

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: PLANT CONSERVATION BOARD

RULE CITATION: 02 NCAC 48F .0305

RECOMMENDED ACTION:

Approve the technical change to paragraph (c)(4) on page 3 and the remainder of the rule with the exception of sub-paragraph(d)(6) on page 3 lines 9 – 15. You should take no action concerning the change to sub-paragraph (d)(6) as explained below.

COMMENT:

*The attached portion of Session Law 2011-394 in Section 18.(d) states that rules “adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14.” In my opinion the change adopted pursuant to that section is the deletion of the export certification fee in (d)(6) of the rule. This means that you are entitled to review the remainder of this rule under G.S. 150B-21.8 but are not required or entitled to take any action on Paragraph (d) of this rule.*

*If the agency makes the requested change to the rule in paragraph (c)(4) – which I would expect them to do since the statutory cite is incorrect – then you should do as we typically do: approve the amendment and the remainder of this rule except that you take no action concerning sub-paragraph (d)(6).*

*The rule will then be subject to a delayed effective date and legislative review as set out in G.S. 150B-21.3(b1) as though 10 or more objection letters had been received.*

*This “review but take no action” is a procedure that the RRC recently followed in April of this year.*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**SESSION LAW 2011-394  
HOUSE BILL 119**

SECTION 18.(a) Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

SECTION 18.(b) Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.

SECTION 18.(c) Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

SECTION 18.(d) Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

[SL2011-0394 Pages 16 and 17]

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .0102

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In item (16)(b) page 2 line 35 it is unclear what constitutes "healthy air quality." The rule refers to the "Air Quality Color Guide" found on the division's web site (screen print on the next page). However it is not clear whether the agency means only weather color coded as "good" (green) in the far left hand column or would also include the category of "moderate" or even "unhealthy for certain groups."*





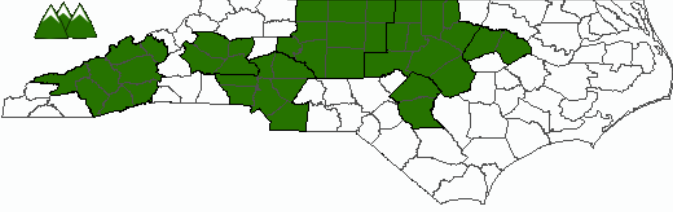

*If you clicked on the color code button itself, you would be taken to another link that gave more explanation. At that site you would find that even air labeled as "moderate" states that "unusually sensitive people" "should consider limiting prolonged outdoor exertion." But while the explanation for "unhealthy" air quality states that "everyone else, especially children, should limit prolonged outdoor exertion" it does not say that children should not be exposed to any outdoor exertion. The language even implies otherwise to me. "Limit" and "prolonged outdoor exertion" does not sound quite the same as a guide to avoiding all outdoor recreation or other activity. If the agency intends to restrict any outdoor activity under the rubric of item (16)'s "if weather conditions permit" then it needs to be more explicit as to which of the five categories listed are included within "healthy air quality."*

*If the agency intends to allow activity even when some might deem the air quality as "moderate" or "unhealthy" it must offer more guidance in its rule to what the child care center is required to do.*

## North Carolina Air Quality Forecast Center

Welcome to the Air Quality Forecast web page. Tomorrow's forecasts are posted each day by 3pm (EDT) and are updated at 10am the next morning, if necessary.

We encourage your feedback of this web page through the survey links found below.

