

CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 61 .0101 PURPOSE

It is the responsibility of the Board to license respiratory care practitioners and to see that the qualifications and activities of those engaged in respiratory care are in accord with law and in the best interest of the public. The Board shall issue and enforce standards for the licensure of respiratory care practitioners but the Board is not a Board of arbitration and has no jurisdiction to settle disputes between private parties.

History Note: Authority G.S. 90-652(2).
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0102 BOARD OFFICE

The administrative offices of The North Carolina Respiratory Care Board (NCRCB) are located at: 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. Office hours are 9:00 a.m. until 5:00 p.m., Monday through Friday, except North Carolina State Holidays.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter. In addition, the following definitions apply with regard to these Rules:

- (1) Assessment means a clinical evaluation of the individual patient and the suitability and efficacy of a respiratory care procedure or treatment, including an assessment of the suitability and efficacy of equipment for the individual patient if equipment is to be used in the procedure or treatment. Assessment can be performed by physician, Respiratory Care Practitioner (RCP) or other licensed health care provider within their scope of practice.
- (2) Respiratory care includes any acts, tests, procedures, treatments or modalities that are routinely taught in educational programs or in continuing education programs for respiratory care practitioners and are routinely performed in respiratory care practice settings.
- (3) The practice of respiratory care includes the application of a range of evaluation and treatment procedures related to the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics. In addition to the general activities identified in G.S. 90-648(10), each of the following specific activities constitutes the practice of Respiratory care:
 - (a) the performance of pulmonary diagnostic and sleep related testing;
 - (b) the administration of pharmacologic agents related to respiratory care procedures;
 - (c) establishment and maintenance of arterial lines for hemodynamic monitoring;
 - (d) therapeutic evaluation and assessment relating to mechanical or physiological ventilatory support, including positive pressure support apparatus;
 - (e) airway clearance techniques, postural drainage and chest percussion;
 - (f) assistance with bronchoscopy;
 - (g) asthma and respiratory disease management;
 - (h) cardiopulmonary rehabilitation;
 - (i) alleviating respiratory impairment and functional limitation by designing, implementing, and modifying therapeutic care plans;
 - (j) patient instruction in respiratory care, functional training in self-care and home respiratory care management, and the promotion and maintenance of respiratory care fitness, health, and quality of life;

- (k) those advanced practice procedures that are recognized by the Board in declaratory rulings as being within the scope of respiratory care, when performed by an RCP with appropriate training; and
- (l) managing the clinical delivery of respiratory care services through the on-going supervision, teaching and evaluation of respiratory care.

*History Note: Authority G.S. 90-652;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. September 1, 2010; January 1, 2007; March 1, 2006.*

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 61 .0201 APPLICATION PROCESS

(a) Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the fee established in Rule .0204 of this Chapter;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs or the Canadian Council on Accreditation for Respiratory Therapy Education;
- (4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification in Basic Life Support which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute; and
- (5) evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination administered by it.

(b) Applicants for initial licensure in North Carolina, who have been inactive and who have not practiced respiratory care for a period of time greater than one year, must complete the following requirements in addition to the requirements in Paragraph (a) of this Rule:

- (1) for applicants who have not practiced respiratory care for a period of time greater than one year, but less than five years, the applicant must provide evidence of twelve hours of continuing education, that meet the requirements of 21 NCAC 61 .0401, for each full year of inactivity; and
- (2) for applicants who have not practiced respiratory care for a period of time greater than five years, the applicant must provide evidence of either:
 - (A) sixty hours of continuing education that meet the requirements of 21 NCAC 61 .0401 and evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination taken as an assessment examination within the 90-day period before issuance of a license, or
 - (B) completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs.

