

Burgos, Alexander N

Subject: FW: [External] RE: August 2023 RRC Request for Changes - 14B NCAC 16
Attachments: 09.2023 - PPSB 14B NCAC 16 .0201 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .0205 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .0403 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .0807 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1101 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1501 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1502 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1601 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1701 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1706 Staff Opinion.doc; 09.2023 - PPSB 14B NCAC 16 .1707 Staff Opinion.doc

From: Gray, Jeffrey <JGray@bdixon.com>
Sent: Thursday, September 7, 2023 4:22 PM
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Subject: [External] RE: August 2023 RRC Request for Changes - 14B NCAC 16

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Brian:

Revised rules attached.

A couple of preliminary matters first before I respond to each Request for Technical Change individually. You state that the changes made due to Public Comment for .1501, .1502 and .1504 were not noted (and also were “substantial.”) It was noted in the Submission for Permanent Rule form that each of these three rules were changed due to Public Comment. Granted, they were not properly formatted to indicate that change, but for .1501 it is not possible to comply with 26 NCAC 02C .0405(b)(1) when it is an adoption and the entire rule is underlined to begin with. Subsection (a)(5) was added. I hopefully now have it formatted correctly. See, my further explanation below. The changes to .1502 are not substantial, either; they were merely a clarification of what was being required by way of referencing existing other requirements. The industry members came up with a more understandable way to word it, and the Board agreed. And as to .1504, it was not substantial either. There are two ways to lawfully engage in Close Personal Protection services: obtain an endorsement on a Private Investigator license that was effective on or before December 1, 2021 OR apply for the license based on experience or based on training. As worded, .1504 could have been interpreted to only apply to someone who is a “licensee” and not a PI with an endorsement. This is not a “substantial” change.

I also have a universal objection to the numerous requests to provide the rule cite that sets forth the contents or substantive requirements of any form. (i.e. G.S. 150B-2(8a)d.) The RRC abandoned this years ago and the policy or practice was that if the form was readily available on an agency’s website where it could be viewed by the public, that would suffice. In many instances the website url. is provided in the body of the rule. I changed every one of this Board, and well as the Alarm Systems Licensing Board’s, rules to conform with this policy, and no one on staff has raised the issue since. Has the RRC formally withdrawn that as a policy or practice?

As to the specific Requests, my responses to each are as below:

14B NCAC 16 .0201

(a), line 4: *See*, my universal objection above. But also, the entirety of this rule sets forth the contents of the application. That is why it is entitled, “Application.”

(a)(1), line 6: The Board does not govern this. The approval is up to the SBI.

(a)(4), lines 15-16: It is two separate fees. This language is the language approved by the RRC when transaction fees and credit card convenience fees were first implemented.

(a)(6), line 21: None of the other requirements have a time limit, why do you think there needs to be a time limit for the credit history? It merely cannot be older than 30 days. Also, everything required must be submitted within 60 days or the application will be deemed incomplete and therefore void pursuant to 14B NCAC 16 .0114.

(b), line 24: *See*, my universal objection above. But also, all the requirements are contained in this rule.

(c), line 28: There is no difference. The technical or correct term is “trainee,” but the industry does not like that word so years ago – long before I represented the Board – “Associate” became the preferred term, as in “Private Investigator Associate.” I always use “trainee” in any legal documents, etc.

(c), line 29: *See*, my universal objection above.

(c), line 35: *See*, my universal objection above.

All other requested changes made.

14B NCAC 16 .0205

(c), line 19: There is no way to define “management position” other than to say, “a person in a position of management.” “Management position” is a universal, known term understood by all.

(d), line 22: If this is the Board’s administrative rule for licensing, is it really necessary to state **who** issues the license? (It certainly is not some other agency like the Board of Nursing, or the Well Drillers.)

All other requested changes made.

14B NCAC 16 .0403

(a), line 6, the supervisor must merely be licensed. The proposed supervisor has to submit a plan of supervision and not have more than five supervisees (i.e. trainees or Associates) at any one time. That is all there is to “approval.” And it is all set forth in the rules.

(a), line 7: Once the person becomes a trainee, the trainee can do anything the license can under the licensee’s supervision so the “other” is any task or activity performed that would constitute private investigation, electronic countermeasures or digital forensics.

(c), line 11: *See*, my universal objection above.

(c), line 11: If the person had no proof of experience, such as proof of retirement from say the Secret Service, or proof of military experience by way of a DD-213 form.

(c), line 12: Although this language has been applied to private investigator trainees for 39 years and no one has misunderstood, I’ve added “by Board staff” to the rule. Requested change made.

(d), line 14: See, my universal objection above.

14B NCAC 16 .0807

Question re: (a) & (b): . You have it backwards. The way it is written ONLY armed security guards have to take the unarmed security guard training prior to obtaining a firearms registration permit. Licensees – which are different from registrants – and are namely PIs and CPPs do not have to take the **unarmed** guard training; only the firearms and legal blocks.