Forecast Links	Previously Observed	Today's Forecast	Tomorrow's Forecast																																													
<a href="#">Web Site Redesign - Short Survey</a> <a href="#">Web Site Redesign - Extended Survey</a> <a href="#">Morning Edition</a> <a href="#">Forecast Discussion</a> <a href="#">Weekend Outlook (Thursday - Saturday)</a> <a href="#">AQ Forecast Center on Facebook</a>  <a href="#">Forecast Emails (Enviroflash)</a>  <a href="#">Printable Forecast Flyers</a> <a href="#">Forecast Tweets</a>  <a href="#">Forecast RSS Feeds (Enviroflash)</a>  <a href="#">Realtime AQ Data Page</a> <a href="#">Charlotte Air Quality Data</a>	<p><b>Air Quality Forecast for Monday, 10/31/2011</b></p>  <p>Last Updated: 10/30/2011 02:52 PM EDT</p>  <table border="1"> <thead> <tr> <th>Forecast Area</th> <th>Ozone AQI</th> <th>PM2.5 AQI</th> <th>Color Code</th> <th>Notices</th> </tr> </thead> <tbody> <tr> <td>Asheville Ridge Tops</td> <td>35</td> <td></td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Asheville Valleys</td> <td>34</td> <td>40</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Charlotte</td> <td>34</td> <td>38</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Fayetteville</td> <td>31</td> <td>30</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Hickory</td> <td>34</td> <td>30</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Rocky Mount</td> <td>26</td> <td>15</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Triad</td> <td>33</td> <td>31</td> <td>CODE GREEN</td> <td></td> </tr> <tr> <td>Triangle</td> <td>31</td> <td>29</td> <td>CODE GREEN</td> <td></td> </tr> </tbody> </table>			Forecast Area	Ozone AQI	PM2.5 AQI	Color Code	Notices	Asheville Ridge Tops	35		CODE GREEN		Asheville Valleys	34	40	CODE GREEN		Charlotte	34	38	CODE GREEN		Fayetteville	31	30	CODE GREEN		Hickory	34	30	CODE GREEN		Rocky Mount	26	15	CODE GREEN		Triad	33	31	CODE GREEN		Triangle	31	29	CODE GREEN	
Forecast Area	Ozone AQI	PM2.5 AQI	Color Code	Notices																																												
Asheville Ridge Tops	35		CODE GREEN																																													
Asheville Valleys	34	40	CODE GREEN																																													
Charlotte	34	38	CODE GREEN																																													
Fayetteville	31	30	CODE GREEN																																													
Hickory	34	30	CODE GREEN																																													
Rocky Mount	26	15	CODE GREEN																																													
Triad	33	31	CODE GREEN																																													
Triangle	31	29	CODE GREEN																																													

*In item (20) page 2 it is unclear what constitutes the "equivalent" of the N.C. Early Educator Certification. There are other rules, e.g. rule .2819(b)(1) and (3)(A), that require having this certification "or its equivalent." Since that equivalency occurs in more than one place it seems as if the standard(s) should be provided here. Note that in item (3) on page 1 at lines 15-16 the agency did define what would establish an equivalency standard for "Basic School-Age Care" training (BSAC training)." It seems they should do the same here.*

*It is likewise unclear if there is any definition at all for the "N.C. Early Childhood Administration Credential" or the standard for "its equivalent" or for "early childhood" as referred to in Rule .2819.*

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .2819

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

COMMENT:

*This rule should be broken into multiple rules and the portions common or applicable to many, if not all, of the seven point levels put into separate rules. The rule is difficult to follow and perhaps unclear in determining the standards that set each "point level" apart. [The rule establishes seven "point levels" to distinguish the level to which the various child care centers can aspire.] The rule is especially difficult to follow in the last sub-sub-paragraphs and the requirements are unclear because they are formatted as lengthy run-on sentences with confusing semicolons and commas rather than formatted as lists. To cite one example: In (d)(5)(B) page 4 lines 20 – 31 it is not clear what the varying alternatives are for the program coordinator to satisfy, especially the hours of experience that are required to meet each alternative.*

*I have requested the above as a technical change since it could be done without changing the meaning, or at least what many people including the agency have probably understood as the meaning and requirement of the rule.*

*If the agency is unwilling to do this I believe the RRC should object to this rule based on ambiguity for the reasons set out above. If the agency is willing to do this and needs additional time I would recommend extending the period of review on this rule.*

*It is also unclear if there is any definition at all for the "N.C. Early Childhood Administration Credential" or the standard for "its equivalent" or for "early childhood" as used throughout this rule. See e.g., (b)(1)(A) for the former and (b)(1)(B) for the latter. Without a definition the meanings for these terms and therefore the qualifications for these various positions are unclear.*

*It also seems to me that the definition of "administrative" (and its variants) duties found in (b)(1)(B) and elsewhere in this rule is unclear. Perhaps it is a term of art that presents no difficulties to the applicants for this position, those who hire, and those who enforce the requirements and rate the centers. If so, the agency needs to assert this position.*

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .2820

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

COMMENT:

*The analysis and opinion applied to the previous rule apply to this one as well. Those comments were:*