*History Note: Authority G.S. 90-652 (1),(2) and (13); 90-653(a);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2008; November 1, 2004; March 1, 2004.*

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

- (1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only apply to activities and services provided in the course of such service or employment.
- (2) A student or trainee who is working under the direct supervision of a respiratory care practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.
- (3) A person who provides only support activities as defined in G. S. 90-648(13). Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver; but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.
- (4) A person who is licensed by another North Carolina licensing board to carry on an occupation, who is acting within the recognized scope of practice for the license issued by that other board, or who otherwise is carrying out functions recognized as appropriate for the licensed person by that board; and any other person who is working under the supervision of such a licensed person, provided that the supervision of the other person also is recognized as being within the appropriate scope of practice or functions of the licensed person. With regard to other persons who are not licensed by a North Carolina licensing board, the Board shall consider whether there is evidence establishing that such persons meet the requirements of G. S. 90-664 (1).

History Note: Authority G.S. 90-652(2); 90-664; 90-648(13);
 Temporary Adoption Eff. October 15, 2001;
 Eff. August 1, 2002.

21 NCAC 61 .0203 INTERVIEWS

If the Board has questions about the qualifications of an applicant, it may conduct interviews of the applicant, or of others with knowledge of an applicant's qualifications.

History Note: Authority G.S. 90-652(2);
 Temporary Adoption Eff. October 15, 2001;
 Eff. August 1, 2002.

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of fifty dollars (\$50.00);
- (2) For issuance of an active license, a fee of one hundred twenty-five dollars (\$125.00);
- (3) For the renewal of an active license, a fee of seventy-five dollars (\$75.00);
- (4) For the late renewal of any license, an additional late fee of seventy-five dollars (\$75.00);
- (5) For a license with a provisional or temporary endorsement, a fee of fifty dollars (\$50.00);
- (6) For official verification of license status, a fee of twenty dollars (\$20.00);

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Respiratory Care Board. However, personal checks shall be accepted for payment of renewal fees.

History Note: Authority G.S. 90-652(2);(9); 90-660;

*Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. December 1, 2010; March 1, 2008; March 1, 2004.*

21 NCAC 61 .0205 BACKGROUND INVESTIGATION

- (a) Every applicant for licensure shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) as required to perform a criminal history check by the North Carolina Department of Justice at the time of the application. In all instances the applicant must make full and accurate disclosure of any felony convictions, any misdemeanor convictions (except for traffic violations), convictions of any crime directly related to the practice of respiratory care or any disciplinary action pending or ever been taken against any health care provider license / certificate the applicant has or has had.
- (b) The applicant shall provide any additional information regarding any conviction as requested by the Board.
- (c) Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to licensure pursuant to G.S. 90-659.
- (d) The Board shall determine if any conviction is related to the duties and responsibilities of a respiratory care practitioner. The Board shall consider the following factors:
- (1) The nature and seriousness of the crime;
 - (2) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and
 - (3) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a respiratory care practitioner.
- (e) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.
- (f) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedure established in G.S. 150B, Article 3A.

*History Note: Authority G.S. 90-652(1);
Eff. April 1, 2004*

SECTION .0300 –LICENSING

21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE

- (a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in the Rules in this Section.
- (b) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will not be reissued. A license card showing the expiration date must be filed or on display at the licensee's principal place of business so as to be available for inspection. Each licensee also shall keep a copy of the license wallet card available for inspection to anyone on request in the course of delivering services.
- (c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee shall wear a badge or nameplate that displays, in easily visible type, the licensee's name followed by a comma and the designation "RCP," that is an abbreviation for respiratory care practitioner. Provisional license holders shall wear a badge or nameplate which displays, in easily visible type, the licensee's name and the designation "RCP-Provisional." RCP students shall wear a badge or nameplate that displays, in easily visible type, the student's name, the designation "RCP Student" and the name of the school the student is attending.

*History Note: Authority G.S. 90-652(2);(4); 90-658(b); 90-640;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2004.*

21 NCAC 61 .0302 LICENSE RENEWAL

- (a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the fee established in this Chapter.

(b) Any person whose license is lapsed or expired and who engages in the practice of respiratory care as defined in G.S. 90-648(10) will be subject to the penalties prescribed in G.S. 90-659.

(c) Each applicant for renewal shall provide proof of completion of continuing education requirements as established in this Chapter.

