

NORTH CAROLINA REGISTER

VOLUME 37 • ISSUE 18 • Pages 1200 – 1920

March 15, 2023

I. IN ADDITION

License and Theft Bureau - Public Notices of License Application Submissions 1866 – 1869

II. PROPOSED RULES

Agriculture and Consumer Services, Department of

Agriculture, Board of..... 1870 – 1873

Health and Human Services, Department of

Medical Care Commission..... 1873 – 1882

Public Safety, Department of

Private Protective Services Board..... 1882 – 1889

Occupational Licensing Boards and Commissions

Nursing, Board of..... 1889 – 1902

Optometry, Board of Examiner in..... 1902 – 1903

Real Estate Commission..... 1903 – 1909

III. RULES REVIEW COMMISSION..... 1910 – 1920

PUBLISHED BY

The Office of Administrative Hearings

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings

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116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Julie Ventaloro, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0694

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

919-715-2925

mjackson@nclm.org

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Raleigh, North Carolina 27611

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NORTH CAROLINA REGISTER
Publication Schedule for January 2023 – December 2023

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Bellwether Manufacturing LLC

Applicant's Address: 203 N Frontage Road, Winfield TX 75493

Application Date: 10/31/22

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

Lee Webb Owner

Elizabeth Webb Owner

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: CHAMPION HOME BUILDERS INC

Applicant's Address: 349 E RAILROAD ST PEMBROKE NC 28372

Application Date: 02/10/2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

MARK J. YOST	CEO & PRESIDENT
LAURIE M. HOUGH	EVP, CFO & TREASURER
ROBERT M. SPENCE	SVP, GC & SECRETARY
TIMOTHY BURKHARDT	VP & CONTROLLER

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: KTM North America Inc

Applicant's Address: 1119 Milan Ave, Amherst, OH 44001

Application Date: July 17, 2022

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

John Hinz CEO

Diane Roth CFO

Elisabeth Steinacker Sec

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Nikola Corporation

Applicant's Address: 4141 E Broadway Road, Phoenix, AZ 85040-8803

Application Date: 10/17/2022

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

Mark Russell CEO

Kim Brady CFO

Britton Worthen CLO

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rule cited as 02 NCAC 52B .0214.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

Proposed Effective Date: July 1, 2023

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing to Anna Hayworth, NCDA&CS Rulemaking Coordinator at rulesreview@ncagr.gov.

Reason for Proposed Action: After review and careful consideration, as well as industry input, the current rule as written is unnecessarily burdensome on rabbit producers and has a negative impact on the rabbit exhibition industry and stakeholders in North Carolina. The North Carolina Rabbit Breeders Association has indicated to the NCDA&CS Veterinary Division that the Certificate of Veterinary Inspection (CVI) requirement for animals originating from Rabbit Hemorrhagic Disease Virus-2 (RHDV2) positive states for exhibition purposes is unnecessarily burdensome due to the lack of veterinarians willing to provide CVIs in a cost-effective manner. In order to protect the RHDV2-negative status of North Carolina's domestic and wild rabbit populations, the NCDA&CS Veterinary Division wishes to waive the CVI and entry permit requirements for exhibition purposes if a USDA accredited veterinarian performs a health assessment outside of the exhibition/show venue prior to any commingling of animals from other origins, and prior to entry of the exhibition/show venue, and the exhibition/show administrators, upon request from the NCDA&CS Veterinary Division, shall provide the name, address, phone number and number of animals for every participant in the exhibition/show for NCDA&CS disease epidemiological investigation and testing purposes.

Comments may be submitted to: Anna Hayworth, 1002 Mail Service Center, Raleigh, NC 27699; phone (984) 236-4509; email anna.hayworth@ncagr.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules

Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 52 - VETERINARY

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

02 NCAC 52B .0214 IMPORTATION REQUIREMENTS: RABBITS, OR ANY SPECIES IN THE ORDER LAGOMORPHA, INCLUDING HARES AND PIKAS

(a) An import permit from the State Veterinarian is required for the importation of a rabbit, or any species in the order of Lagomorpha, including hare and pika, into the State of North Carolina originating from:

- (1) any country or state with Rabbit Hemorrhagic Disease Virus-2 ("RHDV-2") detected; or
- (2) a state or country without RHDV-2 if the animal makes any intervening stop in a country or state with RHDV-2 detected, if the animal is commingled or exposed to any other animal in the order of Lagomorpha not being shipped directly from the point of origin together, or if the imported rabbit is exposed to materials such as cages, beddings, and supplies that have been in contact with another animal in the order of Lagomorpha not shipped directly from the point of origin together.

(b) The import permit application shall be accompanied by an official health certificate certifying the animal to be free from any contagious animal disease, including RHDV-2, as follows:

- (1) If the animal is shipped directly without any intervening stops, without commingling or exposure to any other animal in the order of Lagomorpha not being shipped directly from the point of origin together, and without exposure to materials such as cages, beddings, and supplies that have been in contact with another animal in the order of Lagomorpha not shipped directly from the point of origin together, then the official health certificate shall be obtained within 7 days of the date of importation into North Carolina.
- (2) If the animal is shipped with intervening stops, with commingling or exposure to another animal in the order of Lagomorpha not being shipped directly from the point of origin together, or with exposure to materials such as cages, beddings, and supplies that have been in contact with another animal in the order of Lagomorpha not shipped directly from the point of origin together, then the official health certificate shall be obtained from the location of the last intervening stop, commingling, or exposure, and within 7 days of the date of importation into North Carolina.

(c) No permit is needed for rabbits, or any species in the order of Lagomorpha, including hare and pika, brought into the State on a temporary basis for the sole purpose of seeking veterinary services by a North Carolina licensed veterinarian, lasting only until the end of the veterinary service visit, and the animal is brought directly to the veterinary clinic and departs from the veterinary clinic to the originating state with no intervening stops.

(d) The application for a importation shall include the state of origin, health certificate inspection date, the owner's name, address, and phone number at the time of import, the import destination within the State of North Carolina, the name, address, and phone number of the person with control and responsibility over the animal at the import destination, and any federal licensing, permit, and documentation required for the importation of the animal if imported from outside of the United States of America.

(e) A rabbit, or any species in the order of Lagomorpha, including hare and pika, requiring an import permit that is imported into North Carolina shall be accompanied by an official health certificate with the import permit number and shall be made available for inspection by the State Veterinarian or his or her designee upon request.

(f) An intervening stop is defined as a stop in a country or state longer than 24 hours but less than 10 days. The location of any stop for longer than 10 days shall be deemed the new country or state of origin.

(g) Health certificates issued outside of the United States shall be issued in English and by a veterinarian with a valid license to practice veterinary medicine in the country of export.

(h) The requirement for an entry permit and official health certificate are waived for a rabbit, or any species in the order of

Lagomorpha, including hare and pika, for exhibitions/shows that adhere to the following guidelines:

- (1) A licensed and USDA accredited veterinarian performs a health assessment outside of the exhibition/show venue prior to any commingling of animals from other origins, and prior to entry of the exhibition/show venue. If an animal is found to exhibit any symptoms consistent with RHDV2 that animal as well as any cohorts (same origin/traveled together/commingled) will be excluded from the exhibition/show and must return directly to the origin location.
- (2) The exhibition/show administrators, upon request from the NCDA&CS Veterinary Division, shall provide the name, address, phone number and number of animals for every participant in the exhibition/show for NCDA&CS disease epidemiological investigation and testing purposes.

Authority G.S. 106-317.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 52J .0903, .0904 and amend the rules cited as 02 NCAC 52J .0901 and .0902.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

Proposed Effective Date: July 1, 2023

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing to Anna Hayworth, NCDA&CS Rulemaking Coordinator at rulesreview@ncagr.gov.*

Reason for Proposed Action: *The changes to the rules for 02 NCAC 52J 900 are necessary because of the statutory changes made to NCGS §§ 19A- 67 and 68 in the NC 2021-2022 Budget. Those statutory changes modified the Animal Support Fund from a reimbursement fund for damages during a natural disaster or the closing of an animal shelter to a fund to provide grants for counties to implement corrective actions for compliance with the Animal Welfare Act. The previous rules were based on reimbursement of funds and were not applicable to the new language of grant funding. In addition, the expenses allowed by the new language were different that the previous statutes so the rules need to be changed to reflect the new language.*

Comments may be submitted to: Anna Hayworth, 1002 Mail Service Center, Raleigh, NC 27699; phone (984) 236-4509; email rulesreview@ncagr.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 52 - VETERINARY

SUBCHAPTER 52J - ANIMAL WELFARE SECTION

SECTION .0900 – ANIMAL SHELTER SUPPORT FUND

02 NCAC 52J .0901 ELIGIBLE EXPENSES

Eligible expenses include:

- (1) Veterinary costs - Reimbursement Grant money may be requested for veterinary expenditures incurred for the assessment, diagnostic and triage evaluation, medical treatment, minor surgical treatment, medications, first aid and minor medical supplies, vaccinations, parasite control/treatment, or euthanasia of animals housed at the shelter at the time of the event or impounded during the interim or transition period.
(2) Sanitation costs - Reimbursement Grant money may be requested for expenditures related to sanitation of the affected shelter, including detergent/disinfectant supplies, cleaning supplies, labor costs for the sanitation of the shelter, and waste and carcass disposal costs.
(3) Animal sustenance and supplies - Reimbursement Grant money may be requested for expenditures for animal food, provision of water to the shelter, and food and water bowls or buckets, as well as labor costs for the feeding and watering of the shelter animals.

- (4) Temporary housing and sheltering of animals - Reimbursement Grant money may be requested for expenditures for animal cages and kennels, animal transport carriers, fencing panels for runs, tarps, fencing, dog or cat houses and other construction supplies, as well as labor costs or equipment or facility leasing expenses incurred during the construction or repair of temporary animal housing.
(5) Administrative Costs - Grant money may be requested for administrative costs only if such costs are directly required for the facility to comply with the North Carolina Animal Welfare Act (AWA) or the rules adopted by the Board of Agriculture implementing that Act.
(6) Capital Expenditures - Grant money may be requested for capital expenditures for facilities and equipment costs only if such costs are directly required for the facility to comply with the AWA or the rules adopted by the Board of Agriculture implementing that Act.

Authority G.S. 19A-67; 19A-68.

02 NCAC 52J .0902 APPLICATION GUIDELINES

(a) A local government applying for reimbursement grant money from the Animal Shelter Support Fund (the Fund) Fund shall submit the request for reimbursement completed application form to the Animal Welfare Section (AWS) of the North Carolina Department of Agriculture and Consumer Services.

(b) The request shall:

- (1) be received by AWS by mail, email, or fax within 60 days of the date the eligible expense was incurred;
(2) include a completed "Animal Shelter Support Fund Reimbursement Application" with the county name, tier of county, facility name, facility license number, and contact information. This application can be found on the AWS website (http://www.ncagr.gov/vet/AWS/);
(3) include an itemized listing of eligible expenses for which reimbursement is sought;
(4) include proof that matching funds have been provided; and
(5) include proof of payment of the eligible expense. If the payment of expense occurs after the application was submitted, proof of payment shall be submitted to AWS within 30 days of payment of the expense.

(b) Application forms and instructions are available online at: https://www.ncagr.gov/vet/aws/. To be eligible for consideration for grant funds from the Fund, applicants shall complete the Animal Shelter Support Fund Application Form. This application shall contain the following information:

- (1) local government information including the name and contact information for the municipal official that oversees the operation of the government animal shelter;

- (2) name, address and contact information for the animal shelter for which the funds are being applied;
- (3) a copy of the AWS Order of Suspension, AWS Order of Revocation, or AWS Facility Compliance Inspection report citing the specific violation(s) for which the county is applying for the grant funds; or
- (4) the date and description of the incident and damage incurred by the unforeseen catastrophic disaster at the animal shelter;
- (5) an explanation of how the use of the grant funds will resolve or significantly mitigate the cited violation(s) of the AWA and its rules and how the applicant will ensure future compliance with the AWA and its associated rules.

- (b) In the event that the local government agency does not use all the grant funding awarded from the Fund, the remaining funds shall be returned to AWS within 14 days of the completion of the corrective actions or repairs. Returned funds shall be reimbursed to the Fund.
- (c) In the event that AWS determines that the grant funds were not used for their intended purpose as stated in the application, the local government shall return the contested funds to AWS. Contested funds shall be reimbursed to the Fund.
- (d) In the event that the local government agency does not spend the grant funding within 60 days of the award, the agency shall update the AWS on the status of the funds every 60 days until the Grant Closeout Report has been filed.

Authority G.S. 19A-67; 19A-68.

Authority G.S. 19A-67; 19A-68.

02 NCAC 52J .0903 EVALUATION OF APPLICATIONS

(a) Each completed application shall be evaluated by the Animal Welfare Section (AWS) staff based on the information provided in the application.

(b) The staff shall review all applications for completeness. If an application is incomplete, the applicant shall be asked to reapply with a new, completed application.

(c) The following general criteria shall be used to evaluate the applications:

- (1) the completeness of the application including supporting documentation;
- (2) the explanation of how the compliance violations will be resolved or significantly mitigated with the use of the grant funds;
- (3) the completeness of the explanation of the plans to ensure future compliance with the AWA and its associated rules; or
- (4) in the incidence of an unforeseen catastrophic occurrence, the explanation of how the grant funds will be used to mitigate the damage done by the incident;
- (5) the amount of funds available;
- (6) the amount of funds requested; and
- (7) the order in which the application was received.

Authority G.S. 19A-67; 19A-68.

02 NCAC 52J .0904 GRANT CLOSEOUT REPORT

(a) The local government agency receiving a grant from the Fund shall submit a final Grant Closeout Report to AWS that contains the following information:

- (1) a detailed accounting of how the grant funds were spent;
- (2) the date by which the corrective actions for the items of non-compliance were completed; and
- (3) in the case of a disaster incident, the date by which the repairs or corrective actions were completed.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13A .0201.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://info.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: *October 1, 2023*

Public Hearing:

Date: *April 3, 2023*

Time: *10:00 a.m.*

Location: *Dorothea Dix Park, Edgerton Building, Room 026, 809 Ruggles Drive, Raleigh, NC 27603*

Reason for Proposed Action: *The rulemaking procedures in Subchapter 10A NCAC 13A apply to the rulemaking authority of the North Carolina Medical Care Commission (MCC) granted by G.S. 143B-165. Rules are required in the N.C. Administrative Code pursuant to G.S. 150B-20 for the procedure for submitting a rule petition to an Agency and the procedure an Agency follows in considering a rulemaking petition.*

The MCC proposes to amend one rule to revise, update and clarify the requirements for the procedure for rule petition submission and rule petition approval by the MCC. The rule has been reorganized to identify items the petitioner may include in the petition but are not required to submit. In addition, requirements governed by and text restating statutory requirements have been removed.