*This rule should be broken into multiple rules and the portions applicable to many, if not all, of the point levels put into separate rules. The rule is difficult to follow and perhaps unclear in determining the standards that set each "point level" apart. [The rule establishes seven "point levels" to distinguish the level to which the various child care centers can aspire.] The rule is especially difficult to follow in the last sub-sub-paragraphs and the requirements are unclear because they are formatted as lengthy run-on sentences with confusing semicolons and commas rather than formatted as lists. To cite one example: In (e)(2)(A) and (B) page 2 lines 17 – 25 it is not clear what the varying alternatives are for the program coordinator to satisfy, especially the hours of experience that are required to meet each alternative.*

*I have requested the above as a technical change since it could be done without changing the meaning, or at least what many people including the agency have probably understood as the meaning and requirement of the rule.*

*If the agency is unwilling to do this I believe the RRC should object to this rule based on ambiguity for the reasons set out above. If the agency is willing to do this and needs additional time I would recommend extending the period of review on this rule.*

*It is unclear if there is any definition at all for the "N.C. Early Childhood Administration Credential" or the standard for "its equivalent" as used throughout beginning in (c)(1).*

*It also seems to me that the definition of "administrative" (and its variants) duties found in (c)(1) line 13 and elsewhere in this rule is unclear. Perhaps it is a term of art that presents no difficulties to both the applicants for this position, those who hire, and those who enforce the requirements and rate the centers. If so, the agency needs to assert this position.*

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .2822

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*I have not recommended an objection to this rule as I did the other two rules based on ambiguity in that the rule is too difficult to follow because of its length and the lack of lists further breaking down and making clear the requirements in the sub-sub- paragraphs. This rule can be rewritten or rearranged comparatively easily and probably just as a technical change.*

*However if they do make the changes I requested concerning the other rules, or you object to them for the reasons stated, then the agency may wish to rewrite this rule as well depending on the approach they take concerning the contents of those rules possibly affecting the content of this rule.*

*At the same time there is a problem with the rule.*

*I read the requirement in (b)(3) of "eight additional clock hours of annual ... training" as eight hours total over the five years of experience that is also required in this sub-paragraph. I have asked the agency to verify that the requirement. If the agency responds that the requirement is something other than the way I am reading it – or if any of you read it in a different manner – then the rule is ambiguous and you should object to it.*

*I also believe the requirement in (e)(1) is unclear. I will rewrite the rule in a list requirement as I understand it (using abbreviations not found in the rule):*

- (e)... operator shall have completed:*
  - (1) Either:*
    - (A) The NCFCC or its equivalent; or*
    - (B) Level 1 certification on the ECE scale; and*

*Now, here is where I begin to get confused. I believe the rule is intended to be read, based on my initial reading of it:*

- (e)... operator shall have completed:*
  - (1) Either:*
    - (A) The NCFCC or its equivalent; or*
    - (B) Level 1 certification on the ECE scale; and*
  - (2) Twelve semester credit hours in ... development (not including ... coursework); and either*
    - (A) Two of the twelve hours must be in ECE or in child care administration; or*
    - (B) One year verifiable early childhood work experience.*

*However I believe that it is a possible reading of the rule as follows:*

- e)... shall have completed:*
  - (1) Either:*
    - (A) The NCFCC or its equivalent; or*
    - (B) Level 1 certification on the ECE scale; and*
  - (2) Either:*
    - (A) Have completed 12 semester credit hours in ... development (not including ... coursework) and two of the twelve hours must be in ECE or in child care administration; or*
    - (B) Have one year verifiable early childhood work experience.*

*The same difficulty and ambiguity in reading applies to (f)(1).*



## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0102

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

In (1), it is not clear what ethical customs have been defined by the North Carolina Medical Board. There is no authority cited to do so outside of rulemaking.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

There is no authority cited for the Board to adopt Items (1) through (5) and (7) of this Rule.

Items (6), (8) and (9) basically just repeat portions of G.S. 55B-6, 55B-7, 55B-8 and 55B-14 and thus are not necessary to be included in the rules.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

**§ 55B-6. Capital stock.**

(a) Except as provided in subsections (a1) and (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer shares of stock issued to the shareholder only to another licensee. No share or shares of any stock of a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, 89E, and 89F, for nonlicensed employees of the corporation to own not more than one-third of the total issued and outstanding shares of the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to the nonprofessional transferee. The issuance or transfer of any share of stock in violation of this section is void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any of the stock of a professional corporation.