(d) Each applicant for renewal shall provide a copy of current certification in Basic Life Support (BLS) which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute. The board shall accept a copy of the applicant's BLS Instructor certificate or Advanced Cardiac Life Support (ACLS) certificate in lieu of the BLS certificate.

(e) Licenses lapsed in excess of 24 months shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

(f) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in 21 NCAC 61 .0401. A copy of military orders or the extension approval by the Internal Revenue Service must be furnished to the Board. If approved, continuing education credits acquired during this extended time period shall not be utilized for future renewal purposes, but may be used for the current renewal.

History Note: Authority G.S. 90-652(1),(2),(4) and (13);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. September 1, 2010; November 1, 2004.

21 NCAC 61 .0303 LICENSE WITH PROVISIONAL ENDORSEMENT

An applicant for a provisional license must have completed the educational requirements set out in G.S. 90-563(a)(3) and must have made application to take the certification exam administered by the NBRC and must have filed his application with the Board in accordance with G.S. 90-656 and the rules in this Chapter. The supervising licensed respiratory care practitioner shall be in the same facility and readily available for supervision of and consultation with the provisional licensee at all times the provisional licensee is engaging in the practice of respiratory care.

History Note: Authority G.S. 90-652(2),(4); 90-656;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. March 1, 2004.

21 NCAC 61 .0304 LICENSE WITH TEMPORARY ENDORSEMENT

The Board may grant a temporary license pursuant to G.S. 90-654.

History Note: Authority G.S. 90-652(1),(2),(4); 90-654;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. March 1, 2004.

21 NCAC 61 .0305 INACTIVE STATUS

(a) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the annual renewal and payment of a fee of twenty dollars (\$20.00). An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(b) An individual licensed on inactive status may convert his or her license to active status by submission of a renewal application and payment of the renewal fee and late fee. The renewal application must contain evidence of the completion of a minimum of 12 hours of continuing education that meets the requirements of 21 NCAC 61 .0401 for each full year of inactivity.

(c) In no case may an individual remain on inactive status for more than 60 months.

History Note: Authority G.S. 90-652(1),(2),(4);
Temporary Adoption Eff. October 15, 2001;

Eff. August 1, 2002;
Amended Eff. March 1, 2008; June 1, 2005.

21 NCAC 61 .0306 LICENSE BY RECIPROCITY

When the Board determines that a license, certificate or registration issued by another state, political territory, or jurisdiction to a respiratory care practitioner was issued upon satisfaction of substantially the same requirements for licensure required by the North Carolina Respiratory Care Practice Act, the Board may issue a license to that respiratory care practitioner upon receipt of the initial application fee and license issuing fee.

History Note: Authority G.S. 90-652(1),(2),(4); 90-655;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) Failure to meet minimum licensure requirements set by statute or rule.
- (2) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation, or by knowingly perpetuating an error of the Board.
- (3) Violation of any rule adopted by the Board or of a lawful order of the Board.
- (4) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
- (5) Failing to perform any statutory or legal obligation placed upon a respiratory care practitioner licensed pursuant to this part.
- (6) Failing to properly make the disclosures required by 21 NCAC 61 .0308.
- (7) Permitting, aiding, assisting, procuring, or advising any person to violate any rule of the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of respiratory care without a license.
- (8) Having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care by the licensing authority of another state, territory, or country.
- (9) Willfully failing to report any violation of these rules.
- (10) Unprofessional conduct related to the delivery of respiratory care, which includes, but is not limited to, engaging in any act or practice that is hazardous to public health, safety or welfare.
- (11) Performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
- (12) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform.
- (13) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.
- (14) Being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material. In enforcing this Paragraph, the Board shall, upon probable cause, have authority to compel a respiratory care practitioner to submit to a mental or physical examination by physicians designated by the Board. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver respiratory care services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control. A respiratory care practitioner affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory care with reasonable skill and safety to his patients. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to

- submit to an examination shall be deemed by the Board to constitute a conclusive determination that that licensee engaged in any particular conduct.
- (15) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
 - (16) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.
 - (17) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.
 - (18) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.
 - (19) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
 - (20) Circulating false, misleading, or deceptive advertising.
 - (21) Paying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent the licensee from receiving a fee for professional consultation services.
 - (22) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation or undue influence.
 - (23) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner or a respiratory therapist licensed pursuant to this part.
 - (24) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to a licensee's competence or ability to provide respiratory care.
 - (25) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a lawful purpose.
 - (26) Failing to comply with a court order for child support or failing to comply with a subpoena issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1. In revoking or reinstating a license under this provision, the Board shall follow the procedures outlined in G.S. 93B-13.