Comments may be submitted to: *Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *May 15, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules*

Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 13 - NC MEDICAL CARE COMMISSION
SUBCHAPTER 13A - EXECUTIVE COMMITTEE
SECTION .0200 - RULEMAKING

10A NCAC 13A .0201 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the North Carolina Medical Care Commission shall address the petition to the Office of the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

- (b) The petition shall contain the following information:
(1) either a draft of the text of the proposed rule or a summary of its contents
(2) reason for proposal
(3) a statement of the effect on existing rules or orders
(4) any data supporting the proposal
(5) a statement of the effect of the proposed rule on existing practices in the area involved, including cost factors, if known; and names of those most likely to be affected by the proposed rule, with addresses, if known;
(6) the name(s) and address(es) of petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) documents and any data supporting the petition;
(2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an existing rule(s);
(3) a statement explaining the costs and computation of the cost factors, if known; and

- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

(e)(d) The Chairman of the North Carolina Medical Care Commission will determine, based on a study review of the facts stated in the petition, whether the public interest will be served by granting the petition. He will consider all the contents of the submitted petition, plus any additional information he deems relevant, shall consider the following in the determination to grant the petition:

- (1) whether the North Carolina Medical Care Commission has authority to adopt the rule(s);
(2) the effect of the proposed rule(s) on existing rules, programs and practices;
(3) probable costs and cost factors of the proposed rule(s);
(4) the impact of the rule on the public and the regulated entities; and
(5) whether the public interest will be served by granting the petition.

(d) Within 30 days of submission of the petition, the Chairman will render a final decision. If the decision is to deny the petition, the Chairman will notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Chairman will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.

(e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Chairman of the North Carolina Medical Care Commission.

Authority G.S. 143B-165; 150B-20.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13G .0504, readopt with substantive changes the rules cited as 10A NCAC 13F .0702; 13G .0705 and readopt without substantive changes the rules cited as 10A NCAC 13F .1307; and 13G .1301.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for re adoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: http://reports.oah.state.nc.us/ncac.asp.

Link to agency website pursuant to G.S. 150B-19.1(c): https://info.ncdhhs.gov/dhsr/ruleactions.html

Proposed Effective Date: October 1, 2023

Public Hearing:

Date: April 27, 2023

Time: 10:00 a.m.

Location: Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are

reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapters 10A NCAC 13F, Licensing of Adult Care Homes of Seven or More Beds, and 10A NCAC 13G, Licensing of Family Care Homes, these four proposed re-adoption rules were part of the 97 total rules determined as "Necessary With Substantive Public Interest," requiring re-adoption. With input from stakeholders, substantive changes are proposed to two rules for re-adoption, two rules are proposed without substantive changes for re-adoption, and one rule is proposed for amendment for the regulation of licensed Adult Care Homes and Family Care Homes in N.C. The secondary intent of the proposed rules is to make the rules of these two types of assisted living residences comparable, if not the same, for regulatory efficiency since they both house the same type of residents as permitted by law. The proposed rules for Adult Care Homes and Family Care Homes update the resident discharge rule language to align with the existing requirements in accordance with G.S. 131D-4.8 and include additional documentation requirements for discharge preparation. Rule 10A NCAC 13G .0504 is proposed for amendment to add clarifying text to match the text of Rule 10A NCAC 13F .0504. In addition, the proposed rules make technical changes to the text.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F - LICENSING OF ADULT CARE HOMES OF SEVEN OR MORE BEDS

SECTION .0700 - ADMISSION AND DISCHARGE

10A NCAC 13F .0702 DISCHARGE OF RESIDENTS

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

(b) The discharge of a resident shall be based on one of the following reasons:

- (1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;
(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;
(3) the safety of other individuals in the facility is endangered;
(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;
(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or
(6) the discharge is mandated under G.S. 131D-2(a1).

(c) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

- (1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or

- (4) ~~the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~
- (e) ~~The facility shall assure the following requirements for written notice are met before discharging a resident:~~
- (1) ~~The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~
 - (2) ~~A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~
 - (3) ~~Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~
 - (4) ~~A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~
- (f) ~~The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~
- (1) ~~notifying staff in the county department of social services responsible for placement services;~~
 - (2) ~~explaining to the resident and responsible person or legal representative why the discharge is necessary;~~
 - (3) ~~informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~
 - (4) ~~offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:~~
 - (A) ~~a copy of the resident's most current FL-2;~~
 - (B) ~~a copy of the resident's most current assessment and care plan;~~
- (C) ~~a copy of the resident's current physician orders;~~
 - (D) ~~a list of the resident's current medications;~~
 - (E) ~~the resident's current medications;~~
 - (F) ~~a record of the resident's vaccinations and TB screening;~~
- (5) ~~providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~
- (A) ~~the regional long-term care ombudsman; and~~
 - (B) ~~the protection and advocacy agency established under federal law for persons with disabilities.~~
- (g) ~~If an appeal hearing is requested:~~
- (1) ~~the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~
 - (2) ~~the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (e) of this Rule.~~
- (h) ~~If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~
- (i) ~~The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician documented level of care change for the resident, the discharge requirements in this Rule apply.~~
- (a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (h) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.
- (b) The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:

- (1) the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as documented by the resident's physician, physician assistant, or nurse practitioner;
- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
- (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.

- (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

(e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:

- (1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:
 - (A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (C) written notices of warning of discharge for failure to pay the costs of services and accommodations; or
 - (D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and
- (2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident" may be the same person as the resident's legal representative or responsible person as identified in the resident's record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

- (1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;
- (2) informing the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and
 - (A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and
 - (B) The facility shall inform the resident and the resident's legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team; and
- (3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a list of referrals to licensed health professionals, including mental health;
 - (D) a copy of the resident's current physician orders;
 - (E) a list of the resident's current medications;
 - (F) the resident's current medications; and
 - (G) a record of the resident's vaccinations and TB screening;
- (4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:
 - (A) the regional long-term care ombudsman; and
 - (B) the protection and advocacy agency established under federal law for persons with disabilities;
- (5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if

convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and
- (2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

Authority G.S. 131D-2.1; 131D-2.16; 131D-4.5; ~~131D-4.5~~; 131D-21; 143B-165.

SECTION .1300 - SPECIAL CARE UNITS FOR ALZHEIMER AND RELATED DISORDERS

10A NCAC 13F .1307 SPECIAL CARE UNIT RESIDENT PROFILE AND CARE PLAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .0500 – STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13G .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS

(a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their licensed capacity after a

licensed health professional has validated the staff person is competent to perform the task.

(b) The licensed health professional shall evaluate the staff person's knowledge, skills, and abilities that relate to the performance of each personal care task. The licensed health professional shall validate that the staff person has the knowledge, skills, and abilities and can demonstrate the performance of the task(s) prior to the task(s) being performed on a resident.

~~(b)(c)~~ Evaluation and validation of competency shall be performed by the following licensed health professionals in accordance with his or her North Carolina occupational licensing laws:

- (1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;
- (2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19), and (21) of Rule .0903 of this Subchapter;
- (3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform the personal care tasks specified in Subparagraph (a)(8) and (11) of Rule .0903 of this Subchapter. An immunizing pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and
- (4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22) through (a)(27) of Rule .0903 of this Subchapter.

~~(e)(d)~~ If a physician certifies that care can be provided to a resident in a family care home on a temporary basis in accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the physician are competent to perform the task(s) in accordance with Paragraphs ~~(a)(b)~~ and ~~(b)(c)~~ of this Rule. For the purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the care needs of the resident and prevent the resident's relocation from the family care home.

Authority G.S. 131D-2.16; 131D-4.5; 143B-165.

SECTION .0700 - ADMISSION AND DISCHARGE

10A NCAC 13G .0705 DISCHARGE OF RESIDENTS

~~(a)~~ The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility

~~not holding the bed for the resident based on the facility's bed hold policy.~~

~~(b) The discharge of a resident shall be based on one of the following reasons:~~

- ~~(1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;~~
- ~~(3) the safety of other individuals in the facility is endangered;~~
- ~~(4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;~~
- ~~(5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or~~
- ~~(6) the discharge is mandated under G.S. 131D-2(a1).~~

~~(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:~~

- ~~(1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or~~
- ~~(2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.~~

~~(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:~~

- ~~(1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;~~
- ~~(2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;~~
- ~~(3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or~~
- ~~(4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.~~

~~(e) The facility shall assure the following requirements for written notice are met before discharging a resident:~~

- (1) ~~The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand-delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.~~
- (2) ~~A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand-delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.~~
- (3) ~~Failure to use and simultaneously provide the specific forms according to Subparagraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.~~
- (4) ~~A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.~~
- (f) ~~The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:~~
 - (1) ~~notifying staff in the county department of social services responsible for placement services;~~
 - (2) ~~explaining to the resident and responsible person or legal representative why the discharge is necessary;~~
 - (3) ~~informing the resident and responsible person or legal representative about an appropriate discharge destination; and~~
 - (4) ~~offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:~~
 - (A) ~~a copy of the resident's most current FL-2;~~
 - (B) ~~a copy of the resident's most current assessment and care plan;~~
 - (C) ~~a copy of the resident's current physician orders;~~
 - (D) ~~a list of the resident's current medications;~~
 - (E) ~~the resident's current medications; and~~
 - (F) ~~a record of the resident's vaccinations and TB screening.~~
- (5) ~~providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (e) of this Rule:~~
 - (A) ~~the regional long term care ombudsman; and~~
 - (B) ~~the protection and advocacy agency established under federal law for persons with disabilities.~~
- (g) ~~If an appeal hearing is requested:~~
 - (1) ~~the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and~~
 - (2) ~~the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (e) of this Rule.~~
- (h) ~~If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14 day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.~~
- (i) ~~The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.~~
 - (a) ~~The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (j) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.~~
 - (b) ~~The discharge of a resident initiated by the facility shall be based on one of the following reasons under G.S. 131D-4.8:~~
 - (1) ~~the discharge is necessary to protect the welfare of the resident and the facility cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner;~~
 - (2) ~~the health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the facility, as~~

documented by the resident's physician, physician assistant, or nurse practitioner;

- (3) the safety of the resident or other individuals in the facility is endangered;
- (4) the health of the resident or other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner;
- (5) the resident has failed to pay the costs of services and accommodations by the payment due date according to the resident's contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2.2(a).

(c) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Health Benefits, on the internet website <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/forms>.
- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative and the individual identified upon admission to receive a discharge notice on behalf of the resident on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Provide the following material in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the resident and the resident's legal representative:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's current physician's orders, including medication order;
- (4) Failure to use and simultaneously provide the specific forms according to Subparagraphs (c)(1) and (c)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge.
- (5) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(d) The notices of discharge and appeal rights as required in Paragraph (c) of this Rule shall be made by the facility at least 30

days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's urgent medical needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), and (b)(4) of this Rule exist.

(e) The following shall be documented in the resident record and shall be made available upon request to potential discharge locations:

- (1) The reason for discharge to include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:
 - (A) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
 - (B) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
 - (C) written notices of warning of discharge for failure to pay the costs of services and accommodations; or
 - (D) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2.2(a)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility; and
- (2) any known intervention of law enforcement with the resident due to threatening behavior or violence toward self or others.

(f) The facility shall document contacts with possible discharge locations and responses and make available this documentation, upon request, to the resident, legal representative, the individual identified upon admission to receive a discharge notice on behalf of the resident and the adult care home resident discharge team if convened. For the purposes of this rule, "the individual identified upon admission to receive a discharge notice on behalf of the resident" may be the same person as the resident's legal representative or responsible person as identified in the resident's record.

(g) The facility shall provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:

- (1) explaining to the resident and responsible person or legal representative and the individual identified upon admission to receive a copy of the discharge notice on behalf of the resident why the discharge is necessary;
- (2) informing the resident and responsible person or legal representative and the individual

identified upon admission to receive a copy of the discharge notice on behalf of the resident about an appropriate discharge destination; and

(A) If at the time of the discharge notice the discharge destination is unknown or is not appropriate for the resident, the facility shall contact the local adult care home resident discharge team to assist with placement; and

(B) The facility shall inform the resident and the resident's legal representative of their right to request the Regional Long-Term Care Ombudsman to serve as a member of the adult care home resident discharge team; and

(3) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:

(A) a copy of the resident's most current FL-2;

(B) a copy of the resident's most current assessment and care plan;

(C) a list of referrals to licensed health professionals, including mental health;

(D) a copy of the resident's current physician orders;

(E) a list of the resident's current medications;

(F) the resident's current medications; and

(G) a record of the resident's vaccinations and TB screening;

(4) providing written notice of the name, address and telephone number of the following, if not provided on the discharge notice required in Paragraph (c) of this Rule:

(A) the regional long-term care ombudsman; and

(B) the protection and advocacy agency established under federal law for persons with disabilities.

(5) providing the resident, responsible party or legal representative and the individual identified upon admission who received a copy of the discharge notice on behalf of the resident with the discharge location as determined by the adult care home resident discharge team, if convened, at or before the discharge hearing, if the location is known to the facility.

(h) If an appeal hearing is requested:

(1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and

(2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (d) of this Rule.

(i) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person which means the resident or responsible person may be charged for the days of the required notice if notice is not given or if notice is given and the resident leaves before the end of the required notice period. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

(j) The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule apply.

Authority G.S. 131D-2.1; 131D-2.16; 131D-4.8; 131D-4.5; 131D-21; 143B-165.

SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rules cited as 14B NCAC 16 .1501-.1504, .1601, .1701-.1709 and amend the rules cited as 14B NCAC 16 .0201, .0403, and .0807.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdps.gov/about-dps/boards-commissions/private-protective-services-board>

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 4, 2023

Time: 2:00 p.m.

Location: 3101 Industrial Dr., Suite 104, Raleigh, NC 27609

Reason for Proposed Action: Senate Bill 424 (S.L. 2022-66) created two new license categories for the Board: Close Personal Protection and Digital Forensics Examination. This necessitates the creation of three new Sections of Subchapter 16 (Section 15,

Section 16 & Section 17) and conforming changes to three existing rules (.0201, .0403 & .0807). These portions of S.L. 2022-66 were effective October 1, 2022.

(Note 1: The version of 14B NCAC 16 .0807 noticed was approved by the RRC December 15, 2022 and effective January 1, 2023.)

(Note 2: The version of 14B NCAC 16 .0502(b) noticed as a temporary rule was amended based on public comment to include additional course providers.)

(Note 3: The title of Section .1700 as noticed as a temporary rule was amended based on public comment to add the word "Associates".)

Comments may be submitted to: Paul Sherwin, 3101 Industrial Dr., Suite 104, Raleigh, NC 27609; phone (919) 788-5320; email paul.sherwin@ncdps.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

14B NCAC 16 .0201 APPLICATION FOR LICENSE AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit shall submit an online application on the website provided by the Board. The online application shall be accompanied by:

- electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of

- classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
(2) one head and shoulders digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
(3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
(4) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
(5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
(6) an Equifax credit check run within 30 days of the license application submission date, which will be submitted to the Board's investigator during the application process; and
(7) five letters attesting to the good character and reputation of the applicant using the online character letter submission process.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his or her prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor and the form shall be uploaded as part of the online application process.

(c) Private investigator and digital forensics examination trainees applying for a license shall make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must upload evidence of high school graduation either by diploma, G.E.D. certificate, or other proof.

(e) Each applicant for a license shall meet personally with a Board investigator, the Screening Committee, the Director, or another Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74C and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board indicating that he or she has reviewed G.S. 74C and the administrative rules in this Chapter with the Board's representative. During a national or State declared state of emergency that restricts or prohibits travel, the personal meeting requirement may be waived if requested by the applicant in favor of alternative means of communication.

Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12.

