

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Nursing

RULE CITATION: 21 NCAC 36 .0120

**DEADLINE FOR RECEIPT: Thursday, May 11, 2017**

***NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In Item (1), line 6, what do you mean by "procedural officer"? Do you mean "hearing officer"?*

*In Item (5), line 14, consider inserting a comma after "(7)"*

*Page 2, Item (18), line 9, consider inserting a comma after "(7)"*

*In Item (20), line 13, I take it that "NCLEX" is a known term to your regulated public?*

*Item (42), Page 4, why are you defining this term? It doesn't appear to be used anywhere else in the Code since you are deleting it from Rule .0217.*

*Item (45), line 9, should "Self-assessment" be hyphenated? The only place I saw the term being used was in 21 NCAC 36 .0232, and it was hyphenated there.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: April 27, 2017

1 21 NCAC 36 .0120 is amended as published in NCR 31:14, pages 1403 – 1406, as follows:

2  
3 **21 NCAC 36 .0120 DEFINITIONS**

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

- 5 (1) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve  
6 as procedural officer for contested cases.
- 7 ~~(1)(2)~~ "Academic term" means one semester of a school year.
- 8 ~~(2)(3)~~ "Accountability/Responsibility" means being answerable for action or inaction of self, and of others  
9 in the context of delegation or assignment.
- 10 ~~(3)(4)~~ "Accredited institution" means an institution accredited by a United States Department of Education  
11 approved institutional accrediting body.
- 12 ~~(4)(5)~~ "Active Practice" means activities that are performed, either for compensation or without  
13 compensation, consistent with the scope of practice for each level of licensee as defined in G.S. 90-  
14 171.20(4), (7) and (8).
- 15 ~~(5)(6)~~ "Advanced Practice Registered Nurse (APRN)" means a nurse practitioner, nurse anesthetist, nurse-  
16 midwife or clinical nurse specialist.
- 17 ~~(6)(7)~~ "Assigning" means designating responsibility for implementation of a specific activity or set of  
18 activities to a person licensed and competent to perform such activities.
- 19 ~~(7)(8)~~ "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment  
20 in a current or evolving practice setting where the student provides care to clients under the  
21 supervision of faculty or a preceptor.
- 22 ~~(8)(9)~~ "Clinical judgment" means the application of the nursing knowledge, skills, abilities, and experience  
23 in making decisions about client care.
- 24 ~~(9)(10)~~ "Competent" means having the knowledge, skills, and ability to safely perform an activity or role.
- 25 ~~(10)(11)~~ "Continuing Competence" means the on-going acquisition and application of knowledge and the  
26 decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in  
27 nursing care that contributes to the health and welfare of clients served.
- 28 ~~(11)(12)~~ "Contact Hour" means 60 minutes of an organized learning experience.
- 29 ~~(12)(13)~~ "Continuing Education Activity" means a planned, organized learning experience that is related to  
30 the practice of nursing or contributes to the competency of a nurse as outlined in 21 NCAC 36 .0223  
31 Subparagraph (a)(2).
- 32 ~~(13)(14)~~ "Controlling institution" means the degree-granting organization or hospital under which the nursing  
33 education program is operating.
- 34 ~~(14)(15)~~ "Curriculum" means an organized system of teaching and learning activities directed toward the  
35 achievement of specified learning objectives and outcomes.

1 ~~(15)~~(16) "Delegation" means transferring to a competent individual the authority to perform a selected  
2 nursing activity in a selected situation. The nurse retains accountability/responsibility for the  
3 delegation.

4 ~~(16)~~(17) "Debriefing" means an activity that follows a clinical or simulated experience and is led by a trained  
5 faculty facilitator. Students' reflective thinking is encouraged, and feedback is provided regarding  
6 the students' performance during discussion of various aspects of the completed experiences.

7 ~~(17)~~(18) "Dimensions of Practice" means those aspects of nursing practice that include professional  
8 responsibility, knowledge-based practice, ethical and legal practice, and collaborating with others,  
9 consistent with G.S. 90-171.20(4), (7) and (8).

