC 42D .0102 NCRMA comments

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Mr. Peaslee:

Mr. Ellen apparently does not understand the nature of our Board or of occupational licensing boards in general in North Carolina. Our Board has never been required to submit a fiscal note because none of its funds are subject to the State Budget Act. None of its funds come from the state: all of its funds are received from its licensees by way of licensing fees and similar fees and not general revenue. As such, none of its funds are "State funds" within the meaning of GS 150B-21.4 or GS 143C-1-1. No "State funds" are ever expended by our Board.

This is true, to my belief, of most if not all of the state's occupational licensing boards, such as the Medical Board. So Mr. Ellen's request to submit the rule to OSBM is misplaced and should be denied out of hand.

Happy to supply clarification or other information if you need it.

Johnny

From: Andy Ellen <andye@ncrma.org>
Sent: Wednesday, June 19, 2024 1:22 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

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

Subject: Re: 21 NCAC 42D .0102 NCRMA comments

Bill -

Thank you for you email.

My apologies for not being as clear as I should have been in my earlier correspondence. Yes, NCRMA would request that the rule - 21 NCAC 42D .0102 - be sent to the Office of State Budget and Management pursuant to G.S. 150B-9 for a determination whether the rule has a substantial economic impact.

Thank you -

Andy Ellen
NC Retail Merchants Association

On Jun 19, 2024, at 1:16 PM, Peaslee, William W <bill.peaslee@oah.nc.gov> wrote:

Good afternoon,

I am in receipt of your comments on behalf of the NCRMA concerning the above captioned rule.

It is unclear whether the NCRMA is requesting that the rule be sent to the Office of State Budget and Management pursuant to G.S. 150B-21.9 for a determination whether the proposed rule has a substantial economic impact.

Thank you in advance for your prompt reply.

William W. Peaslee
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