SECTION .0400 - PRIVATE INVESTIGATOR: ELECTRONIC COUNTERMEASURES

14B NCAC 16 .0403 TRAINEE PERMIT REQUIREMENTS

(a) In addition to the requirements of Section .0200 of this Chapter, applicants for a trainee permit in private ~~investigation or countermeasures~~ investigation, electronic countermeasures, or digital forensics examination shall be directly supervised by a licensee approved by the Board and that supervisor shall be responsible for the training and ~~investigations~~ other professional activities of the trainee.

(b) Trainees who wish to apply for a license must submit an application to the Board in accordance with Rule .0201 of this Chapter.

(c) Private ~~investigator~~ investigator, electronic countermeasures, or digital forensics examination trainees shall maintain a log on a form provided by the Board on its website as evidence of experience. This log must be available for inspection when applying for a license.

(d) Any request for renewal of a trainee permit or for issuance of a license shall be accompanied by an evaluation report of the trainee's performance on a form provided by the Board on its website and submitted by the trainee's supervisor.

Authority G.S. 74C-2; 74C-5.

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED LICENSEES AND REGISTRANTS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private ~~investigator~~ investigator, close personal protection, or any other licensee applying for an armed ~~security guard firearm registration~~ permit shall first complete a ~~five-hour~~ training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

Subparagraph (c)(2), "operation" under Subparagraph (c)(3), and Subparagraph (c)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(d) Applicants for either an armed licensee permit or an armed security guard firearm registration permit shall attain a score of at

least 80 percent accuracy on a firearms range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office, once in three consecutive attempts. Should a student fail to attain a score of 80 percent accuracy, the student may be given a second opportunity to qualify once in three consecutive attempts on the course of fire the student did not pass. Failure to qualify after the second series of attempts shall require the student to repeat the entire basic training course for armed security guards. All attempts must take place within 20 days of the completion of the initial 20 hour course. For rifle qualification all shots shall be located on the target.

(e) All initial ~~armed security guard~~ training required by this Chapter shall be administered by a certified trainer and shall be completed no more than 90 days prior to the date of ~~issuance of application for the licensee permit or~~ armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all ~~weapons~~ firearms.

(g) No more than six new or renewal licensee permit or armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range ~~training for armed security guards~~ training.

(h) Applicants for re-certification of a licensee permit or an armed security guard firearm registration permit shall complete a ~~the~~ basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. Subparagraphs (c)(2), operation under Subparagraph (c)(3), and Subparagraphs (c)(4) and (5) of this Rule shall be reviewed prior to range firing and maintenance under Subparagraph (c)(3) of this Rule may be reviewed after range firing. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of a licensee permit or an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard registered with one company may be registered with a second company. The registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required to be submitted by the applicant, along with the digital photograph, updated criminal records checks, and a forty dollar (\$40.00) registration fee. If the guard will be carrying a firearm of the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, six hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotgun (minimum of one hour);
- (2) shotgun safety, including range firing procedures (minimum of one hour);
- (3) shotgun operation and maintenance (minimum of one hour);
- (4) shotgun fundamentals (minimum of two hours); and
- (5) night firing (minimum of one hour).

Subparagraph (j)(2), "operation" under Subparagraph (j)(3), and Subparagraph (j)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(k) An armed security guard applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);
- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours);
- (4) rifle fundamentals (minimum of ten hours); and
- (5) night firing (minimum two hours).

Subparagraph (m)(2), "operation" under Subparagraph (m)(3), and Subparagraph (m)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in Paragraph (c) of this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Upon written request, an applicant for a licensee permit or an armed security guard firearm registration permit who possesses a current firearms trainer certificate shall be given a ~~firearms~~ licensee permit or registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with the applicant's duty firearms as set forth in Paragraph (d) of this Rule.

(r) An armed licensee or security guard is required to qualify annually both for day and night firing with his or her duty handgun, shotgun, and rifle, if applicable. If the licensee or security guard fails to qualify on any course of fire, licensee or the security guard shall not carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the licensee or security guard that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

(s) A firearm training certificate of an armed security guard remains valid even if the guard leaves the employment of one company for the employment of another. The range qualifications shall remain valid if the guard will be carrying a firearm of the same make, model, and caliber and no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course. However, nothing herein shall extend the period of time the qualification is valid.

Authority G.S. 74C-5; 74C-9; 74C-13.

SECTION .1500 - CLOSE PERSONAL PROTECTION

14B NCAC 16 .1501 EXPERIENCE REQUIREMENTS FOR A CLOSE PERSONAL PROTECTION LICENSE

(a) In addition to the requirements of G.S. 74C-8 and Section .0200 of this Chapter, applicants for a close personal protection license shall:

- (1) establish to the Board's satisfaction three years of verifiable experience while conducting close personal protection services as set forth in G.S. 74C-3(a)(3a) with a private person, firm, association, or corporation within the last 10 years;
- (2) establish to the Board's satisfaction three years of verifiable experience while conducting close personal protection services as set forth in G.S. 74C-3(a)(3a) with any federal, state, county or municipal law enforcement agency, or other governmental agency within the last 10 years;

- (3) establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience within the past five years in the U.S. Armed Forces while conducting close personal protection services as set forth in G.S. 74C-3(a)(3a) while serving in an official capacity; or
- (4) have completed a course in close personal protection approved by the Board given by a school specializing in close personal protection (or "executive protection") that consists of a minimum of 40 hours of actual classroom and practical instruction within the last 2 years.

(b) In addition to the requirements of Section .0200 of this Chapter, an applicant for a close personal protection license that is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification, or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- (2) the spouse has two years verifiable experience within the past five years while conducting close personal protection as set forth in in G.S. 74C-3(a)(3a) while serving in an official capacity with any entity described in Paragraph (a) of this rule.

Authority G.S. 74C-5(2); 93B-15.1.

14B NCAC 16 .1502 TRAINING REQUIREMENTS FOR CLOSE PERSONAL PROTECTION LICENSE

(a) Applicants for a close personal protection license who do not have the experience set forth in Rule .1501(a)(1)-(3) or (b)(1) and (2) of this Section shall complete a basic close personal protection (or "executive protection") training course approved by the Board within the previous 24 months. The course shall consist of a minimum of 40 hours of classroom and practical instruction including:

- (1) Fundamentals of personal protection, including mission planning, performing site surveys, route selection (primary, secondary, etc.), medical evacuation, walking formations (single, multiple, etc.), communications with protectees, and transitional movements (arrivals, departures, plan changes, hasty movements, etc.) – (minimum of 26 hours);
- (2) Practical exercises – (minimum of 12 hours); and
- (3) Legal Issues, including the rules set forth in this Section, G.S. 74C-13 and 14B NCAC 16 .0807, North Carolina's laws on use of force, and the federal and State firearms law– (minimum of two hours).

(b) In addition to the minimum classroom and practical instruction required by Paragraph (a) of this Rule, the applicant must possess a basic first aid certificate from the American Red Cross and a valid CPR and AED certification from the American

Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council.

(c) Subparagraph (a)(3) of this Rule may be conducted remotely as provided for by 14B NCAC 16 .0707(c).

Authority G.S. 74C-5.

14B NCAC 16 .1503 INVESTIGATIONS DIRECTLY RELATED TO PROVISION OF SERVICES

A close personal protection licensee may engage in activities otherwise defined by G.S. 74C-3(a)(8) as an investigation which are directly related to the provision of services including but not limited to advance planning, intelligence, and risk assessment.

Authority G.S. 74C-5.

14B NCAC 16 .1504 DISTINGUISHING SECURITY SERVICES

(a) Prior to providing any service to a client, a close personal protection licensee shall enter into a written contract or agreement that lists by name the individual person or persons for whom service is to be provided, the specific function that constitutes the service, and the duration of the service.

(b) A close personal protection license does not entitle the licensee to provide services defined by G.S. 74C-3(a)(6) to any person or persons not listed in the contract or agreement.

Authority G.S. 74C-5.

SECTION .1600 – DIGITAL FORENSICS EXAMINER

14B NCAC 16 .1601 EXPERIENCE REQUIREMENTS FOR A DIGITAL FORENSICS EXAMINER LICENSE

(a) In addition to the requirements of Section .0200 of this Chapter, applicants for a Digital Forensic Examiner (D.F.E.) license shall:

- (1) establish to the Board's satisfaction three years of verifiable experience within the past five years conducting digital forensic examinations as defined by G.S. 74C-3(a)(5a) individually, or with any private company or federal, state, county or municipal agency;
- (2) hold a North Carolina private investigator license, or private investigator license from a state reciprocal with North Carolina, and have completed a course of instruction consisting of not less than 40 hours of live classroom and practical instruction in digital forensics and obtained certification from a certifying entity approved by the Board within the previous two years;
- (3) establish to the Board's satisfaction that the applicant has been qualified as an expert witness in an area of digital forensics in a court of law using the standard set forth by the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and its progeny cases, within the previous three years; or

- (4) establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience conducting digital forensics examinations within the past five years in the U.S. Armed Forces.

(b) In addition to the requirements of Section .0200 of this Chapter, an applicant for a D.F.E. license that is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification, or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- (2) the spouse has two years of verifiable experience conducting digital forensics examinations within the past five years.

(c) The Board shall give credit toward the experience requirements set forth in Paragraphs (a) and (b) of this Rule as follows:

- (1) An applicant shall receive 400 hours of experience credit for an associate's degree. The Board shall grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the associate's degree.
- (2) An applicant shall receive 800 hours of experience credit for a bachelor's degree. The Board shall grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the bachelor's degree.
- (3) An applicant shall receive 1,200 hours of experience credit for a graduate degree. The Board shall grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the graduate degree.

Authority G.S. 74C-5; 93B-15.1.

SECTION .1700 – TRAINING AND SUPERVISION FOR DIGITAL FORENSICS EXAMINER (D.F.E.) ASSOCIATES

14B NCAC 16 .1701 DEFINITIONS

In addition to the definitions set forth in G.S. 74C, the following definitions shall apply to this Section:

- (1) "Digital Forensics Examiner Associate" refers to an individual training to become a digital forensics examiner licensee. A Digital Forensics Examiner Associate may also be referred to as a "trainee" in these Rules. A Digital Forensics Examiner Associate must complete three training levels as set out in this Section.

- (2) "One-on-one Supervision" means person-to-person contact whereby the licensee is personally and directly supervising or training the Associate. The training licensee must be the sponsoring digital forensics examiner licensee. The Digital Forensics Examiner Associate may not subcontract his or her employment to another licensee. However, the sponsoring digital forensics examiner licensee may subcontract the Digital Forensics Examiner Associate if the sponsor obtains prior written approval from the Board's Director by showing that the Digital Forensics Examiner Associate will receive an educational benefit from the subcontract employment and the Associate will receive one-on-one supervision from another licensee.

- (3) "Training Checklist" refers to the document(s) that shall state all areas of training and work that the Associate has performed. The supervising licensee is responsible for maintaining the training checklist and providing a copy of the checklist to the Associate. The Training Checklist must reflect the date the Associate advances from one level to another. The training checklist must be signed by the Associate and the sponsoring licensee at the end of each reporting period. In the event the Associate transfers employment to another licensee, the Associate must provide the new supervising licensee with the training checklist and the new sponsoring licensee will then be responsible for the maintenance of the checklist. The Training Checklist must be updated on a quarterly basis for Level One Associates and on a yearly basis for Level Two and Level Three Associates. The training checklist must be maintained pursuant to Rule .0108 of this Chapter. When an Associate completes Level Three, the Training Checklist must be made a part of the Associate's application for a digital forensics examiner license. The Board shall have immediate access to the training checklist.

- (4) "Associate Log" refers to the document(s) maintained by the Associate which shall list each case the Associate has worked, the number of hours spent on the case, and the type of work performed. Details of the one-on-one training must be documented within the Associate's log.

Authority G.S. 74C-2(c); 74C-5(2).

14B NCAC 16 .1702 TRAINING AND SUPERVISION REQUIRED IN LEVEL ONE

- (a) If upon sponsorship, the Associate has less than one year or 1,000 hours of verifiable training or experience, the Associate shall undergo 160 hours of one-on-one supervision training.

(b) The first 40 hours of employment shall be one-on-one supervision. The remaining 120 hours of one-on-one supervision shall be gathered over the first year of employment or the first 1,000 hours of work, whichever comes first.

(c) A Level One Associate cannot, independently of the sponsor, accept or contract employment. The Associate shall have direct face-to-face, telephone or virtual contact with the sponsor before accepting employment or before accepting a new case.

(d) The sponsor shall meet with the Level One Associate to review the Associate's activities. The sponsor licensee's review may be by telephone, virtually, or face-to-face and shall occur at least four times per month. The licensee shall review each assignment the Associate is working or has worked since the last review. Review sessions may encompass more than one assignment.

Authority G.S. 74C-5(2).

14B NCAC 16 .1703 TRAINING AND SUPERVISION REQUIRED IN LEVEL TWO

(a) If upon initial application for an Associate permit, the applicant has at least one year or 1,000 hours of verifiable training or experience, the applicant will skip Level One and be classified as a Level Two Digital Forensics Examiner Associate. An applicant that skips Level One shall undergo 80 hours of one-on-one training. The first 40 hours of one-on-one supervision shall occur within the first 40 hours of employment. The remaining 40 hours shall be gathered over the first year of employment or the first 1,000 hours of work, whichever comes first.

(b) A Level Two Associate cannot, independently of the sponsor, accept or contract employment. The Associate shall have direct face-to-face, virtual, or telephone contact with the sponsor.

(c) The sponsor shall meet with the Level Two Associate to review the Associate's work product. The licensee's review may be by telephone, virtually, or face-to-face and shall occur at least four times per month. The licensee shall review each assignment the Associate is working or has worked since the last review. Review sessions may encompass more than one assignment.

Authority G.S. 74C-5(2).

14B NCAC 16 .1704 TRAINING AND SUPERVISION REQUIRED IN LEVEL THREE

(a) If upon sponsorship the Associate has at least two years or 2,000 hours of verifiable training or experience, the Associate will be classified as a Level Three Associate and shall undergo 40 hours of one-on-one training.

(b) The first 40 hours of employment for the Level Three Digital Forensics Examiner Associate shall be one-on-one supervision.

(c) When the Level Three Associate completes the requirements of Level Three by fulfilling the licensing requirements set forth in Rules .0204 and .0401 of this Chapter, the Associate may apply for digital forensics examiner license.

(d) The sponsor shall meet with the Level Three Associate to review the Associate's activities. The sponsor licensee shall review each assignment the Associate is working or has worked since the last review. Review sessions may encompass more than one assignment.

(e) The sponsoring licensee shall have contact with the Level Three Associate sufficient to ensure compliance with G.S. Chapter 74C.

Authority G.S. 74C-5(2).

14B NCAC 16 .1705 EDUCATIONAL DEGREES AND NON-DEGREED TRAINING

(a) An applicant shall receive a minimum of 400 hours of experience credit for an associate's degree. The Board shall grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the associate's degree.

(b) An applicant shall receive 800 hours of experience credit for a bachelor's degree. The Board shall grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the bachelor's degree.

(c) An applicant shall receive 1,200 hours of experience credit for a graduate degree. The Board shall grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to digital forensics examination was received while obtaining the graduate degree.

Authority G.S. 74C-5(2).

14B NCAC 16 .1706 CONSIDERATION OF EXPERIENCE

(a) The Board shall consider any practical experience gained prior to the application date. The Board shall not consider experience claimed by the applicant if the experience was gained after December 1, 2022:

- (1) by contracting private protective services to another person, firm, association, or corporation while not in possession of a valid private protective services license; or
- (2) when employed by a company contracting private protective services to another person, firm, association, or corporation while the company is not in possession of a valid private protective services license.