(a1) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

- (1) Licensees continue to own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
- (2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void. (1969, c. 718, s. 6; 1977, c. 855, s. 1; 1989, c. 258; 1991, c. 179, s. 1; c. 205, s. 3; 1995, c. 351, s. 16; 1999-440, s. 1; 2000-115, s. 5.)

**§ 55B-7. Death or disqualification of a stockholder or employee.**

(a) If any officer, shareholder, agent or employee of a corporation organized under this Chapter who is a licensee becomes legally disqualified to render professional services within this State, he shall sever all employment with, and financial interest in, such corporation forthwith. A corporation's failure to comply with this provision shall constitute grounds for the forfeiture of its certificate of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the Secretary of State, the Secretary of State shall forthwith certify that fact to the Attorney General for appropriate action to dissolve the corporation.

(b) A professional corporation shall report to the appropriate licensing board the death of any of its shareholders within 30 days thereafter. Within one year of the date of such death, all of the shares owned by such deceased shareholder shall be transferred to and acquired by the professional corporation or persons qualified to own such shares. In the absence of an agreement which determines the equitable value of the shares, then the price for such shares shall be the fair market value of the stock, but not less than the book value as of the end of the month immediately preceding the death or disqualification. Notwithstanding any other provisions of this Chapter, the shares of stock owned by such deceased shareholder may be owned and held by the person or persons who may be legally entitled to receive such shares for a period of one year after the death of such deceased shareholder, or in the case of the death of the owner of all the shares of such corporation, for such period of time as may be necessary to liquidate the corporation. (1969, c. 718, s. 7.)

**§ 55B-8. Rendition of professional services.**

A professional service corporation may render professional services only through its officers, employees and agents who are duly licensed to render such professional services; provided, however, this provision shall not be interpreted to include in the term "employee," as used herein, clerks, secretaries, bookkeepers, technicians and other assistants who are not considered by law to be rendering professional services to the public. (1969, c. 718, s. 8.)

**§ 55B-14. Types of professional services.**

(a) A professional corporation shall render only one specific type professional service, and such services as may be ancillary thereto, and shall not engage in any other business or profession; provided, however, such corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other type of investments.

(b) Notwithstanding subsection (a) of this section, in the case of architectural, landscape architectural, engineering or land surveying, geological, and soil science services, as defined in Chapters 83A, 89A, 89C, 89E, and 89F respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession.

(c) A professional corporation may also be formed by and between or among:

- (1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services.
- (2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the

respective stockholders are licensed, certified, or otherwise approved to provide.

- (3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related services.
- (4) A physician, a licensed psychologist, a licensed clinical social worker, or each of them and a certified clinical specialist in psychiatric and mental health nursing, a licensed marriage and family therapist, a licensed professional counselor, or each of them, to render psychotherapeutic and related services that the respective stockholders are licensed, certified, or otherwise approved to provide.
- (5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to provide.
- (6) A physician practicing anesthesiology and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide.
- (7) A physician and an audiologist who is licensed under Article 22 of Chapter 90 of the General Statutes to render audiological and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide.
- (8) A physician practicing ophthalmology and an optometrist who is licensed under Article 6 of Chapter 90 of the General Statutes to render either or both of ophthalmic services and optometric and related services that the respective stockholders are licensed, certified, or otherwise approved to provide.
- (9) A physician practicing orthopedics and a podiatrist who is licensed under Article 12A of Chapter 90 of the General Statutes to render either or both of orthopedic services and podiatric and related services that the respective stockholders are licensed, certified, or otherwise approved to provide. (1969, c. 718, s. 14; 1971, c. 196, s. 2; 1973, c. 1446, s. 9; 1985, c. 251; 1991, c. 205, s. 4; 1995, c. 382, s. 1; 1997-421, s. 1; 1997-500, s. 1; 1999-136, s. 1; 2000-115, s. 6; 2001-487, s. 40(e); 2003-117, s. 4; 2006-144, s. 3.1; 2007-451, s. 2(a).)

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0106

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

There is no authority cited for the agency to adopt this Rule.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

#### **§ 55B-6. Capital stock.**

(a) Except as provided in subsections (a1) and (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer shares of stock issued to the shareholder only to another licensee. No share or shares of any stock of a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, 89E, and 89F, for nonlicensed employees of the corporation to own not more than one-third of the total issued and outstanding shares of the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to the nonprofessional transferee. The issuance or transfer of any share of stock in violation of this section is void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any of the stock of a professional corporation.