10 ~~(18)~~(19) "Distance education" means teaching and learning strategies used to meet the learning needs of  
11 students when the students and faculty are not in the same location.

12 ~~(19)~~(20) "External standardized examination" means a commercially available standardized predictive test  
13 that provides individual student scores that are linked to a probability of passing the NCLEX™  
14 examination.

15 ~~(20)~~(21) "Faculty directed clinical practice" means clinical experiences provided under the  
16 accountability/responsibility and direction of nursing program faculty.

17 ~~(21)~~(22) "Focused client care experience" means a clinical experience that emulates an entry-level work  
18 experience in nursing. The intent is to assist the student to transition to an entry-level nursing  
19 practice. There is no specific setting requirement. Supervision may be by faculty and preceptor  
20 dyad or direct faculty supervision.

21 ~~(22)~~(23) "Interdisciplinary faculty" means faculty from professions other than nursing.

22 ~~(23)~~(24) "Interdisciplinary team" means all individuals involved in providing a client's care who cooperate,  
23 collaborate, communicate, and integrate care to ensure that care is continuous and reliable.

24 ~~(24)~~(25) "Learning resources" means materials that faculty use to assist students in meeting the expectations  
25 for learning defined by the curriculum.

26 ~~(25)~~(26) "Level of Licensure" means practice of nursing by either a Licensed Practical Nurse or a Registered  
27 Nurse as defined in G.S. 90-171.20(7) and (8).

28 ~~(26)~~(27) "Level of student" means the point in the program to which the student has progressed.

29 ~~(27)~~(28) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the  
30 nursing program at any one time. The number reflects the capacity of the nursing program based  
31 on demonstrated resources sufficient to implement the curriculum.

32 ~~(28)~~(29) "Methods of Instruction" means the planned process through which teacher and student interact with  
33 selected environment and content so that the response of the student gives evidence that learning  
34 has taken place. It is based upon stated course objectives and outcomes for learning experiences in  
35 classroom, laboratory, simulation and clinical settings.

36 ~~(29)~~(30) "National Credentialing Body" means a credentialing body that offers certification or re-certification  
37 in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.

- 1 ~~(30)~~(31) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- 2 ~~(31)~~(32) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- 3 ~~(32)~~(33) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United
- 4 States Department of Education.
- 5 ~~(33)~~(34) "Nursing program faculty" means individuals employed full or part-time by academic institution
- 6 responsible for developing, implementing, ~~evaluation~~ evaluating and updating nursing curricula.
- 7 ~~(34)~~(35) "Nursing project" means a project or research study of a topic related to nursing practice that
- 8 includes a problem statement, objectives, methodology and summary of findings.
- 9 ~~(35)~~(36) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- 10 ~~(36)~~(37) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in
- 11 Section .0300.
- 12 ~~(37)~~(38) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is
- 13 seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical
- 14 experience.
- 15 ~~(38)~~(39) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical
- 16 Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled
- 17 pharmacological agents and devices to a client in compliance with Board of Nursing rules and other
- 18 applicable federal and state law and regulations.
- 19 ~~(39)~~(40) "Program Closure" means to cease operation of a nursing program.
- 20 ~~(40)~~(41) "Program" means a course of study that prepares an individual to function as an entry-level
- 21 practitioner of nursing. The three "Program Types" are:
- 22 (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the
- 23 attainment of knowledge and skill sets in the current practice in nursing, nursing theory,
- 24 nursing research, community and public health, health care policy, health care delivery and
- 25 finance, communications, therapeutic interventions and current trends in health care. For
- 26 this program type, the client is the individual, family, group, and community.
- 27 (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum
- 28 components for the ADN/Diploma in Registered Nursing provides for the attainment of
- 29 knowledge and skill sets in the current practice in nursing, community concepts, health
- 30 care delivery, communications, therapeutic interventions and current trends in health care.
- 31 For this program type, client is the individual, group of individuals, and family.
- 32 (c) Practical Nurse Diploma - Curriculum prepares for providing direct nursing care under the
- 33 supervision of a registered nurse or other health care provider as defined by the Nursing
- 34 Practice Act. Curriculum components provide for the attainment of knowledge and skill
- 35 sets in the current practice of practical nursing, communications, therapeutic interventions,
- 36 including pharmacology, growth and development, and current trends in health care. For
- 37 this program type client is the individual or group of individuals.