(d), line 21: The 80% score is for the course. The sentence states it is the “firearms range qualification course.” Nowhere in (d) is the word “test” used.

(d), line 22: The placement of the comma indicates that it is the course that is on file.

(d), line 26-27: This sentence means exactly what it says, “all shots shall be located on the target,” as in all shots shall be located on the large piece of paper with a black silhouette of a man on it. It is possible to pass the handgun qualification course and totally miss the paper target one or two times. For the rifle course that is not allowed. All shots must be on the paper.

(e), line 28: “Initial” training is the training in (a), (b), and (c), above, as opposed to recertification.

(j), line 19: Absolutely there are limitations on what firearms may be carried. (That is why .0807 is the longest, most elaborate rule of all of the Board’s rules.) G.S. 74C-13(b)(1) states no firearm may be carried that is not approved by the Board; 14B NCAC 16 .0809 sets forth the approved firearms.

(n), line 11: Absolutely there is a limitation. Subsection (e) of this Section states it must be a **certified trainer** and the entirety of Section .0900 of the Board’s rules is devoted to firearms trainers.

(s), line 30: “Certificate” is correct. A certificate is proof of completion of the training.

All other requested changes made.

14B NCAC 16 .1101

.1701, below, is essentially a mirror image of this rule. However, you requested numerous technical changes to .1701 that were not requested here. Please note that I have made similar changes to this rule to make it (continue to) mirror .1701 as closely as possible.

(1), line 6: Clarification is unnecessary.

(2), lines 16-18: The Director does not approve the individual or educational course. He just must be notified of it.

(3), lines 23-24: There is no set reporting period. The period is however long it takes to acquire the hours.

(3), line 34: The details are just what the rest of the sentence says: What the one-on-one training consisted of, e.g. “I showed the trainee how to conduct surveillance.” “I showed the trainee how to research a person’s social media accounts.”

All other requested changes made.

14B NCAC 16 .1501

Question regarding change made pursuant to Public Comment: The addition is now properly formatted. As stated above, it was not a substantial change. It was discovered that the first aid requirement was included in the rule for obtaining the license by training but was not in the rule for obtaining the license by experience. The industry pointed this out and requested that this requirement be the same for both.

Requested change made.

14B NCAC 16 .1502

Question regarding change made pursuant to Public Comment: The addition is now properly formatted. As stated above, it was not a substantial change. The industry expressed its opinion that it would be more understandable to reference the existing rules for the specified training rather than using broad terms. This is something that you ask be done all the time. The changes merely accomplished this before you made a formal Request.

Request regarding parenthesis: I did not remove the parenthesis. These parentheticals have a specific meaning to the industry, are used in similar rules throughout this Chapter, and the industry are the ones who wrote the rule. You allowed this for the Temporary rules.

All other requested changes made.

14B NCAC 16 .1503

Line 6: "Provision of services" obviously means provision of close personal protection services since that is what the Section .1500 rules address. And "directly related" means directly related to Close Personal Protection and the rule cites the statute that defines what those services constitute.

14B NCAC 16 .1504

(a), line 5: It is not necessary to add the statute to the rule, however, I have added it to the History Note.

14B NCAC 16 .1601

(a)(1), (3) and (4) and 9B): As stated above regarding a similar rule, the Board needs "proof;" documentary proof (not just "I was a digital forensics examiner before Bill Gates was born.")

Question re: (c)(1) & (2), lines 33 and 35: From the course hours themselves. This language mirrors .0401(c) and the "decoder" or conversion for hours is found in .0204(d).

Other requested change made.

14B NCAC 16 .1701

Question regarding sponsor: No one other than a licensee can be a sponsor so its one and the same here. The PI trainee rule (i.e. .1101) is a mirror image of this one. The regulated industry knows the difference.

(3), line 24: As with .1101, above, there is no set period; its however long it takes to get the hours.

(3), line 31: "Immediate" means right then, whenever the Board staff asks for it. This word is used intentionally to make sure that the checklist is kept current; no going back and filing it in after a request to inspect it is made.

All other requested changes made.

14B NCAC 16 .1702

All requested changes made.

14B NCAC 16 .1703

All requested changes made.

14B NCAC 16 .1704

All requested changes made.

14B NCAC 16 .1705

(a)&(b), lines 5 and 7: Same as answer to .1601, above.

14B NCAC 16 .1706

(a), line 4: "Practical experience" is a known descriptive phrase, in common usage, and does not necessitate defining.

Other requested change made.

14B NCAC 16 .1707

First requested change made. The second requested change is unnecessary.

14B NCAC 16 .1708

Requested change made.

14B NCAC 16 .1709

This rule will be substantially re-written to mirror a new rule, .1109, which was noticed in 37:24 NCR 2229 and will be approved at the Board's October 2023 meeting. **.1709 is hereby being withdrawn.** No requested changes made.

If you have questions, or need something further, I am available tomorrow (Friday) and all next week.

Jeff

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