(a1) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

- (1) Licensees continue to own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
- (2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void. (1969, c. 718, s. 6; 1977, c. 855, s. 1; 1989, c. 258; 1991, c. 179, s. 1; c. 205, s. 3; 1995, c. 351, s. 16; 1999-440, s. 1; 2000-115, s. 5.)

**§ 55B-12. Application of regulations of licensing boards.**

A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the licensing board as herein defined. Nothing in this Chapter shall impair the disciplinary powers of any licensing board applicable to a licensee as herein defined. No professional corporation may do any act which its shareholders as licensees are prohibited from doing. (1969, c. 718, s. 12.)



## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0107

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

The authority for this Rule was repealed in 1991. There is no longer a need to have a rule listing an agency's forms.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0108

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

There is no authority cited for this Rule as written. There is no fee set in G.S. 55B-10 or 55B-11 for registration or renewal of a certificate of authority to transact business. In order to obtain a certificate of authority to transact business pursuant to G.S. 55B-16, a foreign corporation must have a certificate of registration, but there is no separate fee for the certificate of authority to transact business.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

**§ 55B-10. Registration with licensing board.**

No professional corporation shall open, operate, or maintain an establishment for any of the purposes set forth in this Chapter without first having obtained a certificate of registration from the licensing board or boards. Applications for such registration shall be made to the licensing board or boards in writing and shall contain the name and address of the corporation and such other information as may be required by the licensing board or boards. If the board finds that no disciplinary action is pending before the board against any of the licensed incorporators, officers, directors, shareholders or employees of such corporation, and if it appears that such corporation will be conducted in compliance with the law and the regulations of the board, the board shall issue, upon the payment of a registration fee, not to exceed fifty dollars (\$50.00), a certificate of registration which shall remain effective until January 1 following the date of such registration or until such other expiration or renewal date as may be established by law or by the regulations of the licensing board. (1969, c. 718, s. 10.)

**§ 55B-11. Renewal of certificate of registration.**

Upon written application of the holder, accompanied by a fee not to exceed the sum of twenty-five dollars (\$25.00), the licensing board shall renew the certificate of registration of a professional corporation as required by law or the regulations of the licensing board if the board finds that the corporation has complied with its regulations and the provisions of this section. If the corporation does not apply for renewal of its certificate of registration within 30 days after the date of the expiration of such certificate, the certificate of registration shall be automatically suspended and may be reinstated within the calendar year upon the payment of the required renewal fee plus a penalty of ten dollars (\$10.00), if such corporation is then otherwise qualified and entitled to a renewal of its certificate of registration. (1969, c. 718, s. 11.)

**§ 55B-16. Foreign professional corporations.**

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

- (1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;
- (2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;
- (3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;
- (4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;
- (5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and
- (6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a

certification by the appropriate licensing board that each individual is a "licensee" as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a "foreign professional corporation" as defined in G.S. 55B-16(b).

(b) For purposes of this section, "foreign professional corporation" means a corporation for profit that:

- (1) Is incorporated under a law other than the law of this State;
- (2) Is incorporated for the purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and
- (3) Has as its shareholders only individuals who:
  - a. Qualify to hold shares of a corporation organized under this Chapter;
  - b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation;
  - c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate; or
  - d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own not more than forty-nine percent (49%) of the stock in the professional corporation as long as:
    1. Individuals who meet the requirements of sub-subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
    2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

(c) A foreign professional corporation with a valid certificate of authority has the same but no greater rights and privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 do not apply. (1995, c. 351, s. 18; 1997-485, s. 23; 1999-440, s. 2.)

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: NC MEDICAL BOARD

RULE CITATION: 21 NCAC 32C .0109

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

There is no authority cited for the agency to adopt this Rule.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

**§ 55B-16. Foreign professional corporations.**

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

- (1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;
- (2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;
- (3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;
- (4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;
- (5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and
- (6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a "licensee" as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a "foreign professional corporation" as defined in G.S. 55B-16(b).