1           ~~(42)~~ "Prosecuting Attorney" means the attorney representing the Board of Nursing to prepare and  
2           prosecute contested cases.

3           ~~(41)~~~~(43)~~ "Review" means collecting and analyzing information to assess compliance with Section .0300 of  
4           this Chapter. Information may be collected by multiple methods, including review of written reports  
5           and materials, on-site observations, review of documents, and in-person or telephone interview(s)  
6           and conference(s).

7           ~~(42)~~~~(44)~~ "Rescind Approval" means a Board action that removes the approval status previously granted by  
8           the Board.

9           ~~(43)~~~~(45)~~ "Self Assessment" means the process whereby an individual reviews her or his own nursing practice  
10          and identifies the knowledge and skills possessed as well as those skills to be strengthened or  
11          acquired.

12          ~~(44)~~~~(46)~~ "Simulation" means a technique, not a technology, to replace or amplify clinical experiences with  
13          guided experiences that evoke or replicate substantial aspects of the real world of nursing practice  
14          in a fully interactive manner.

15          ~~(45)~~~~(47)~~ "Specialty" means a broad, population-based focus of study encompassing the common health-  
16          related problems of a particular group of patients and the likely co-morbidities, interventions, and  
17          responses to those problems.

18          ~~(46)~~~~(48)~~ "Supervision" means the provision of guidance or direction, evaluation, and follow-up by a licensed  
19          nurse to accomplish an assigned or delegated nursing activity or set of activities.

20          ~~(47)~~~~(49)~~ "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing a nursing  
21          program's compliance with Section .0300 of this Chapter.

22  
23       *History Note:*     *Authority G.S. 90-171.23; 90-171.38;*  
24                         *Eff. April 1, 2003;*  
25                         *Amended Eff. June 1, 2017; December 1, 2016; July 1, 2012; November 1, 2008; May 1, 2006;*  
26                         *December 1, 2005; August 1, 2005.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Nursing

RULE CITATION: 21 NCAC 36 .0217

**DEADLINE FOR RECEIPT: Thursday, May 11, 2017**

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

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), line 17, replace "which" with "that"*

*In (a)(1), line 19, who determines what "may" impair? And define "safely"*

*In (a)(3), line 21, consider inserting a comma after "possessing"*

*On line 22, consider inserting the name of the Act. "... violations of the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;"*

*In (a)(4), line 23, replace "which" with "that"*

*In (a)(4), what crimes are these? If G.S. 90-171.48 is no longer your lodestar, what are these crimes?*

*So that I'm clear, how will (a)(5) occur? Is this only when the information is requested?*

*In (a)(6), I take it your regulated public is familiar with its scope of practice?*

*In (a)(7), line 31, replace "which" with "that"*

*And in (a)(7), so that I'm clear, how will the regulated public know these limitations?*

*In (a)(8), line 33, define "adequate" and replace "which" with "that"*

*In (a)(9), line 37, is "equivalent" care known to your regulated public?*

*In (a)(11), Page 2, line 2, what do the terms "threatening, harassing, abusing, or intimidating" mean?*

*In (a)(12), line 3, define "pertinent"*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: April 27, 2017

*In (a)(14), line 7, is “undue influence” known to your regulated public?*

*In (a)(16), line 11, for consistency, consider replacing “failure” with “failing”*

*Also on line 11, I take it any Board required reports are in Rule?*

*In (a)(17), line 13, insert a comma after “assessing”*

*In (a)(19), line 22, replace “such” with “the”*

*In (a)(20), how will your licensees know this?*

*In (a)(21), line 28, replace the semicolon after “conditions” with a comma, to be consistent with line 26.*