(b) The Board shall consider any educational experience referred to in Rule .1705 of this Section.

Authority G.S. 74C-5(2).

14B NCAC 16 .1707 ENFORCEMENT

A violation by the Associate may be deemed by the Board to be a violation of the sponsor if the violation is found to be the result of insufficient supervision and may subject the sponsor to any enforcement actions pursuant to G.S. 74C-17.

Authority G.S. 74C-2(c); 74C-5(2); 74C-12.

14B NCAC 16 .1708 TRANSFERABILITY OF TRAINING HOURS

If a Level One Associate transfers employment to another digital forensics examiner licensee, the one-on-one training shall not transfer and the Associate shall undergo new one-on-one

supervised training hours with the new sponsoring licensee. If a Level Two or Level Three Associate transfers employment to another licensee, all training hours shall be transferred.

Authority G.S. 74C-5(2).

14B NCAC 16 .1709 PROBATIONARY EMPLOYEES

(a) A digital forensics examiner licensee may employ a potential examiner as a probationary employee for 60 consecutive calendar days. The Director, upon written request, may extend the probationary period by 30 additional days. Upon completion of the probationary period and the desire of the licensee to hire the probationary employee the employee shall apply pursuant to this Section.

(b) Before a probationary employee engages in digital forensic examination, the employee shall complete any training requirements required by this Section, and the licensee shall conduct a criminal record check on the employee.

(c) Within five business days of hiring the licensee shall submit to the Director the name, address, social security number, and date of employment of the probationary employee.

Authority G.S. 74C-5(2).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0120, .0220, .0221, .0233, .0302, .0303, .0309, .0317, .0318, and .0320-.0323.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncbon.com

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 4, 2023

Time: 10:00 a.m.

Location: 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action:

Rationale for .0221: Session Law 2021-3, Section 2.9.(a), permits “immunizing pharmacists” (as defined by statute) to administer long-acting injectable medications to adults pursuant to prescription. The law became effective on October 1, 2021, and the Board of Pharmacy adopted a temporary rule (21 NCAC 46 .2514) to implement the section, as permitted by the statute. Because of the placement of the long-acting injectable authority in the “immunizing pharmacist” statute (90-85.15B), a permanent rule governing the administration of these drugs was required to be approved by both the Board of Pharmacy and the Medical Board. The Board of Pharmacy proposed adoption of a permanent version of Rule .2514. The proposed rule put appropriate standards in place for training, recordkeeping and

other requirements needed to ensure that the drugs are administered with adequate protection of the public health, safety, and welfare (NC Register, Volume 36, Issue 16, pages 1393). After successfully completing the rulemaking process, amended rule 21 NCAC 46 .2507 and permanent rule 21 NCAC 46 .2514 became effective July 1, 2022. The Board of Nursing Administrative Code 21 NCAC 36 .0221 (e) reads: “Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507.” Based on adoption of permanent rule 21 NCAC 46 .2514, the Board of Nursing rule needs to be amended to include the new reference.

Rationale for .0120, .0220, .0233 .0302, .0303, .0309, .0317, .0318, .0320, .0321, .0322, .0323: The Education and Practice Committee, with the goal of assuring that the NCBON Administrative Code (Rules) regulating pre-licensure nursing education programs are current, consistent, and conducive to the preparation of nurses able to provide safe, effective, care now and in the future, carefully reviewed the literature, resources from NCSBN, rules and practices of other nursing regulatory bodies, and testimony from NC education, regulatory and practice stakeholders.

Comments may be submitted to: Angela Ellis, PO Box 2129, Raleigh, NC 27602-2129; email lawsrules@ncbon.com

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 36 .0120 DEFINITIONS

The following definitions apply throughout this chapter unless the context indicates otherwise:

- (1) "Administrative Law Counsel" means an attorney licensed to practice in this State whom

- the Board has retained to serve as procedural officer for contested cases.
- (2) "Academic term" means one semester of a school year.
- (3) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (4) "Accredited institution" means an institution accredited by a United States Department of Education-approved institutional accrediting body.
- (5) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensure as defined in G.S. 90-171.20(4), (7), and (8).
- (6) "Advanced Practice Registered Nurse (APRN)" means a nurse practitioner, nurse anesthetist, nurse-midwife, or clinical nurse specialist.
- (7) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to an individual licensed and competent to perform such activities.
- (8) "Bulletin" means the official publication of the Board.
- (9) "Clinical experience" means application of nursing knowledge demonstrating clinical judgment in a current or evolving practice setting in which a student provides care to clients under the supervision of faculty or a preceptor.
- (10) "Clinical judgment" means ~~the application of nursing knowledge, skills, abilities, and experience in making decisions about client care.~~ the observed outcome of critical thinking and decision-making. It is an iterative process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions in order to deliver safe client care.
- (11) "Competent" means having the knowledge, skills, and ability to safely perform an activity or role.
- (12) "Continuing Competence" means on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
- (13) "Contact Hour" means 60 minutes of an organized learning experience.
- (14) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of a nurse as outlined in 21 NCAC 36 .0223(a)(2).
- (15) "Controlling institution" means the degree-granting organization or hospital under which a nursing education program is ~~operating, operating or seeking to establish a new nursing education program.~~ The controlling institution shall hold approval or applicable licensure by the appropriate North Carolina agency, the University of North Carolina System, or North Carolina College System and be accredited by an accrediting body recognized by the United States Secretary of Education.
- (16) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives and outcomes.
- (17) "Delegation" means transferring to a competent individual the authority to perform a specific nursing activity in a selected situation. The nurse retains accountability/responsibility for the delegation.
- (18) "Debriefing" means an organized learning activity that follows a clinical or simulated experience and is led by a trained faculty facilitator. Students' reflective thinking is encouraged and feedback is provided regarding the students' performance during discussion of various aspects of the completed experiences.
- (19) "DHSR" means Division of Health Service Regulation.
- (20) "Dimensions of Practice" means aspects of nursing practice, including professional responsibility, knowledge-based practice, ethical and legal practice, and collaborating with others, consistent with G.S. 90-171.20(4), (7), and (8).
- (21) "Distance education" means teaching and learning strategies used to meet the learning needs of students when the students and faculty are not in the same location.
- (22) "External standardized examination" means a commercially available standardized predictive test that provides individual student scores that are linked to a probability of passing the NCLEX™ examination.
- (23) "Faculty directed clinical practice" means clinical experiences provided under the accountability/responsibility and direction of nursing program faculty.
- (24) "Focused client care experience" means a clinical experience that emulates an entry-level work experience in nursing, assisting the student in transitioning to an entry-level nursing practice. Supervision may be by faculty and preceptor dyad or direct faculty supervision.
- (25) "Full Approval" is the status assigned to a program following graduation by the first cohort of students, evidence of compliance with Section .0300 of this Chapter, and an NCLEX® examination pass rate that meets or exceeds 90

- percent of the national pass rate for licensure level on first writing of the licensure examination for calendar years ending December 31.
- (25)(26) "Initial Approval" means the status assigned to a ~~newly established~~ nursing education program following submission of a new, complete application and documented evidence of compliance with Section .0300 of this Chapter.
- (26)(27) "Interdisciplinary faculty" means faculty from professions other than nursing.
- (27)(28) "Interdisciplinary team" means all individuals involved in providing a client's care who cooperate, collaborate, communicate, and integrate care to ensure that care is continuous and reliable.
- (28)(29) "Learning resources" means materials that faculty use to assist students in meeting the expectations for learning defined by the curriculum.
- (29)(30) "Level of Licensure" means practice of nursing by either a licensed practical nurse or a registered nurse, as defined in G.S. 90-171.20(7) and (8).
- (30)(31) "Level of student" means the point in the program to which the student has progressed.
- (31)(32) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- (32)(33) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place, based upon stated course objectives and outcomes for learning experiences in classroom, laboratory, simulation, and clinical settings.
- (33)(34) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (34)(35) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- (35)(36) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- (36)(37) "Nursing Accreditation body" means a national nursing accrediting body that is recognized by the United States Department of Education.
- (37)(38) "Nursing program faculty" means individuals employed full or part-time by an academic institution responsible for developing, implementing, evaluating, and updating nursing curricula.
- (38)(39) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology, and summary of findings.
- (39)(40) "Participating in" means to have a part in or contribute to the elements of the nursing process. As defined by the legal scope of practice, the licensed practical nurse role for participating in the nursing process is dependent upon the assignment and supervision by the registered nurse, physician, dentist, or other person authorized by State law to provide the supervision.
- (40)(41) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- (41)(42) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking who may serve as a teacher, mentor, role model, and supervisor for the student in a faculty-directed clinical experience.
- (42)(43) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board rules and other applicable federal and State law, regulations, and rules.
- (43)(44) "Program Closure" means to cease operation of a nursing program.
- (44)(45) "Program" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three types of programs are:
- (a) Bachelor of Science Degree in Nursing (BSN) - Curriculum components for the BSN provide for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions, and current trends in health care. For this program type, the client is the individual, family, group, and community.
 - (b) Associate Degree in Nursing (ADN) (~~ADN/Diploma in Registered Nursing~~ - Curriculum components for the (ADN) ~~ADN/Diploma in Registered Nursing~~ provide for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions, and current trends in health care. For this program type,

client is the individual, group of individuals, and family.

- (c) Practical Nurse Diploma (PN) - Curriculum components for the practical nurse PN diploma prepare for providing direct nursing care under the supervision of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development, and current trends in health care. For this program type client is the individual or group of individuals.

~~(45)~~(46) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods, including review of written reports and materials, on-site observations, review of documents, and in-person or telephone interviews and conferences.

~~(46)~~(47) "Self-Assessment" means the process whereby an individual reviews their own nursing practice and identifies the knowledge and skills possessed as well as those skills to be strengthened or acquired.

~~(47)~~(48) "Simulation" means a technique, not a technology, to replace or amplify clinical experiences with guided experiences that evoke or replicate substantial aspects of the real world of nursing practice in a fully interactive manner.

~~(48)~~(49) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of a particular group of patients and the likely co-morbidities, interventions, and responses to those problems.

~~(49)~~(50) "Supervision" means the provision of guidance or direction, evaluation, and follow-up by a licensed nurse to accomplish an assigned or delegated nursing activity or set of activities.

~~(50)~~(51) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing a nursing program's compliance with Section .0300 of this Chapter.

(52) "Traditional clinical experience" means a clinical experience where the student provides in-person care to patients/clients under the guidance of an instructor or preceptor.

(53) "Warning Status" means the status assigned to a nursing education program found to be noncompliant with any provision in Section .0300 of this Chapter.

Authority G.S. 90-171.23; 90-171.38.

SECTION .0200 – LICENSURE

21 NCAC 36 .0220 REFRESHER COURSE

(a) A refresher course shall be designed for those individuals, previously licensed, who are not eligible for re-entry into nursing practice because their license has expired for five or more years.

(b) Satisfactory completion of a Board-approved refresher course shall be required of the individual who has not held an active license in any jurisdiction for five or more years and requests:

- (1) reactivation of an inactive license;
- (2) reinstatement of an expired license; or
- (3) endorsement to North Carolina.

(c) If satisfactory completion of a Board-approved refresher course is required by the Board based upon action as authorized in G.S. 90-171.37 or based upon a license being inactive due to disciplinary action, the individual may be subject to Board-stipulated restrictions in the clinical component of the refresher course, based upon the terms of the disciplinary actions and the contents of the clinical components. All eligibility requirements for reinstatement of the license shall have been met prior to refresher course enrollment.

(d) Application for approval of a refresher course shall be completed and submitted by the provider at least 90 days prior to the expected date of enrollment and shall include evidence of complying with the rules as defined in this Chapter for refresher courses. No student shall be enrolled prior to Board approval. Board approval shall be granted to a provider for a period of time not to exceed five years. All changes in faculty, curriculum, or clinical facilities shall be approved by the Board prior to implementation, as set out in the Rules of this Chapter.

(e) The application for approval of a refresher course shall include:

- (1) course objectives, content outline, and time allocation;
- (2) didactic and clinical learning experiences, including teaching methodologies for measuring the registrant's abilities to practice nursing;
- (3) a plan for evaluation of student competencies and ability to competently practice nursing;
- (4) a faculty list that includes the director and all instructors, and identifies their qualifications and their functions in teaching roles; and
- (5) the projected clinical schedule.

(f) The Board shall make site visits if it is unable to determine that all requirements have been met through application document review. A decision on an application to offer a refresher course shall be given within 30 days following receipt of a complete application.

(g) A provider of a refresher course shall be approved by the Board as set out in these Rules. A provider may be a post-secondary educational institution, a health care institution, or other agency.

(h) Administrative responsibility for developing and implementing a refresher course shall be vested in a registered nurse director.

(i) The registered nurse director shall have authority and responsibility for maintaining compliance with this Rule.

~~(j)~~(j) ~~Instructors in the course shall be directly accountable to the nurse director.~~ The director shall have had at least one year prior teaching experience preparing individuals for registered nurse or licensed practical nurse licensure at the post-secondary level or in a nursing staff development position. Instructors in the course shall be directly accountable to the director. The director and each instructor shall:

- (1) hold an active unencumbered license to practice as a registered nurse in North Carolina;
- (2) hold a baccalaureate or higher degree in nursing; and
- (3) have had at least two years experience in direct patient nursing practice as a registered nurse.

~~(k)~~(k) Proximity of the instructor to students is the major factor in determining faculty-student ratio for clinical learning experiences. The ratio of instructors to students shall not exceed 1:10.

~~(l)~~(l) Clinical preceptors shall have competencies, assessed by the registered nurse director of the refresher course or a designated instructor, related to the area of assigned clinical precepting responsibilities. Clinical preceptors shall hold an active unencumbered license to practice as a registered nurse in North Carolina.

~~(m)~~(m) The refresher course shall include both theory and clinical instruction. Course objectives shall be stated that:

- (1) show relationships between nursing theory and practice; and
- (2) identify behaviors consistent with the ability to competently practice nursing.

~~(n)~~(n) The curriculum for a registered nurse refresher course shall include at least 240 hours of instruction, at least 120 of which shall consist of clinical learning experiences, and shall incorporate:

- (1) the scope of practice for the registered nurse, as defined in G.S. 90-171.20 and 21 NCAC 36 .0221, .0224, .0225 and .0401; and
- (2) instruction in and opportunities to demonstrate knowledge, skills, and abilities to competently practice nursing according to components of practice for the registered nurse as defined in 21 NCAC 36 .0224.

~~(o)~~(o) The curriculum for a licensed practical nurse refresher course shall include at least 180 hours of instruction, at least 90 of which shall consist of clinical learning experiences, and shall incorporate:

- (1) the scope of practice for the licensed practical nurse, as defined in G.S. 90-171.20(8) and 21 NCAC 36 .0221, .0225 and .0401; and
- (2) instruction in and opportunities to demonstrate knowledge, skills, and abilities to competently practice nursing according to components of nursing practice for the licensed practical nurse as defined in 21 NCAC 36 .0225.

~~(p)~~(p) The refresher course director or the designated refresher course instructor shall assess each refresher student and ensure the appropriateness of all clinical learning settings and assignments.