(b) For purposes of this section, "foreign professional corporation" means a corporation for profit that:

- (1) Is incorporated under a law other than the law of this State;
- (2) Is incorporated for the purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and
- (3) Has as its shareholders only individuals who:
  - a. Qualify to hold shares of a corporation organized under this Chapter;
  - b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation;
  - c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate; or
  - d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own not more than forty-nine percent (49%) of the stock in the professional corporation as long as:

1. Individuals who meet the requirements of sub-subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

(c) A foreign professional corporation with a valid certificate of authority has the same but no greater rights and privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 do not apply. (1995, c. 351, s. 18; 1997-485, s. 23; 1999-440, s. 2.)

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .0107

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
- x Unnecessary
  - Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

This rule only deals with the internal management of the agency and is not necessary to be included in the N.C. Administrative Code G.S. 150B-2(8a)a. exempts from the definition of "rule" for purposes of the Administrative Procedure Act "[s]tatements concerning only the internal management of an agency...if the statement does not affect the procedural or substantive rights or duties of a person not employed by the agency..." This rule appears to only affect Board members and would be more appropriately included in a set of bylaws.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL



**§ 87-18. Organization meeting; officers; seal; rules; employment of personnel; acquire property.**

The Board shall, within 30 days after its appointment, meet in the City of Raleigh and organize, and elect a chairman, secretary, and treasurer, each to serve for one year. Thereafter the officers shall be elected annually. The secretary and treasurer shall give bond approved by the Board for the faithful performance of their duties in the sum as the Board may, from time to time, determine. The Board shall have a common seal, shall formulate rules to govern its actions, and is hereby authorized to employ personnel as it may deem necessary to carry out the provisions of this Article. The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. (1931, c. 52, s. 3; 1939, c. 224, s. 2; 1953, c. 254, s. 1; 2001-270, s. 1.)

**§ 150B-2. Definitions.**

As used in this Chapter,

- (1) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1b) "Adopt" means to take final action to create, amend, or repeal a rule.
- (1c) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.
- (1d) "Commission" means the Rules Review Commission.
- (2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession,

occupation, or field of endeavor that is issued by an occupational licensing agency.

- (4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.
- (5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.
- (6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business.
- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
  - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
  - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.
  - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.
  - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- (8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.
- (9) Repealed by Session Laws 1991, c. 418, s. 3. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b.)

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .0301

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

There does not appear to be authority for the provisions in (d), (e), (f) and (i) that allow a person to obtain a license without passing an examination. G.S. 87-21(b)(3) requires the Board to give an examination and issue a license as a result of the examination. G.S. 87-21(b)(4) does make an exception and allows the Board to either provide an examination for fire sprinkler contracting or accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technicians, Level III, subfield of Automatic Sprinkler System Layout. None of these paragraphs require that certification.

In (i), it is not clear what is mean by "an Authority Hearing Jurisdiction."

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

**§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.**

(a) Definitions. – For the purpose of this Article:

- (1) The word "plumbing" is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.
- (2) The phrase "heating, group number one" shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.
- (3) The phrase "heating, group number two" means an integral system for heating or cooling a building consisting of an assemblage of interacting components producing conditioned air to raise or lower the temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air. Systems installed in single-family residences are included under heating group number three, regardless of size. Holders of a heating group number three license who have heretofore installed systems classified as heating group number two systems may nevertheless service, replace, or make alterations to those installed systems until June 30, 2004.
- (4) The phrase "heating, group number three" shall be deemed and held to be a direct heating or cooling system of a building that raises or lowers the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger using an air distribution system of ducts and having a mechanical refrigeration capacity of 15 tons or less. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 degrees Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.
- (5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.
- (6) The word "contractor" is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.

- (7) The word "heating" shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.
  - (8) Repealed by Session Laws 1997-298, s. 1.
  - (9) The word "Board" means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
  - (10) The word "experience" means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.
  - (11) The phrase "fire sprinkler" means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.
- (b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License.

- (1) In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings.
- (2) The Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used to supply fuel to any systems, equipment, or appliances located inside the premises.

The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

- (3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall

give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required. Prior to taking the examination, the applicant may be required by the Board to establish that the applicant is at least 18 years of age and is of good moral character. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience.

- (4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.
- (5) The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. The Board is also authorized to issue a certificate of license limited to one or more restricted classifications that are established pursuant to this section.
- (6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any

examination shall not be reexamined until after 90 days from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail any part of the examination three times to receive additional education before the applicant is allowed to retake the examination or wait one year before retaking any portion of the examination.