*In (a)(23), line 29, what are these records? Where are they kept?*

*In (a)(23), what does this mean? How are these boundaries determined? Are they in a Code of Ethics?*

*Also, on line 32, insert a comma after “emotional”*

*Line 32, define “financial exploitation”*

*In (a)(24), line 35, insert a comma after “employer”*

*On line 36, how will this work as a practical matter?*

*End (a)(25), line 37, with a period, not a semicolon.*

*In (b), Page 3, what is the Board’s statutory authority for this reciprocal discipline?*

*On line 3, since you state that the Board “may” summarily impose the discipline, under what circumstances will the Board not do this? You need to provide guidance in the Rule.*

*In (c), lines 26 through 29 restate G.S. 150B-3(c). Do you need to repeat it here?*

*What is the use of the sentence of lines 29-30?*

*In (d), Page 6, line 7, who determines when something is “practical”?*

*On line 8, how is the date known? Is it pursuant to G.S. 150B-38(b)?*

*On line 10, is the “administrative law counsel” serving as the hearing officer as defined by G.S. 150B-2(2b)?*

*On line 11, replace “such” with “the”*

*In (e), line 16, who will give this consideration? The administrative law counsel? And on line 17, define “effectively”*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: April 27, 2017

*Line 16, replace “will” with “shall”*

*On lines 19, why is “Administrative Law Counsel” capitalized? It isn’t on lines 10 and 24.*

*In (f), line 26, when does the counsel advise the Board? At the hearing?*

*In (g), line 29, replace “21 NCAC 36 .0217” with “this Rule”*

*In the History Note on Page 7:*

- *Do you need to retain G.S. 14-208.5, given the changes to the language in this Rule?*
- *G.S. 15A-1331A was recodified as G.S. 15A-1331.1 in 2012. And do you need to retain it all, given the repeal of Paragraph (b)?*
- *Please separate the citations of G.S. 90-171.23(b)(3) and (7) as “90-171.23(b)(3); 90-171.23(b)(7);”*
- *G.S. 150B-11 and 14 were repealed in 1991. Delete the citations.*
- *What statutes are you specifically referring to between 150B-38 through 42? Please list these out here.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: April 27, 2017



1 21 NCAC 36 .0217 is amended as published in NCR 31:14, pages 1406-1410, as follows:

2  
3 **21 NCAC 36 .0217        REVOCATION, SUSPENSION, OR DENIAL OF LICENSE INVESTIGATIONS;**  
4 **DISCIPLINARY HEARINGS**

5 ~~(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) apply.~~

6 ~~In addition, the following definitions apply:~~

7        (1) ~~—"Investigation" means an exploration of the events and circumstances related to reported information~~  
8                ~~in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by~~  
9                ~~the Board.~~

10        (2) ~~—"Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as~~  
11                ~~procedural officer for contested cases.~~

12        (3) ~~—"Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute~~  
13                ~~contested cases.~~

14 ~~(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has~~  
15 ~~successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the~~  
16 ~~Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.~~

17 ~~(a) Behaviors and activities which may result in disciplinary action by the Board include the following:~~

18        (1)     ~~drug or alcohol abuse; abuse or use of any substance or other agents while on duty or on call to the~~  
19                ~~extent that such use may impair the nurse's ability to safely practice nursing;~~

20        (2)     ~~testing positive on a drug screen for a non-prescribed drug or illicit substance;~~

21        ~~(3)~~(3) ~~illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other~~  
22                ~~violations of G.S. 90-86 to 90-113.8; et seq.;~~

23        ~~(3)~~(4) ~~commission conviction of any crime which bears on a licensee's fitness to practice nursing as set out in~~  
24                ~~G.S. 90-171.48(a)(2); nursing;~~

25        ~~(4)~~(5) ~~failure to make available to another health care professional any client information crucial to the safety~~  
26                ~~of the client's health care; information;~~