~~(q)~~(q) Registered nurse and licensed practical nurse refresher courses shall limit simulation experiences to no more than 50 percent of clinical learning experiences, pursuant to 21 NCAC 26 .0321(m).

~~(r)~~(r) Evaluation processes shall be implemented that effectively measure the refresher student's ability to competently practice nursing consistent with the level of licensure and scope as set forth in 21 NCAC 36 .0221, .0224, .0225, and .0401.

(s) Completion of both the theory and clinical components of the refresher course shall occur within 24 months of initial enrollment in the course.

~~(t)~~(t) Clinical resources shall indicate, in written contract, support and availability to provide the necessary clinical experiences.

~~(u)~~(u) Individuals previously licensed in North Carolina and presently residing outside of North Carolina may meet the requirements of this Rule by successfully completing a refresher course approved by another state board of nursing.

~~(v)~~(v) Individuals enrolled in refresher courses shall identify themselves as RN Refresher Student (R.N.R.S.) or LPN Refresher Student (L.P.N.R.S.), consistent with the course level, after signatures on records or on name pins.

~~(w)~~(w) In a format specified by the Board, the course provider shall provide the Board with the names and license numbers of those individuals who have satisfactorily completed the refresher course at the appropriate level of licensure on the Board supplied form.

~~(x)~~(x) Upon request, the Board shall provide:

- (1) a list of approved providers;
- (2) the format for applications for program approval; and
- (3) the format for verification of successful completion to all approved programs.

Authority G.S. 90-171.23(b)(3); 90-171.35; 90-171.36; 90-171.37; 90-171.38; 90-171.83.

21 NCAC 36 .0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia, or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure that does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to a Nurse Aide I and a Nurse Aide II shall be established by the Board pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person that:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making that cannot be logically separated from the tasks themselves.

Client-care services that do not meet all of these criteria shall be performed by a licensed nurse.

(c) A registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement a treatment or pharmaceutical regimen that is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects or that may rapidly endanger a client's life or well-being and that is prescribed by an individual authorized by State law to prescribe such a regimen. A nurse who assumes responsibility directly or through delegation for implementing a treatment or pharmaceutical regimen shall be accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in a client's condition that contraindicates continued administration of the pharmaceutical or treatment regimen;
- (7) anticipating those effects that may rapidly endanger a client's life or well-being; and
- (8) making judgments and decisions concerning actions to take in the event such effects occur.

(d) If health care needs of a client are incidental to the personal care needs of the client, a nurse shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with ~~21 NCAC 46 .2507~~ 21 NCAC 46 .2507 and .2514.

Authority G.S. 90-85.3; 90-171.23(b); 90-171.43; 90-171.83.

21 NCAC 36 .0233 OUT OF STATE STUDENTS

(a) Unlicensed nursing students enrolled in out-of-State nursing education programs who request use of North Carolina clinical facilities shall be allowed such experiences following approval by the Board. ~~Upon receiving such a request, the chief nursing administrator of a North Carolina clinical facility shall provide the Board with the following~~ Requests to use North Carolina clinical facilities for out-of-state nursing education programs shall be submitted by the chief nursing administrator or RN designee of a North Carolina clinical facility in the format provided by the Board at least 30 days prior to the start of the requested experience. ~~experience.~~ The submitted request shall include the following:

- (1) a letter of request for approval to provide the clinical offering, including proposed starting and completion dates;
- (2) documentation that the nursing program is currently approved by the Board of Nursing in the state in which the parent institution is located;
- (3) the name, qualifications, curriculum vitae, and evidence of an active, unencumbered registered nurse licensure of the faculty responsible for coordinating the student's experience; and
- (4) the name, qualifications, resume, and evidence of active unencumbered license to practice as a

registered nurse in North Carolina for the preceptor or on-site faculty.

(b) Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

- (1) North Carolina Nursing Practice Act;
- (2) North Carolina administrative rules and related interpretations provided by the Board regarding the role of the registered nurse, licensed practical nurse, and unlicensed nursing personnel; and
- (3) North Carolina Board of Nursing developed Suggestions for Utilization of Preceptors.

(c) Failure to continue in compliance with the requirements of Paragraph (a) of this Rule shall result in the immediate withdrawal of the Board's approval of the clinical offering and student status, consistent with G.S. 90-171.43(2).

Authority G.S. 90-85.3; 90-171.23(b) 90-171.43; 90-171.83.

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

(a) ~~A~~ A controlling institution seeking initial approval to operate a nursing program shall employ a program director qualified pursuant to Rule ~~.0317(e)~~ .0317(b) of this Section. A controlling institution can seek initial approval to establish one nursing program and one program entry option at a time.

(b) The program director shall develop and submit an application for initial approval at least ~~six~~ 12 months prior to the proposed program start date that documents the following:

- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution, including accreditation status. The controlling institution shall be an accredited institution;
- (2) a general overview of the entire proposed curriculum that includes:
 - (A) the program philosophy, purposes, and objectives;
 - (B) a master plan of the curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
 - (C) course descriptions and course objectives for all courses; and
 - (D) course syllabi pursuant to 21 NCAC 36 ~~.0321(i)~~ .0321(j) for all first-year nursing courses;
- ~~(3) the proposed student population;~~
- ~~(4)~~(3) the projected student enrollment;
- ~~(5)~~(4) evidence of learning resources and clinical experiences available to implement and maintain the program;
- ~~(6)~~(5) financial resources adequate to begin and maintain the program;
- ~~(7)~~(6) physical facilities adequate to house the program;

- (8)(7) support services available to the program from the controlling institution;
- (9)(8) approval of the program by the governing body of the controlling ~~institution;~~ institution;
- (9) approval from the applicable licensing regulatory body in North Carolina for the controlling institution;
- (10) student policies for admission, progression and graduation of students, pursuant to 21 NCAC 36 .0320;
- (11) an emergency preparedness plan for addressing situations which shall include a reduction in the availability of clinical sites, a transition from in-person to virtual learning platforms, and a need for increased use of simulation;
- (12) a comprehensive program evaluation plan, pursuant to 21 NCAC 36 .0317(f); and,
- (10)(13) a plan with a specified time frame for:
- (A) availability of qualified faculty as specified in 21 NCAC 36 .0318; .0318; and
- (B) course syllabi as specified in 21 NCAC 36 .0321(h) .0321(i) and (j) of this Section for all nursing courses; courses.
- (C) ~~student policies for admission, progression, and graduation of students, pursuant to 21 NCAC 36 .0320; and~~
- (D) ~~comprehensive program evaluation, pursuant to 21 NCAC 36 .0317(d).~~
- (c) The application to establish a nursing program shall contain current and accurate information required in Paragraph (a)(b) of this Rule, be complete, and be signed by the program director and the chief executive officer of the controlling institution.
- (d) The completed application shall be received by the Board not less than 120 days prior to a regular meeting of the Board to be considered for placement on the agenda of that meeting.
- (e) If another program exists in the institution, the application shall include:
- (1) the organizational relationship of the existing program and the proposed program in the institution;
 - (2) the NCLEX pass rate of the existing program for the past three years; and
 - (3) a description of the expected impact of the proposed program on the existing program, including:
 - (A) the availability of a program director for each program;
 - (B) the availability of qualified faculty;
 - (C) the physical facilities adequate to house both programs;
 - (D) the availability of learning resources;
 - (E) the availability of clinical experiences; and
 - (F) the adequacy of student services.
- (f) No new program application shall be considered if a nursing program currently exists in the institution if:
- (1) ~~the NCLEX pass rate of the existing program has not met the standard for the past three years, pursuant to 21 NCAC 36 .0320(e); and any currently approved program at the institution is on warning status; or~~
 - (2) resources are not demonstrated to be adequate to maintain both the existing and the proposed program in compliance with Rules .0300 to .0323 of this Section.
- ~~(g) Programs on initial approval may admit students.~~
- ~~(h)(g)~~ The Board shall conduct an on-site survey of the proposed program after the application meets all the requirements set forth in this Rule, shall prepare a survey report, and afford the petitioning institution an opportunity to respond to the survey report.
- ~~(i) The Board shall consider all evidence, including the application, the survey report, comments from representatives of the petitioning institution, public comments, and the status of other nursing programs at the institution in determining whether to approve the application.~~
- ~~(j)(h)~~ If the application is approved, When the Board shall grant grants initial approval approval, it and shall establish a maximum enrollment and implementation ~~date.~~ date for the program.
- ~~(k)(i)~~ The institution seeking initial approval shall not solicit students until the program has been granted initial approval status by the Board.
- ~~(j)~~ Programs on initial approval status may admit students.
- (k) The Board shall rescind the initial approval status of a program if the controlling institution fails to submit documentation as set forth in the plan required by Subparagraph ~~(b)(10)(b)(13)~~ of this Rule.
- (l) The Board shall rescind the initial approval status of a program if the first class of students is not enrolled in the program within one year after issuing the initial ~~approval.~~ approval status.
- (m) For 12 months following rescission of approval, the controlling institution shall not submit an application for establishing a nursing program.
- (n) A program shall retain initial approval status for the time necessary for full implementation of the ~~curriculum,~~ curriculum and graduation of the first cohort of students, provided ~~that~~ the program complies with Section .0300 of this Chapter.
- (o) Programs with initial approval status shall be surveyed:
- (1) during the final term of curriculum implementation of the program; and
 - (2) upon receipt by the Board of information that the program may not be complying with Section .0300.
- (p) If at any time a program on initial approval status is not complying with Section .0300 of this Chapter, the program, upon written notification, shall:
- (1) correct the area of noncompliance and submit written evidence of this correction to the Board; or
 - (2) submit and implement a plan for correction to the Board.
- (q) The Board shall rescind the initial approval status of a program if the program does not comply with Paragraph (o) of this Rule.

(r) ~~If, following the survey and during final curriculum implementation, the Board finds that the program is complying with Section .0300 of this Chapter, the~~ The Board shall place the program on full approval ~~status; status provided:~~

- (1) the Board finds that the program has complied with Section .0300 of this Chapter while on initial approval status;
- (2) an on-site survey is completed during the final term of curriculum implementation; and
- (3) the program demonstrates an NCLEX® examination pass rate that meets or exceeds 90 percent of the national pass rate for licensure level on first writing of the licensure examination for calendar years ending December 31.

(s) If, following the survey and during final curriculum implementation, the program does not comply with ~~the~~ Section .0300 of this Chapter, the Board shall rescind the program's initial approval status and provide the program with written notice of the Board's decision.

(t) Upon written request from the program submitted within 10 business days of the Board's written notice of rescinding the initial ~~approval~~, approval status, the Board shall schedule a hearing at the next available meeting of the Board for which appropriate notice can be provided, or at a meeting of the Board that is scheduled by consent of the parties.

(u) Following the hearing and consideration of all evidence provided, the Board shall assign the program full approval status or shall enter an Order rescinding the initial approval status, which shall constitute program closure pursuant to 21 NCAC 36 .0309.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All prelicensure nursing education programs ~~that~~ are governed by the rules in this ~~Chapter~~ Chapter. Accreditation by a may obtain national nursing program accreditation by a nursing accreditation body as defined in 21 NCAC 36 .0120(30). .0120(37) is required. For those programs granted initial approval status, full approval status, or warning status prior to December 31, 2023, evidence of accreditation by a national nursing accreditation body (not to include pre-accreditation status) is required effective January 1, 2030.

(b) Board action is based upon each program's performance and demonstrated compliance with the Board's requirements and responses to the Board's recommendations. The Board may, depending on the severity and pattern of violations of this Chapter, require corrective action for identified deficiencies, impose a monitoring plan, conduct a program survey, change program approval status, withdraw approval, issue discipline, or close a program.

(c) Full Approval

- (1) The Board shall review approved programs at least every ~~eight~~ 10 years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board.

(2) National accreditation by a national nursing accrediting body, set forth by the US Department of Education is required, and evidence of compliance with the accreditation standards shall be used for evaluating continuing approval. Self-study reports shall provide a basis for review of accredited programs.

~~(2)~~(3) The Board shall send a written report of the review no more than ~~20~~ 30 business days following the completion of the review process. Responses from a nursing education program regarding a review report or warning status as referenced in Paragraph (d) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of warning status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and the testimony of the Board staff.

~~(3)~~(4) If the Board finds a pattern of noncompliance with one or more rules in this Section, the Board may take action as outlined in Paragraph (b) of this Rule.

(d) Warning Status

(1) If the Board finds that a program is not complying with the rules in this Section, the Board shall assign the program warning status and shall give written notice by certified mail to the program specifying:

- (A) the areas in which there is noncompliance;
- (B) the date by which the program must comply with the rules in this Section. The maximum time for compliance shall be two consecutive years after issuance of the written notice; and
- (C) the opportunity to schedule a hearing. Any request for a hearing regarding the program warning status shall be submitted to the Board. A hearing shall be afforded pursuant to the provisions of G.S. 150B, Article 3A.

(2) On or before the required date of compliance specified in Part (d)(1)(B) of this Rule if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program full approval status.

(3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (d)(1)(B) of this Rule, the program shall remain on warning status, and a review by the Board shall be conducted during that time and the Board shall either:

- ~~(A) continue the program on warning status; or~~

- ~~(B)~~(4) If the Board finds the program is not in compliance with the rules in this Section for two consecutive years following the date specified in Part (d)(1)(B) of this Rule, warning status approval will be withdraw approval, withdrawn, constituting a program closure consistent with Subparagraph ~~(e)(3)(b)~~ of this Rule.
- (4)(5) Upon written request from the program submitted within 10 business days of the Board's written notice of warning status, or withdrawal of approval, the Board shall schedule a hearing at the next available meeting of the Board for which appropriate notice can be provided, or at a meeting of the Board that is scheduled by consent of the parties. provided.
- ~~(5)~~(6) If a hearing is held at the request of the program and the Board determines that the program is not in compliance with the rules in this Section, the program shall remain on warning status, a review by the Board shall be conducted during that time and the Board shall either: shall:
- (A) continue the program on warning status; or
 - (B) withdraw approval, constituting program closure consistent with Subparagraph ~~(e)(3)~~ Paragraph (b) of this Rule. Rule; or
 - (C) remove the program from warning status.

Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40.

21 NCAC 36 .0309 PROCESS FOR PROGRAM CLOSURE

- (a) A program is deemed closed when the program has not enrolled students for a period of two consecutive years since the last graduating class or student enrollment has not occurred for a two consecutive year period.
- ~~(a)~~(b) When the controlling institution makes the decision to close a nursing program, the Administration of the institution shall submit a written plan for the discontinuation of the program to the Board and shall include include:
- (1) the reasons for program closure, closure;
 - (2) the date of intended closure, closure;
 - (3) and a plan for students to complete this or another approved program. program;
 - (4) a plan detailing the arrangement for secure storage and access to academic records and transcripts for all students and graduates; and
 - (5) the communication methods to all current and former students the intent to close.
- ~~(b)~~(c) When the Board closes a nursing program, the program director shall, within 30 days, develop and submit a plan for discontinuation of the program for Board approval. The plan shall address transfer of students to approved programs. When the controlling institution makes the decision to close a nursing program, the institution may not apply to establish a nursing program until at least 12 calendar months from the date of official

- notification to the Board in writing that the plan for closure has been fully implemented.
- ~~(e)~~(d) The controlling institution shall notify the Board of the arrangement for secure storage and access to academic records and transcripts. When the Board closes a nursing program based on noncompliance with the rules and requirements in this Section, the Board shall give written notice of closure by certified mail to the program specifying the areas in which there is evidence of noncompliance and the opportunity for the program to request a hearing contesting the involuntary program closure pursuant to the provisions of G.S. 150B, Article 3A.
- (e) If the program does not contest the involuntary closure by the Board, the program director shall, within 30 days, develop and submit a plan for discontinuation of the program for Board approval consistent with Paragraph (b) of this Rule. The plan shall address transfer of students to approved programs. Involuntary program closure shall occur within six months from the date of notification of closure by the Board.
- (f) When the Board closes a program, the controlling institution may not apply to establish a nursing program until at least 24 calendar months from the date of official notification of program closure by the Board.