(c) To Whom Article Applies. - The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing, heating or air conditioning, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system. Minor repairs or minor replacements within the meaning of this subsection shall include the replacement of parts in an installed system which do not require any change in energy source, fuel type, or routing or sizing of venting or piping. Parts shall include a compressor, coil, contactor, motor, or capacitor.

(c1) Exemption. - The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person (i) is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or a full-time employee of either, (ii) obtains an inspection by the local inspections department and (iii) performs the assembly according to the State Plumbing Code.

(c2) Exemption. - The provisions of this Article shall not apply to electric generating facilities that are subject to G.S. 62-110.1 or that provide power sold at wholesale that is regulated by the Federal Energy Regulatory Commission.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired December 31, 1991.

(e) Posting License; License Number on Contracts, etc. - The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar (\$10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired December 31, 1993.



(i) The provisions of this Article shall not apply to a retailer, as defined in G.S. 105-164.3(35), who, in the ordinary course of business, enters into a transaction with a buyer in which the retailer of a water heater sold for installation in a one- or two-family residential dwelling contracts with a licensee under this Article to provide the installation services for the water heater if the retail sales and installation contract with the buyer is signed by the buyer, the retailer, and the licensee and bears the licensee's license number and telephone number. All installation services rendered by the licensee in connection with any such contract must be performed in compliance with all building code, permit, and inspection requirements.

(j) The provisions of this Article shall not apply to a person primarily engaged in the retail sale of goods and services who contracts for or arranges financing for the sale and installation of a single-family residential heating or cooling system for which a license to install such system is required under this Article, provided all of the following requirements are met:

- (1) No contract or proposal for sale or installation may be presented to or signed by the buyer unless either (i) the specifications for and design of the system have been first reviewed and approved by an employee of the retail seller who is licensed under this Article or (ii) the specifications for and design of the system have been first reviewed and approved by the person licensed under this Article who will install the system, if the installer is not an employee of the retail seller. This subdivision does not prohibit the retailer from providing a written estimate to a potential buyer so long as no contract or proposal for contract is presented or signed prior to the review and approval required by this subsection.
- (2) The person installing the system is licensed under this Article.
- (3) The contract for sale and for installation is signed by the buyer, by an authorized representative of the retail seller, and by the licensed contractor and contains the contractor's name, license number, and telephone number and the license number of the person approving the system design specifications.
- (4) Installation services are performed in compliance with all applicable building codes, manufacturer's installation instructions, and permit and inspection requirements.
- (5) The retailer provides, in addition to any other warranties it may offer with respect to the system itself, a warranty for a period of at least one year for any defects in installation.

(k) The provisions of subsections (i) and (j) of this section shall not apply to a system meeting the definition of subdivision (a)(11) of this section. (1931, c. 52, s. 6; 1939, c. 224, s. 3; 1951, c. 953, ss. 1, 2; 1953, c. 254, s. 2; 1967, c. 770, ss. 1-6; 1971, c. 768, ss. 2-4; 1973, c. 1204; 1979, c. 834, ss. 4-7; 1981, c. 332, s. 1; 1983, c. 569, ss. 1, 2; 1989, c. 623, s. 1; 1989 (Reg. Sess., 1990), c. 842, s. 3; c. 978, s. 2; 1991, c. 355, s. 1; c. 507, s. 1; c. 761, s. 13; 1993, c. 78, s. 1; 1997-298, s. 1; 1997-382, ss. 1, 4; 2001-270, s. 2; 2002-159, s. 36(a); 2003-2, s. 1; 2003-31, ss. 1-3.1; 2004-203, s. 69; 2005-131, s. 1; 2005-289, s. 3.)

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .0306

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

There does not appear to be authority for the provision in (h) that applicants for licensure in the Residential Fire Sprinkler Installation Contractor classification must hold an active Plumbing Class I or Class II Contractor license for a minimum of three years. G.S. 87-21(b)(3) limits experience that can be required to two years.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .0505

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

In (e) and (f), there is no authority cited for this board to determine what a Licensed Professional Engineer is required to do.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .0516

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

There is no authority cited for this board to determine what a Licensed Professional Engineer is required to do.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: BOARD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPRINKLER  
CONTRACTORS

RULE CITATION: 21 NCAC 50 .1401

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☐ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

It is not clear what standards the Board will use in approving continuing education classes. There do not appear to be any standards in the rules.

ROBERT A. BRYAN, JR.  
COMMISSION COUNSEL