27        (5) ~~delegating responsibilities to a person when the licensee delegating knows or has reason to know that~~  
28                ~~the competency of that person is impaired by physical or psychological ailments, or by alcohol or~~  
29                ~~other pharmacological agents, prescribed or not;~~

30        (6)     practicing or offering to practice beyond the scope permitted by law;

31        (7)     accepting and performing professional responsibilities which the licensee knows or has reason to know  
32                that he or she is not competent to perform;

33        (8)     performing, without adequate supervision, professional services which the licensee is authorized to  
34                perform only under the supervision of a licensed professional, ~~except in an emergency situation where~~  
35                ~~a person's life or health is in danger; professional;~~

36        (9)     abandoning ~~or neglecting a~~ an assigned ~~client who is in need of nursing care,~~ without making  
37                ~~reasonable~~ arrangements for the continuation of ~~such~~ equivalent nursing care;

- 1           (10) neglecting a client in need of nursing care;  
2           ~~(10)(11)threatening, harassing, abusing, or intimidating a client either physically or verbally; client;~~  
3           ~~(11)(12) failure to maintain an accurate record for each client which records of all pertinent health care~~  
4                     ~~information as defined in Rule .0224(f)(2) or .0225(f)(2); for each client;~~  
5           ~~(12)(13) failure to exercise supervision over persons who are authorized to practice only under the supervision~~  
6                     ~~of the licensed professional;~~  
7           ~~(13)(14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or~~  
8                     ~~drugs client for the financial or personal gain of the practitioner or of a third party; licensee;~~  
9           ~~(14)(15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other~~  
10                   ~~consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;~~  
11           ~~(15)(16) failure to file a report, or filing a false report, required by law or by the Board, Board or impeding or~~  
12                   ~~obstructing such filing or inducing another person to do so;~~  
13           ~~(16)(17) obtaining, accessing or revealing identifiable data, or healthcare information obtained in a~~  
14                   ~~professional capacity, without prior consent of the client, from a client record or other source, except~~  
15                   ~~as required by professional duties or authorized or required by law;~~  
16           ~~(17) guaranteeing that a cure will result from the performance of professional services;~~  
17           (18) altering a license, using a license that has been altered or permitting or allowing another person to use  
18                   his or her license for the purpose of nursing. Altering is defined to include changing the expiration  
19                   date, certification number, or any other information appearing on the license; presenting false or  
20                   fraudulent licensure information for any purpose;  
21           (19) assigning or delegating professional responsibilities to a person when the licensee assigning or  
22                   delegating such responsibilities knows or has reason to know that such a person is not qualified by  
23                   training, by experience, experience or by licensure;  
24           (20) assigning or delegating responsibilities to a person when the licensee assigning or delegating knows or  
25                   has reason to know that the competency of that person is impaired by sleep deprivation, physical or  
26                   psychological conditions or by alcohol or other agents, prescribed or not;  
27           (21) accepting responsibility for client care while impaired by sleep deprivation, physical or psychological  
28                   conditions; or by alcohol or other pharmacological agents; agents, prescribed or not;  
29           (22) falsifying a client's record or the controlled substance records of the agency; or records;  
30           (23) engaging in any activities of a sexual nature with a client including kissing, fondling or touching while  
31                   responsible for the care of that individual, violating boundaries of a professional relationship including  
32                   but not limited to physical, sexual, emotional or financial exploitation of the client or the client's  
33                   significant other(s);  
34           (24) misappropriating, in connection with the practice of nursing, anything of value or benefit, including  
35                   but not limited to, any property, real or personal of the client, employer or any other person or entity,  
36                   or failing to take precautions to prevent such misappropriation; or  
37           ~~(20)(25) violating any term of probation, condition, or limitation imposed on the licensee by the Board;~~

1 ~~(d)(b)~~ When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed or  
2 has privilege to practice in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee,  
3 the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the  
4 other jurisdiction's action. The licensee may request a hearing. At the hearing the issues ~~will~~ shall be limited to:

- 5 (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina  
6 licensee are the same person;
- 7 (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice  
8 Act; and
- 9 (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

10 ~~(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or~~  
11 ~~licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S.150B,~~  
12 ~~Article 3A.~~

13 ~~(1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for~~  
14 ~~the North Carolina Board of Nursing.~~

15 ~~(2) The following general statutes, rules, and procedures apply unless another specific statute or rule of~~  
16 ~~the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in~~  
17 ~~G.S. 1A 1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90 86 through 90 113.8; 21~~  
18 ~~NCAC 36 .0224 .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for~~  
19 ~~Superior and District Court.~~

20 ~~(3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or~~  
21 ~~his attorney who prepares the document and shall contain his name, title/position, address, and~~  
22 ~~telephone number. If the individual involved is a licensed nurse the nursing license certificate number~~  
23 ~~shall appear on all correspondence with the Board of Nursing.~~

24 ~~(f)(c) In accordance with G.S. 150B 3(e) a license may be summarily suspended if the public health, safety, or welfare~~  
25 ~~requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant~~  
26 ~~to G.S. 90 171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and If a summary~~  
27 ~~suspension is issued pursuant to G.S. 150B-3(c), the order is effective on the date specified in the order or on service of~~  
28 ~~the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective~~  
29 ~~during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate~~  
30 ~~the order. Proceedings shall be commenced in a timely manner.~~

31 ~~(g) Board staff shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a~~  
32 ~~written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.~~

33 ~~(1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on~~  
34 ~~behalf of the Board of Nursing to the person who is the subject of the complaint.~~

35 ~~(A) The Letter of Charges shall be served in accordance with G.S. 1A 1, Rule 4, Rules of Civil~~  
36 ~~Procedure.~~



- 1           ~~(1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Part~~  
2           ~~(g)(1)(A) of this Rule;~~
- 3           ~~(2) Date, time, and place of the hearing;~~
- 4           ~~(3) Notification of the right of a party to represent himself or to be represented by an attorney;~~
- 5           ~~(4) A statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee~~  
6           ~~to compel the attendance of witnesses or the production of documents;~~
- 7           ~~(5) A statement advising the licensee that a notice of representation, containing the name of licensee's~~  
8           ~~counsel, if any, shall be filed with the Board of Nursing not less than 10 calendar days prior to the~~  
9           ~~scheduled date of the hearing;~~
- 10          ~~(6) A statement advising the licensee that a list of all witnesses for the licensee shall be filed with the~~  
11          ~~Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and~~
- 12          ~~(7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of~~  
13          ~~the Letter of Charges being taken as true and that the Board may proceed on that assumption.~~
- 14          ~~(4) Pre hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to~~  
15          ~~testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to~~  
16          ~~consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced~~  
17          ~~at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious~~  
18          ~~conduct of the hearing.~~
- 19                 ~~(1) The pre hearing conference shall be conducted in the offices of the Board of Nursing, unless another~~  
20                 ~~site is designated by mutual agreement of all parties.~~
- 21                 ~~(2) The pre hearing conference shall be an informal proceeding and shall be conducted by a~~  
22                 ~~Board designated administrative law counsel.~~
- 23                 ~~(3) All agreements, stipulations, amendments, or other matters resulting from the pre hearing conference~~  
24                 ~~shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal~~  
25                 ~~administrative hearing.~~
- 26          ~~(m) Administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual~~  
27          ~~consent in another location when a majority of the Board has convened in that location for the purpose of conducting~~  
28          ~~business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance~~  
29          ~~with G. S. 150B 38(e). All hearings conducted by the Board of Nursing shall be open to the public.~~
- 30          ~~(n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in~~  
31          ~~preparation for, or in the conduct of, a contested case.~~
- 32                 ~~(1) Subpoenas may be issued for the appearance of witnesses or the production of documents or~~  
33                 ~~information, either at the hearing or for the purposes of discovery.~~
- 34                 ~~(2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall~~  
35                 ~~include the following:~~
- 36                         ~~(A) the full name and home or business address of all persons to be subpoenaed; and~~
- 37                         ~~(B) the identification, with specificity, of any documents or information being sought.~~