Authority G.S. 90-171.38; 90-171.39; 90-171.40.

21 NCAC 36 .0317 ADMINISTRATION

- (a) The controlling institution of a nursing program shall provide human, physical, technical, and financial resources and services essential to support program processes and outcomes, including those listed in Paragraph (f) and (g) of this Rule, and maintain compliance with Section .0300 of this Chapter.
- (b) The controlling institution shall ensure that a full-time registered nurse, qualified pursuant to Paragraph (e) of this Rule, has the authority to direct the nursing program. Full-time registered nurse is a registered nurse employed by the institution who is regularly assigned to work at least 40 hours each week in the position of program director.
- (c) The controlling institution shall ensure that the program director has the authority and responsibility for maintaining compliance with the Rules in this Chapter and other legal requirements in all areas of the program.
- (d) The controlling institution shall ensure that the program director has non-teaching time sufficient to allow for program organization, administration, continuous review, planning, and development.
- (e) The program director in a program preparing students for initial nurse licensure shall satisfy the following requirements:
- (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;
 - (2) have two years of full-time experience as a faculty member in a Board-approved nursing program;
 - (3) be experientially qualified, having clinical nursing experience, experience as a faculty member in a nursing program, and academic or nursing leadership experience to lead the program to accomplish the mission, goals, and expected program outcomes;

- (4) hold ~~either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. institution; If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;~~
- (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to the program director role. Once completed, this education need not be repeated if employing organization is changed. This education may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of Board-approved continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of graduate course work in adult learning and learning principles;
 - (D) national certification in nursing education; ~~or~~
 - (E) documentation of completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty ~~performance.~~ performance; or
 - (F) individuals with prior teaching experience in an academic nursing program setting may be evaluated by administration to assess each individual's prior teaching experience commensurate with formal education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to the program director role.
- (6) maintain competence in the areas of assigned responsibility; and
- (7) have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.

(f) A nursing education program shall implement, for quality improvement, a comprehensive program evaluation that shall include the following:

- (1) students' achievement of program outcomes;

- (2) evidence of program resources, including fiscal, physical, human, clinical, and technical learning resources; student support services; and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
 - (3) measures of program outcomes for graduates;
 - (4) evidence that accurate program information for the public is available;
 - (5) evidence that the controlling institution and its administration support program outcomes;
 - (6) evidence that program director and program faculty meet Board qualifications and are sufficient in number to achieve program outcomes;
 - (7) evidence that collected evaluative data is used in implementing quality improvement activities; and
 - (8) evidence of student participation in program planning, implementation, evaluation, and continuous improvement.
- (g) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums, and accessible by the public. The following shall be accessible to all applicants and students:
- (1) admission policies and practices;
 - (2) policy on advanced placement and transfer of credits;
 - (3) the number of credits required for completion of the program;
 - (4) tuition, fees, and other program costs;
 - (5) policies and procedures for withdrawal, including refund of tuition or fees;
 - (6) the grievance procedure;
 - (7) criteria for successful progression in the program, including graduation requirements; and
 - (8) policies for clinical performance.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0318 FACULTY

(a) Policies for nursing program faculty members shall be consistent with those for other faculty of the controlling institution, with variations as needed due to the nature of the nursing curriculum.

(b) Fifty percent or more of the nursing faculty shall hold a graduate degree.

(c) Nurses licensed pursuant to this Chapter who are full-time and part-time faculty and who teach in a program leading to initial licensure as a nurse shall:

- (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;
- (2) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;

- (3) have two calendar years or the equivalent of full-time ~~clinical~~ experience as a registered nurse. Full-time registered nurse is a registered nurse employed by the institution who is regularly assigned to work at least 40 hours each week in ~~the a position of faculty member;~~ position;
- (4) ~~if newly employed in a full-time faculty position on or after January 1, 2016, full-time faculty shall~~ hold a graduate degree from an accredited institution or obtain a graduate degree in nursing from an accredited institution within five years of initial full-time employment;
- (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to faculty assignment. Once completed, this education need not be repeated if the employing organization is changed. This education may be demonstrated by one of the following:
- (A) completion of 45 contact hours of Board-approved continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of graduate course work in adult learning and learning principles;
 - (D) national certification in nursing education; ~~or~~
 - (E) documentation of completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in the curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty ~~performance.~~ performance; or
 - (F) individuals with prior teaching experience in an academic nursing program setting may be evaluated by the Program Director to assess each individual's prior teaching experience commensurate with formal education in teaching and learning principles for adult education including curriculum development, implementation, and evaluation, appropriate to faculty assignment.
- (6) maintain competence in the areas of assigned responsibility; and
- (7) have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.
- (d) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation, including a conferred degree, with applicable licensure or certification in the content area they are teaching.
- (e) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold an active unencumbered license to practice as a registered nurse in North Carolina.
- (f) Nurse faculty members shall have the authority and responsibility for:
- (1) student admission, progression, and graduation requirements; and
 - (2) the development, implementation, and evaluation of the curriculum.
- (g) Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as required by the course objectives, the levels of the students, the nature of the learning environment, and to provide for teaching, supervision, and evaluation.
- (h) Thirty-five percent or more of the nursing faculty employed by the institution shall be full-time faculty.
- (i) The controlling institution shall provide workshops and presentations devoted to faculty development.
- ~~(h)(j)~~ (j) The faculty-student ratio for faculty-directed preceptor clinical experiences shall be no greater than 1:15. The faculty-student ratio for all other clinical experiences shall be no greater than 1:10.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

21 NCAC 36 .0320 STUDENTS

- (a) Students in nursing programs shall meet requirements established by the controlling institution.
- (b) Admission requirements and practices shall be stated and published in the controlling institution's publications and shall include assessment of the student's:
- (1) record of high school graduation, high school equivalent, or earned credits from a post-secondary institution;
 - (2) achievement potential through the use of previous academic records and pre-entrance examination cut-off scores that are consistent with curriculum demands and scholastic expectations; and
 - (3) physical and ~~emotional~~ mental health that is indicative of the applicant's ability to provide competent nursing care to the public.
- (c) The number of students enrolled in nursing courses shall not exceed by more than 10 students the maximum number approved by the Board, as established pursuant to 21 NCAC 36 ~~.0302(f)~~ .0302(h) and 21 NCAC 36 ~~.0321(k)~~ .0321(l).

(d) The nursing program shall publish policies in a nursing student handbook and college catalog that provide for identification and dismissal of students who:

- (1) present physical or ~~emotional~~ mental health problems that conflict with the safety essential to nursing practice and do not respond to treatment or counseling within a timeframe that enables meeting program objectives;
- (2) demonstrate behavior that conflicts with the safety essential to nursing practice; or
- (3) fail to demonstrate professional behavior, including honesty, integrity, and appropriate use of social media, while in the nursing program of study.

(e) The nursing program shall maintain ~~a three-year average at or above 95 percent of an NCLEX® examination pass rate that meets or exceeds 90 percent of the national pass rate for licensure level pass rate~~ on first writing of the licensure examination for calendar years ending December 31.

(f) The controlling institution shall publish policies in a nursing student handbook and college catalog for transfer of credits or for admission to advanced placement, and the nursing program shall determine the total number of nursing courses or credits awarded for advanced placement.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.43.

21 NCAC 36 .0321 CURRICULUM

(a) The nursing program curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives, pursuant to 21 NCAC 36 .0302(a)(2);
- (3) be consistent with Article 9A of G.S. 90 and the Rules in this Chapter governing the practice of nursing;
- (4) define the level of performance required to pass each course in the curriculum;
- (5) enable a student to develop the nursing knowledge, skills, and abilities necessary for competent practice consistent with the level of licensure and scope as set forth in 21 NCAC 36 .0221, .0224, .0225, and .0231;
- (6) include content in the biological, physical, social, and behavioral sciences to provide a foundation for competent and effective nursing practice;
- (7) provide students the opportunity to acquire and demonstrate, through didactic content and clinical experience under faculty supervision, the knowledge, skills, and abilities required for effective and competent nursing practice in the areas of medical/surgical, obstetric, pediatric, psychiatric/mental health, and community health across the lifespan; and
- (8) be revised as necessary to reflect changes and advances in health care and its delivery.

(b) Didactic content and supervised clinical experience across the lifespan appropriate to program type shall include:

- (1) implementing quality and safety principles and practices minimizing the risk of harm to clients and providers through both system effectiveness and individual ~~performance~~; performance to include clinical judgment, skill in clinical management, time management, and emergency preparedness;
- (2) using informatics to communicate, manage knowledge, mitigate error, and support decision making;
- (3) employing evidence-based practice to integrate the best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care;
- (4) providing client-centered, culturally competent care by:
 - (A) respecting client differences, values, preferences, and expressed needs;
 - (B) involving clients in decision-making and care management;
 - (C) coordinating and managing continuous client care consistent with the level of licensure. This shall include a demonstrated ability to delegate and supervise others and provide leadership within the profession appropriate for program type; and
 - (D) promoting healthy lifestyles for clients and populations;
- (5) working in interdisciplinary teams to cooperate, collaborate, communicate, engage in patient teaching consistent with the level of licensure, and integrate client care and health promotion; ~~and~~
- (6) participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in client ~~care~~; and
- (7) legal and ethical issues and professional responsibilities of the licensed nurse.

(c) ~~Clinical experience~~ experience, traditional or simulated, shall be comprised of sufficient hours to accomplish the ~~curriculum~~, curriculum and with the exception of observational experiences and the focused client care experience as noted in Paragraphs (e) and (f) of this Rule, shall be supervised by qualified on-site faculty pursuant to 21 NCAC 36 .0318, and shall ensure students' ability to practice at an entry level.

(d) All student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

(e) A focused client care experience with a minimum of 120 hours shall be provided in the final year of curriculum implementation for programs preparing registered nurses.

(f) A focused client care experience with a minimum of 90 hours shall be provided in the final semester of the curriculum for programs preparing practical nurses.

(g) Learning experiences and methods of instruction, including distance education methods, shall be consistent with the written

curriculum plan and shall demonstrate logical curricular progression.

(h) Remediation strategies for students shall be in place at the beginning of each course and include processes to remediate errors in the clinical setting.

~~(h)~~(i) Objectives for each course shall indicate the knowledge, skills, and abilities expected for competent student performance. These objectives shall:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical experience;
- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

~~(j)~~(j) Student course syllabi shall include a description and outline of:

- (1) the course content;
- (2) the learning environments and activities;
- (3) when the course is taken in the curriculum;
- (4) allocation of time for didactic content, clinical experience, laboratory experience, and simulation; and
- (5) methods of evaluation of student performance, including all evaluation tools used in the course.

~~(j)~~(k) Each course shall be implemented in accordance with and evaluated by reference to the student course syllabus.

~~(k)~~(l) Requests for approval of changes ~~in~~, in the currently approved curriculum, or expansion of, the program, accompanied by all required documentation, shall be submitted in the format provided by the Board at least ~~30~~ 60 days prior to implementation for approval by the Board. Criteria for approval shall include program approval status, the availability of classrooms, laboratories, clinical placements, equipment, and supplies and faculty sufficient to implement the curriculum to an increased number of students. Approval shall be required for any increase in enrollment that exceeds, by more than 10 students, the maximum number approved by the Board. Requests for expansion in enrollment shall be considered only for programs with full approval ~~status that demonstrate at least a three year average licensure examination pass rate equal to or greater than the North Carolina three year average pass rate for program type.~~ status.

~~(l)~~(m) The nursing education program shall notify the Board at least ~~30~~ 45 days prior to implementation of:

- (1) alternative or additional program schedules; and
- (2) planned decrease in the Board-approved student enrollment number to accurately reflect program ~~capacity; and~~ capacity.
- ~~(3) changes that alter the currently approved curriculum.~~

(n) The program shall have written policies and procedures on the following:

- (1) short-term and long-term plans for integrating simulation into the curriculum;
- (2) method of debriefing for each simulated activity; and
- (3) a plan for orienting faculty to simulation.

~~(m)~~(o) For all programs using simulation experiences substituted for clinical experience time, the nursing education program shall:

- (1) demonstrate that simulation faculty have been formally educated and maintain the competencies in simulation and debriefing; and
- (2) provide a simulation environment with adequate faculty, space, equipment, and supplies that simulate realistic clinical experiences to meet the curriculum and course objectives.

~~(n) Programs not holding national nursing accreditation shall limit simulation experiences to no more than 25 percent in each course, including the focused client care experience.~~

~~(o)~~(p) Programs ~~holding national nursing accreditation~~ shall limit simulation experiences to:

- (1) no more than 25 percent in the focused client care experience; and
- (2) no more than 50 percent of clinical experience time in each course.

~~(p)~~(q) External standardized examinations shall not be used to determine a student's progression or graduation in a nursing education program preparing students for initial nurse licensure. When used, external examinations must not count for more than 10 percent of a course grade or assignment.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0322 FACILITIES

- (a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.
- (b) Classrooms, laboratory and simulation space, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment shall be suitable for the number of students and purposes for which the rooms are to be used.
- (c) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy, including conferences with students.
- (d) Learning resources, including educational reference materials and clinical experiences, shall be comprehensive, current, developed with nursing faculty input, accessible to students and faculty and shall support the implementation of the curriculum.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0323 RECORDS AND REPORTS

- (a) The controlling institution's publications describing the nursing program shall be current and accurate.
- (b) The controlling institution shall maintain a system for maintaining official records. Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.
- (c) Both permanent and current records shall be available for review by Board staff.
- (d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.

(e) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:

- (1) documentation of admission criteria met by the student;
(2) documentation of high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and
(3) a transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.

(f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section, including:

- (1) an annual report to be filed with the Board by November 1 of each year; year. This report shall include information about the program's use of simulation;
(2) a program description report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review by the Board; and
(3) notification by institution administration of any change of the nursing program director. This notification shall include a curriculum vitae for the new director and shall be submitted no later than 10 business days before the effective date of the change.

(g) All communications relevant to accreditation shall be submitted to the Board at the same time that the communications are submitted to the accrediting body.

(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its controlling institutions.

(i) The part of the application for licensure by examination to be submitted to the Board by the nursing program shall include a statement verifying satisfactory completion of all requirements for program completion and the date of completion. The nursing program director shall verify completion of requirements to the Board no later than one month following completion of the Board-approved nursing program.

Authority G.S. 90-171.23(b)(8); 90-171.38.

CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners in Optometry intends to amend the rule cited as 21 NCAC 42B .0107.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncoptometry.org/proposed-rules

Proposed Effective Date: July 1, 2023

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Contact the Board at (910) 285-3160 or janice@ncoptometry.org

Reason for Proposed Action: The amendments are an attempt to update and simplify the requirements for taking the Board's clinical practicum examinations to make them clear and understandable to applicants.

Comments may be submitted to: Janice Peterson, 521 Yopp Rd., Suite 214 #444, Jacksonville, NC 28540; phone (910) 285-3160; fax (910) 285-4546; email janice@ncoptometry.org

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

SUBCHAPTER 42B - LICENSE TO PRACTICE OPTOMETRY

SECTION .0100 - LICENSE BY EXAMINATION

21 NCAC 42B .0107 NATIONAL BOARD EXAMINATIONS

(a) Each applicant must submit evidence of having achieved a passing score on:

- (1) Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) Examinations if offered at the time the applicant graduated from an accredited school of optometry;
(2) NBEO's Treatment and Management of Ocular Disease Examination if offered at the time the applicant graduated from an accredited school of optometry; and

(3) ~~NBEO's Injection Skills Examination, reached the recommended levels of acceptable performance on the National Board examinations given by the National Board of Examiners in Optometry on or after the April 1978 administration in one of the following formats and under the following conditions prior to Board approval of his or her application to take the clinical practicum examination administered by the Board.~~

(8) ~~June 1, 2014 administrations through March 2015 administrations: passing score on Part III Injection Skills Examination (ISE) of the National Board.~~

(9) ~~Beginning with March 2015 administrations: all applicants must have a passing score on Part III CSE with a score of not less than 75 on the Skills of gonioscopy, binocular indirect ophthalmoscopy and slit lamp biomicroscopy, and a passing score on Part III ISE of the National Board.~~

(b) The applicant shall authorize the release of his or her official NBEO score report by the National Board to the Board prior to the approval by the Board of his or her application to take the North Carolina clinical practicum examination.

(b) ~~For candidates with passing scores on at least one National Board examination part under different formats and time periods described in Subparagraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this Rule, the following equivalences shall apply:~~

(1) ~~April 1978 through August 1986 administrations: passing scores on Parts I, IIA, and IIB, with scores of not less than 75 in Section 7 (Pathology) and Section 9 (Pharmacology) on the Part IIB examination, and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease: (TMOD) examination.~~

- (1) Part I and IIA is the equivalent of BS;
- (2) Part IIB is the equivalent of CS without the inclusion of TMOD;
- (3) Part I ABS is the equivalent of Part I BS; and
- (4) Part II PAM is the equivalent of Part II CS.

(2) ~~April 1987 through August 1992 administrations: passing scores on the Part I Basic Science (BS) examination and Part II Clinical Science (CS) examination of the National Board, with scores of not less than 75 on the Ocular Disease/Trauma and Clinical Pharmacology sections of the Part II CS examination, and a score of not less than 75 on the TMOD examination.~~

Authority G.S. 90-117.5; 90-118.

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to amend the rule cited as 21 NCAC 58A .0114.

(3) ~~April 1993 through December 2008 administrations: passing score on the Part I BS Examination of the National Board.~~

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncrec.gov

(4) ~~April 1993 through April 2009 administrations: passing score on the Part II CS Examination of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma component within the CS examination, and a score of not less than 75 on either the TMOD component within the CS examination, or on the equivalent stand-alone TMOD examination.~~

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 20, 2023

Time: 9:00 a.m.

Location: Chowan County Courthouse, 117 East King Street, Edenton, NC 27932

(5) ~~March 2009 administrations through November 2009 administrations: passing score on Part I Applied Basic Science (ABS) examination of the National Board.~~

Reason for Proposed Action: 21 NCAC 58A .0114 - RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(6) ~~December 2009 administrations through February 2010 administrations: passing score on Part II Patient Assessment and Management (PAM) examination of the National Board, with a score of not less than 75 on the Disease/Trauma component within the PAM examination, and a score of not less than 75 on the TMOD component within the PAM.~~

In response to a Rule-making Petition, the Commission is proposing amendments to clarify form contents, including additional questions regarding the flood status of the property. The Commission is also proposing amendments to include historic registration or designation property status, private well testing, and elevator systems, and to further clarify rule text relating to form contents.

(7) ~~March 2010 administrations through February 2014 administrations: passing score on the Part III Clinical Skills Examination (CSE) of the National Board.~~

Comments may be submitted to: Melissa Vuotto, PO Box 17100, Raleigh, NC 27619-7100; phone (919) 875-3700; email Public.Comment@ncrec.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
Local funds affected
Substantial economic impact (>= \$1,000,000)
Approved by OSBM
No fiscal note required

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete the following a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a buyer in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows: Disclosure Statement is a form prescribed by the

Commission and available on the Commission's website at https://www.ncrec.gov/Forms/Consumer/rec422.pdf. The Disclosure Statement shall include the requirements set forth in G.S. 47-E and the:

- (1) property address;
(2) owner's name(s), signature(s), and date of Disclosure Statement completion;
(3) instructions for Disclosure Statement completion;
(4) year the dwelling was constructed;
(5) condition of the property's:
(A) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and
(B) fixtures and appliances that may be included in the conveyance.
(6) historic designation or registration of the property, if applicable;
(7) noise, odor, smoke, or other issue from commercial, industrial, or military sources that affect the property;
(8) flood hazard status of the property;
(9) condition of the drainage, grading, or soil stability affecting the property;
(10) private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;
(11) buyer's acknowledgement of examination of the Disclosure Statement prior to signing the Disclosure Statement; and
(12) buyer's signature and date of Disclosure Statement receipt.

(b) A broker shall furnish a current Disclosure Statement published on the Commission's website to the property owner(s) for completion.

(c) A broker shall discover and disclose any material facts about the property that the broker knows or reasonably should know and shall not solely rely on the owner's Disclosure Statement representations.

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND OWNERS' Association DISCLOSURE STATEMENT

Instructions to Property Owners

1. The Residential Property Disclosure Act (G.S. 47E)("Disclosure Act") requires owners of residential real estate (single family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.

2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.

PROPOSED RULES

- a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - e. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
 - d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected Disclosure Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting contract (See "Note to Buyers" below). You should give the buyer a copy of the Disclosure Statement containing your signature and keep a copy signed by the buyer for your records.

Note to Buyers

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
Owner's Name(s): _____
Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
Owner Signature: _____ Date _____, ____

Buyers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Buyers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.

Buyer Signature: _____ Date _____, ____
Buyer Signature: _____ Date _____, ____

Property Address/Description: _____

The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.

PROPOSED RULES

No Repr-

Yes No sentation

1. In what year was the dwelling constructed? _____

Explain if necessary: _____

2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them?

3. The dwelling's exterior walls are made of what type of material? Brick Veneer Wood Stone Vinyl Synthetic Stucco Composition/Hardboard Concrete Fiber Cement Aluminum Asbestos Other _____
(Check all that apply)

4. In what year was the dwelling's roof covering installed? _____
(Approximate if no records are available.) Explain if necessary: _____

5. Is there any leakage or other problem with the dwelling's roof?

6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?

7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?

8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?

9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?

10. What is the dwelling's heat source? Furnace Heat Pump Baseboard Other _____ (Check all that apply)
Age of system: _____

11. What is the dwelling's cooling source? Central Forced Air Wall/Window Unit(s) Other _____ (Check all that apply)
Age of system: _____

12. What is the dwelling's fuel sources? Electricity Natural Gas Propane Oil Other _____ (Check all that apply)
If the fuel source is stored in a tank, identify whether the tank is above ground or below ground, and whether the tank is leased by seller or owned by seller.
(Check all that apply)

13. What is the dwelling's water supply source? City/County Community System Private Well Shared Well Other _____
(Check all that apply)

14. The dwelling's water pipes are made of what type of material? Copper Galvanized Plastic Polybutylene Other _____
(Check all that apply)

15. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity or water pressure)?

16. What is the dwelling's sewage disposal system? Septic Tank Septic Tank with Pump

PROPOSED RULES

~~Community System Connected to City/County System City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates State law]) Other _____~~
(Check all that apply)

- ~~17. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit? If your answer is "Yes," how many bedrooms are allowed? _____ No records available.~~
- ~~18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system?~~
- ~~19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems?~~
- ~~20. Is there any problem, malfunction or defect with any appliances that may be included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?~~
- ~~21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?~~
- ~~22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property?~~
- ~~23. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property?~~
- ~~24. Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?~~
- ~~25. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) located on or which otherwise affect the property?~~
- ~~26. Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property?~~
- ~~27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?~~
- ~~28. Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property?~~
- ~~29. Is the property subject to a flood hazard or is the property located in a federally designated flood hazard area?~~
- ~~30. Does the property abut or adjoin any private road(s) or street(s)?~~
- ~~31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?~~

If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):

PROPOSED RULES

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.

No Repr-
Yes No sentation

32. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?

If you answered "yes" to the question above, please explain (attach additional sheets if necessary):

33. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are

* If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.

No Repr-
Yes No sentation

34. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:

35. As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:

36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed? If your answer is

PROPOSED RULES

~~"yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:~~ _____

37. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.)

- No Representation
- Management Fees
- Exterior Building Maintenance of Property to be Conveyed
- Master Insurance
- Exterior Yard/Landscaping Maintenance of Lot to be Conveyed
- Common Areas Maintenance
- Trash Removal
- Recreational Amenity Maintenance (specify amenities covered) _____
- _____

- Pest Treatment/Extermination
- Street Lights
- Water
- Sewer
- Storm Water Management/Drainage/Ponds
- Internet Service
- Cable
- Private Road Maintenance
- Parking Area Maintenance
- Gate and/or Security
- Other: (specify)

Buyer Initials and Date _____ Owner Initials and Date _____
Buyer Initials and Date _____ Owner Initials and Date _____

~~(b) The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.~~

~~(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2021, applies to all properties placed on the market on or after July 1, 2021. The form described in Paragraph (a) of this Rule as amended effective July 1, 2018, applies to all properties placed on the market prior to July 1, 2021. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after July 1, 2021, for a property placed on the market prior to July 1, 2021, the form described in Paragraph (a) of this Rule as amended effective July 1, 2021, shall be used.~~

Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission February 16, 2023 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeanette Doran (Chair)
Robert A. Bryan, Jr. (2nd Vice Chair)
Jay R. Hemphill
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Wayne R. Boyles, III
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939
Seth M. Ascher	984-236-1934

RULES REVIEW COMMISSION MEETING DATES

March 16, 2023	May 18, 2023
April 20, 2023	June 15, 2023

**RULES REVIEW COMMISSION MEETING
MINUTES**

February 16, 2023

The Rules Review Commission met on Thursday, February 16, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioner Jay Hemphill was present via WebEx.

Staff member Alexander Burgos, and Commission Counsel Seth Ascher, Lawrence Duke, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the January 19, 2023 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matters Tabs H, I, and J for Coastal Resources Commission.

FOLLOW UP MATTERS

Medical Care Commission

10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, and .5411 – These Rules remain on the agenda pending the agency’s intention to seek a legislative fix to address the overarching statutory objection. No action was required by the Commission.

Medical Care Commission

Upon the call of the Chair, 10A NCAC 13F .0904 and 13G .0904 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Megan Lamphere, with the Division of Health Service Regulation, addressed the Commission.

Department of Public Safety

14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, and .0410 - The Commission extended the period of review for these Rules at the January meeting. No action was required by the Commission.

Department of Environmental Quality

15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, and .0115 - The Commission extended the period of review for these Rules at the January meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The rules were returned at the request of the agency. No action was required by the Commission.

Environmental Management Commission

Upon the call of the Chair, 15A NCAC 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, and .0409 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The Commission objected to these Rules at the May 2022 meeting. The agency has not responded to the Commission’s objection since August 2022. No action was required by the Commission.

Coastal Resources Commission

Upon the call of the Chair, 15A NCAC 07I .0508 and .0511 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

The Commission determined that the agency had not satisfied the September 2022 RRC objections and continues to object pursuant to G.S. 150B-21.12(c). Upon the call of the Chair, the Commission voted to continue the objections from the September 2022 meeting for 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Mary Lucasse with the Department of Justice, and representing the agency, addressed the Commission.

Coastal Resources Commission

The Commission determined that the agency had not satisfied the September 2022 RRC objections and continues to object pursuant to G.S. 150B-21.12(c). Upon the call of the Chair, the Commission voted to continue the objection from the September 2022 meeting for 15A NCAC 07H .2305 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Coastal Resources Commission

Upon the call of the Chair, 15A NCAC 07M .1102 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

The Commission determined that the agency had not satisfied the September 2022 RRC objections and continues to object pursuant to G.S. 150B-21.12(c). Further, the RRC determined that, as written, 07M .0201, and .0202 have substantially changed pursuant to G.S. 150B-21.12(c).

Upon the call of the Chair, the Commission voted to continue the objections from the September 2022 meeting for 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10F .0201 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

TSERS and LGERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, and .0505 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

TSERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02B .0101, .0202, .0210, .0211, .0213, .0301, .0302, .0303, .0304, .0305, .0307, .0308, .0401, .0402, .0404, .0405, .0501, .0502, .0503, .0504, .0510, .0701, .0706, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0810, .0901, .0902, .0903, .0904, .0905, .0906, .1003, .1004, .1005, .1006, .1007, .1101, .1102, .1104, .1204, .1205, and .1207 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

LGERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02C .0101, .0201, .0204, .0205, .0301, .0302, .0303, .0304, .0306, .0307, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0704, .0901, .0902, .0904, .0906, .0907, .0908, .0909, .1001, .1002, .1003, .1004, .1006, .1007, .1201, .1301, .1302, .1501, .1503, .1504, .1505, and .1506 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

TSERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02F .0101, .0104, .0107, and .0108 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

TSERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, and .0307 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

LGERS Board of Trustees

Upon the call of the Chair, 20 NCAC 02N .0106, .0108, .0208, .0215, .0218, and .0219 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Examiners for Engineers and Surveyors

Upon the call of the Chair, 21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, and .1713 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

LOG OF FILINGS (PERMANENT RULES)

Department of Labor

Upon the call of the Chair, 13 NCAC 18 .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, and .0110 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02H .0804 was withdrawn at the request of the agency. No action was required by the Commission.

State Board of Education

Upon the call of the Chair, the Commission extended the period of review for 16 NCAC 06E .0204 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Examiners of Electrical Contractors

Upon the call of the Chair, 21 NCAC 18B .0201, .0213, and .0308 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Examiners in Optometry

Upon the call of the Chair, 21 NCAC 42B .0101, .0303; 42D .0101, .0102; 42M .0101 and .0106 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Pharmacy

Upon the call of the Chair, 21 NCAC 46 .1819 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

Upon the call of the Chair, 21 NCAC 50 .0403, .0415, .0519, and .1101 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Building Code Council

Upon the call of the Chair, 2018 NC Fire Code, Sections 510.4.2, 510.5, 510.5.4, and Chapter 80 and the 2020 NC Electrical Code, Article 100 Definitions were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Pursuant to Session Law 2021-121, Rules 2018 NC Fire Code, Section D107.1, D107.2; 2018 NC Plumbing Code, Table 605.3 Water Service Pipe, and 2018 NC Residential Code Table P2906.4 Water Service Pipe are subject to legislative review and are exempt from review by the Commission. Therefore, the agency withdrew these rules from Commission review and no action was taken on these Rules by the Commission.