1           ~~(3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party~~  
2           ~~requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall~~  
3           ~~include the date, time, and place for responding to the subpoena.~~

4           ~~(4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A 1. The cost of~~  
5           ~~service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party~~  
6           ~~requesting the witnesses.~~

7           ~~(d) When practical, All all motions related to a contested case, except motions for continuance and those made during~~  
8           ~~the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-~~  
9           ~~hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of~~  
10           ~~testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving~~  
11           ~~party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions.~~  
12           ~~If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the~~  
13           ~~provisions of G.S. 150B-40(e) shall govern the proceedings.~~

14           ~~(e) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance~~  
15           ~~must shall be in writing and received in the office of the Board of Nursing no less than seven calendar days before the~~  
16           ~~hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting~~  
17           ~~a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar~~  
18           ~~days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier.~~  
19           ~~Motions for continuance filed prior to the date of the hearing shall be ruled on by the Administrative Law Counsel of the~~  
20           ~~Board. All other motions Motions for continuance shall be ruled on by the majority of the Board members or~~  
21           ~~Administrative Law Counsel sitting at hearing. filed on the date of hearing shall be ruled on by the Board.~~

22           ~~(f) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except~~  
23           ~~as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at~~  
24           ~~the hearing. The Board of Nursing shall designate an administrative law counsel who shall advise the presiding officer.~~  
25           ~~The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and~~  
26           ~~issue an order reflecting a majority decision of the Board.~~

27           ~~(g) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board~~  
28           ~~of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to~~  
29           ~~preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in~~  
30           ~~which an administrative law judge is designated as the Hearing Officer.~~

31           ~~(2) In the event that any party or attorney or other representative of a party engages in conduct which~~  
32           ~~obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the~~  
33           ~~Board may apply to the applicable superior court for an order to show cause why the person(s) should~~  
34           ~~not be held in contempt of the Board and its processes.~~

35           ~~(3) During a hearing, if it appears in the interest of justice that further testimony should be received and~~  
36           ~~sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the~~  
37           ~~hearing to a future date to allow for the additional testimony to be taken by deposition or to be~~

1 presented orally. In such situations and to such extent as possible, the seated members of the Board of  
2 Nursing and the designated administrative law counsel shall receive the additional testimony. In the  
3 event that new members of the Board or a different administrative law counsel must participate, a copy  
4 of the transcript of the hearing shall be provided to them prior to the receipt of the additional  
5 testimony.

6 (f) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and  
7 to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings,  
8 except as provided otherwise in this Rule and G.S. 150B-41.

9 (4)(h) Sworn affidavits may be introduced by mutual agreement from all parties.

10 (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise  
11 stipulated by all parties, witnesses are excluded from the hearing room until such time that they have  
12 completed their testimony and have been released.

13 (s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are  
14 available upon request from the Board of Nursing and shall be supplied at cost.

15  
16 *History Note:* Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c);  
17 150B-11; 150B-14; 150B-38 through 150B-42;  
18 Eff. February 1, 1976;  
19 Amended Eff. October 1, 1989; November 1, 1988; July 1, 1986; July 1, 1984;  
20 Temporary Amendment Eff. December 7, 1990 for a period of 180 days to expire on June 5, 1991;  
21 ARRC Objection Lodged December 20, 1990;  
22 Amended Eff. January 1, 1991;  
23 ARRC Objection Removed February 25, 1991;  
24 Temporary Amendment Eff. February 26, 1991 for a period of 35 days to expire on April 1, 1991;  
25 Amended Eff. January 1, 1996; February 1, 1995; April 1, 1991;  
26 Temporary Amendment Eff. March 5, 2001;  
27 Amended Eff. June 1, 2017; January 1, 2007; August 2, 2002.