LOG OF FILINGS (TEMPORARY RULES)

Building Code Council

Upon the call of the Chair, 2018 NC Residential Code: N1103.3.1; 2018 NC Energy Conservation Code: R403.3.1; and 2018 Energy Conservation Code: C403.2.9 were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

COMMISSION BUSINESS

Chair Doran notified the Commissioners of a letter by the Codifier of Rules Ashley Snyder. The letter explained an issue pertaining to the delayed effective dates for 15A NCAC 02D .0535 and .0545.

The meeting adjourned at 10:04 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 16, 2023, at 9:00 a.m.

RULES REVIEW COMMISSION

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

February 16, 2023

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Jennifer Everett	DEQ
Laura Puzo	DST
Phillip Reynolds	NC DOS
Christine Goebel	NC DEQ
David Tuttle	Board of Engineers & Surveyors
Cora Houston	" "
Timothy Melton	DST
Robert El-Jaouhari	Cranfill Sumner LLP
Patrick Kinlaw	NC DST
Reed Fountain	Young Moore
Ann Wall	Sec of State
CHAD STANDER	
Julie Youngman	SELC
Mary Lucas	NC DOT

RULES REVIEW COMMISSION

Rules Review Commission Meeting February 16, 2022
Via WebEx

Name	Agency
Daniel Johnson	DOT
Todd Crawford	DEQ
Virginia Niehaus	CPH
EJ Wiley	DOT
Dauna Bartley	Dental Board
Karen Higgins	EMC
Rachel A Love-Adrick	DEQ
Will Polk	DPS
Helen Landi	DOT
David Wainwright	EMC
Hannah Jernigan	hjernigan@ncdot.gov
Julie Ventaloro	OSBM
Janice Peterson	Optometry
Anna Hayworth	Agriculture
Joelle Burleson	DEQ
Libby Kinsey	DHHS
Makeda Harris	NCHA
Laura Lansford	NCDOR
Shalisa Jones	DHHS
Thomas Ziko	DPI
Christopher Ventaloro	DEQ
Megan Lamphere	DHHS
Carla Rose	Labor
David Rittlinger	BCC
Marlika Hairston	NCCOB
Madison Mackenzie	DHHS
Angela Willis	CRC
Ross Smith	NCMA
Linwood Peele	EMC
Johnny Loper	Optometry
Anne Coan	NCFB
Carrie Ruhlman	WRC
Thomas Causey	Treasurer

LIST OF APPROVED PERMANENT RULES
February 16, 2023 Meeting

MEDICAL CARE COMMISSION

Nutrition and Food Service

10A NCAC 13F .0904

Nutrition and Food Service

10A NCAC 13G .0904

LABOR, DEPARTMENT OF

<u>Introduction</u>	13 NCAC 18 .0101
<u>Definitions</u>	13 NCAC 18 .0102
<u>Licensing Procedures</u>	13 NCAC 18 .0103
<u>Surety Bonds</u>	13 NCAC 18 .0104
<u>Contracts</u>	13 NCAC 18 .0105
<u>Records</u>	13 NCAC 18 .0106
<u>Advertising</u>	13 NCAC 18 .0107
<u>Prohibited Acts</u>	13 NCAC 18 .0108
<u>Review of Job Listing Services</u>	13 NCAC 18 .0109
<u>Penalty</u>	13 NCAC 18 .0110

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Applicability</u>	15A NCAC 02E .0401
<u>Definitions</u>	15A NCAC 02E .0402
<u>Applicability</u>	15A NCAC 02E .0403
<u>Notifications</u>	15A NCAC 02E .0404
<u>Environmental Documents</u>	15A NCAC 02E .0405
<u>Petition</u>	15A NCAC 02E .0406
<u>Settlement Mediation</u>	15A NCAC 02E .0407
<u>Final Determination</u>	15A NCAC 02E .0408
<u>Emergency Transfers</u>	15A NCAC 02E .0409

COASTAL RESOURCES COMMISSION

<u>Consideration of Application by Permit Officer</u>	15A NCAC 07I .0508
<u>Commitment to Adopt Local Management Plan as Ordinance</u>	15A NCAC 07I .0511
<u>Policy Statements</u>	15A NCAC 07M .1102

WILDLIFE RESOURCES COMMISSION

<u>Safety Equipment</u>	15A NCAC 10F .0201
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TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES/LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES

<u>Organization: Authority</u>	20 NCAC 02A .0101
<u>Exercise of Authority</u>	20 NCAC 02A .0102
<u>Delegation of Authority to Director</u>	20 NCAC 02A .0103
<u>Exercise of Employer Options</u>	20 NCAC 02A .0104
<u>Establishment of Procedural Rights</u>	20 NCAC 02A .0201
<u>Definitions</u>	20 NCAC 02A .0202
<u>Establishment of Procedural Rights</u>	20 NCAC 02A .0301
<u>Definitions</u>	20 NCAC 02A .0302
<u>Reconsideration of Declaratory Rulings</u>	20 NCAC 02A .0303
<u>Establishment of Procedural Rights</u>	20 NCAC 02A .0401
<u>Dual Membership - Computation of Service and Benefits</u>	20 NCAC 02A .0503
<u>Direct Deposit of Monthly Benefit Payments</u>	20 NCAC 02A .0504
<u>Administrative Fees for Service Purchasers</u>	20 NCAC 02A .0505

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES

<u>General Information</u>	20 NCAC 02B .0101
<u>Actuarial Tables: Rates and Assumptions</u>	20 NCAC 02B .0202
<u>Medical Board</u>	20 NCAC 02B .0210
<u>Optional Retirement Program</u>	20 NCAC 02B .0211
<u>Disability Retirement Allowance Defined</u>	20 NCAC 02B .0213
<u>Designation</u>	20 NCAC 02B .0301
<u>Principal Beneficiary</u>	20 NCAC 02B .0302
<u>Contingent Beneficiary</u>	20 NCAC 02B .0303
<u>No Living Beneficiary</u>	20 NCAC 02B .0304
<u>Beneficiary Who I Minor</u>	20 NCAC 02B .0305
<u>Change in Beneficiary</u>	20 NCAC 02B .0307
<u>Special Rule: Beneficiary Before July 1, 1967</u>	20 NCAC 02B .0308
<u>Refunds</u>	20 NCAC 02B .0401
<u>Forwarding Of Employer Contributions</u>	20 NCAC 02B .0402
<u>Due Date Of Contributions</u>	20 NCAC 02B .0404
<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20 NCAC 02B .0405
<u>Disability Retirement Examination</u>	20 NCAC 02B .0501
<u>Disability Retirement Reports</u>	20 NCAC 02B .0502
<u>Fees: Independent Medical Exam-Disability Retirements</u>	20 NCAC 02B .0503
<u>Interest Credits</u>	20 NCAC 02B .0504
<u>Pensions</u>	20 NCAC 02B .0510
<u>Educational Leaves of Absence</u>	20 NCAC 02B .0701
<u>Workers' Compensation Leaves of Absence</u>	20 NCAC 02B .0706
<u>Fee</u>	20 NCAC 02B .0801
<u>Qualifying for Credit</u>	20 NCAC 02B .0802
<u>Computation of Cost</u>	20 NCAC 02B .0803
<u>Civil Service Participation</u>	20 NCAC 02B .0804
<u>Service Connected Disability</u>	20 NCAC 02B .0805
<u>Recalculation of Benefits</u>	20 NCAC 02B .0806
<u>Change in Benefits</u>	20 NCAC 02B .0807
<u>Restoring Membership</u>	20 NCAC 02B .0810
<u>Fee</u>	20 NCAC 02B .0901
<u>Qualifying for Credit</u>	20 NCAC 02B .0902
<u>Definition</u>	20 NCAC 02B .0903
<u>Computation of Cost</u>	20 NCAC 02B .0904
<u>Recalculation of Benefits</u>	20 NCAC 02B .0905
<u>Change in Benefits</u>	20 NCAC 02B .0906
<u>Prior Service with General Assembly</u>	20 NCAC 02B .1003
<u>Temporary Service Purchase (Inchoate Rights Only)</u>	20 NCAC 02B .1004
<u>Temporary Service Purchase: Full Actuarial Liability</u>	20 NCAC 02B .1005
<u>Part-Time Service Purchase: Full Actuarial Liability</u>	20 NCAC 02B .1006
<u>Local Government Service Purchase: Full Actuarial Liability</u>	20 NCAC 02B .1007
<u>Fee</u>	20 NCAC 02B .1101
<u>Qualification</u>	20 NCAC 02B .1102
<u>Recalculation of Benefits</u>	20 NCAC 02B .1104
<u>Definitions</u>	20 NCAC 02B .1204
<u>Computation of Cost</u>	20 NCAC 02B .1205

<u>Special Rule for Retired Applicants</u>	20 NCAC 02B .1207
 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES	
<u>General Information</u>	20 NCAC 02C .0101
<u>Actuarial Tables: Rates and Assumptions</u>	20 NCAC 02C .0201
<u>Facility of Payment</u>	20 NCAC 02C .0204
<u>Medical Board</u>	20 NCAC 02C .0205
<u>Designation</u>	20 NCAC 02C .0301
<u>Principal Beneficiary</u>	20 NCAC 02C .0302
<u>No Living Beneficiary</u>	20 NCAC 02C .0303
<u>Payment to Beneficiaries</u>	20 NCAC 02C .0304
<u>Beneficiary Change</u>	20 NCAC 02C .0306
<u>Contingent Beneficiary</u>	20 NCAC 02C .0307
<u>Employer's Contributions</u>	20 NCAC 02C .0402
<u>Refunds</u>	20 NCAC 02C .0403
<u>Due Date of Contributions</u>	20 NCAC 02C .0404
<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20 NCAC 02C .0405
<u>Disability Examination</u>	20 NCAC 02C .0501
<u>Disability Retirement Reports</u>	20 NCAC 02C .0502
<u>Fees: Independent Medical Exam-Disability Retirements</u>	20 NCAC 02C .0503
<u>Reinstatement to Active Service</u>	20 NCAC 02C .0504
<u>Workers' Compensation Leaves of Absence</u>	20 NCAC 02C .0704
<u>Leave</u>	20 NCAC 02C .0901
<u>Fee</u>	20 NCAC 02C .0902
<u>Computation of Cost</u>	20 NCAC 02C .0904
<u>Civil Service Program</u>	20 NCAC 02C .0906
<u>Exclusion</u>	20 NCAC 02C .0907
<u>Recalculation of Benefits</u>	20 NCAC 02C .0908
<u>Change in Benefits</u>	20 NCAC 02C .0909
<u>Fee</u>	20 NCAC 02C .1001
<u>Qualifying for Credit</u>	20 NCAC 02C .1002
<u>Other Governmental Subdivision</u>	20 NCAC 02C .1003
<u>Computation of Cost</u>	20 NCAC 02C .1004
<u>Recalculation of Benefits</u>	20 NCAC 02C .1006
<u>Change in Benefits</u>	20 NCAC 02C .1007
<u>Service Retirement</u>	20 NCAC 02C .1201
<u>Fee</u>	20 NCAC 02C .1301
<u>Qualifying for Credit</u>	20 NCAC 02C .1302
<u>Application of Section</u>	20 NCAC 02C .1501
<u>Definitions</u>	20 NCAC 02C .1503
<u>Computation of Cost</u>	20 NCAC 02C .1504
<u>Extent of Service to be Purchased</u>	20 NCAC 02C .1505
<u>Special Rule for Retired Applicants</u>	20 NCAC 02C .1506

 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES	
<u>General Information</u>	20 NCAC 02F .0101
<u>Actuarial Tables: Rates and Assumptions</u>	20 NCAC 02F .0104
<u>Final Compensation for Three-Fourths Limitation</u>	20 NCAC 02F .0107

<u>Full Actuarial Cost</u>	20 NCAC 02F .0108
 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES/LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES	
<u>General Information</u>	20 NCAC 02L .0101
<u>Definitions</u>	20 NCAC 02L .0103
<u>Retired Members</u>	20 NCAC 02L .0202
<u>Accident and Hospital Benefits</u>	20 NCAC 02L .0302
<u>Definitions</u>	20 NCAC 02M .0101
<u>Agency and Authority of Director</u>	20 NCAC 02M .0102
<u>Time and Date</u>	20 NCAC 02M .0104
<u>Eligibility to Elect Coverage</u>	20 NCAC 02M .0201
<u>When First Eligible</u>	20 NCAC 02M .0202
<u>Reinstatement</u>	20 NCAC 02M .0206
<u>Contribution Rates</u>	20 NCAC 02M .0301
<u>Member Contribution</u>	20 NCAC 02M .0302
<u>Payment of Contribution</u>	20 NCAC 02M .0303
<u>Amount of Benefit Payable</u>	20 NCAC 02M .0304
<u>Payment of Interest on Benefit</u>	20 NCAC 02M .0305
<u>Benefits Payable after Cancellation</u>	20 NCAC 02M .0307
 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES	
<u>Office of The Director</u>	20 NCAC 02N .0106
<u>Divisional Rules</u>	20 NCAC 02N .0108
<u>Applying for Membership</u>	20 NCAC 02N .0208
<u>Military Service</u>	20 NCAC 02N .0215
<u>Retirement Benefits</u>	20 NCAC 02N .0218
<u>Refunds of Deceased Members' Payments</u>	20 NCAC 02N .0219
 ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF	
<u>Requirements for All Examination Applicants</u>	21 NCAC 18B .0201
<u>Alternative Examination</u>	21 NCAC 18B .0213
<u>Bidding Projects Pursuant to G.S. 87-1.1</u>	21 NCAC 18B .0308
 OPTOMETRY, BOARD OF EXAMINERS IN	
<u>Approved Schools of Optometry</u>	21 NCAC 42B .0101
<u>Failure to Meet Continuing Education Requirement</u>	21 NCAC 42B .0303
<u>Definitions</u>	21 NCAC 42D .0101
<u>Function</u>	21 NCAC 42D .0102
<u>Definitions</u>	21 NCAC 42M .0101
<u>Termination</u>	21 NCAC 42M .0106
 PHARMACY, BOARD OF	
<u>COVID-19 Drug Preservation Rule</u>	21 NCAC 46 .1819
 PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS OF	
<u>Use of License</u>	21 NCAC 50 .0403
<u>Proposal, Bid, Estimate, Performance Under G.S. 87-1.1</u>	21 NCAC 50 .0415
<u>Residential Fire Sprinkler Design Contractor License</u>	21 NCAC 50 .0519

RULES REVIEW COMMISSION

Examination Fees 21 NCAC 50 .1101

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

Disbursement of Funds 21 NCAC 56 .0303

Requirements for Licensing 21 NCAC 56 .0601

Surveyor Intern Certificate 21 NCAC 56 .0608

Definitions 21 NCAC 56 .1702

Requirements 21 NCAC 56 .1703

Units 21 NCAC 56 .1704

Determination of Credit 21 NCAC 56 .1705

Exemptions 21 NCAC 56 .1707

Sponsors 21 NCAC 56 .1713

BUILDING CODE COUNCIL

2018 NC Fire Code Sections 510.4.2, 510.5, 510.5.4, and Chapter 80

2020 NC Electrical Code/Definitions Article 100

**LIST OF APPROVED TEMPORARY RULES
February 16, 2023 Meeting**

BUILDING CODE COUNCIL

2018 NC Residential Code/Insulation N1103.3.1

2018 NC Energy Conservation Code/Insulation R403.3.1

2018 Energy Conservation Code/Duct and Plenum Insulation C403.2.9