History Note: Authority G.S. 90-652(2),(4); 90-659;
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0308 CONTINUING DUTY TO REPORT

- (a) All licensed respiratory care practitioners and provisional licensees are under a continuing duty to report to the Board any and all:
- (1) convictions of, or pleas of guilty or nolo contendere to:
 - (A) any felony;
 - (B) any misdemeanor or other offense, such as fraud, when an element of the crime involves conduct by the licensee which indicates a lack of honesty, integrity, or competence directly relating to the licensee's delivery of respiratory care, including crimes whose elements include violations of Rule .0307(2), (5), (7), (10), (19), (21), (22), (23), (24) and (25) of this Chapter; and
 - (2) the existence of any civil suit which arises out of or is related to the licensee's practice of respiratory care.
- (b) All supervising respiratory care practitioners are under a continuing duty to report to the Board any and all:
- (1) terminations of any respiratory care practitioner for violations of the practice act or Board rules; and

- (2) violations of the practice act or Board rules by any respiratory care practitioner under his or her supervision.
- (c) The reports required by this Rule must be made within 15 days of the occurrence, but a failure to make a report within 15 days does not bar the Board from investigating or taking action on the matter when it is reported.

*History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. September 1, 2010; July 1, 2005.*

21 NCAC 61 .0309 SCHEDULE OF CIVIL PENALTIES

- (a) The rules in this Subchapter establish the schedule of civil penalties set out in G.S. 90-666(a). The amounts stated are the presumptive amounts that may be modified in the discretion of the Board based upon factors set forth in G.S. 90-666(b).
- (b) The presumptive civil penalty for the following violations is: 1st offense fifty dollars (\$50.00) (Warning), 2nd offense one hundred dollars (\$100.00), 3rd offense two hundred fifty dollars (\$250.00). Those violations that are first offense correctable are identified with the word "warning" appended to them. If the offense is not corrected within the 30 day time allotted, the presumptive civil penalty in parenthesis shall apply.
 - (1) Failure to display an individual license upon request.
 - (2) Failure to notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.
- (c) The presumptive civil penalty for the following violations is: 1st offense one hundred dollars (\$100.00), 2nd offense two hundred fifty dollars (\$250.00), 3rd offense five hundred dollars (\$500.00).
 - (1) Knowingly perpetuating an error of the Board.
 - (2) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he/she is not competent to perform or delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.
 - (3) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
 - (4) Using the title "Respiratory Care Practitioner", the letters "RCP, RTT, RT" or any facsimile or combination in any words, letters, abbreviations, or insignia or implying orally or in writing or indicating in any way that the person is a Respiratory Care Practitioner unless licensed by the Board.
- (d) The presumptive civil penalty for the following violations is: 1st offense two hundred fifty dollars (\$250.00), 2nd offense five hundred dollars (\$500.00), 3rd offense one thousand dollars (\$1000.00).
 - (1) Practicing respiratory care without a license.
 - (2) Allowing unlicensed individuals under the person's supervision to practice respiratory care. Employ or solicit for employment unlicensed persons to practice respiratory care.
 - (3) Altering a license, permit or authorization issued by the Board.
 - (4) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation.
 - (5) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
 - (6) Performing services which the practitioner is not licensed to perform or performing professional services which have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
 - (7) Failing to properly make the disclosures required by 21 NCAC 61 .0308.
 - (8) Engaging in any act or practice that is hazardous to public health, safety or welfare.
 - (9) Committing an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
 - (10) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.
 - (11) Circulating false, misleading, or deceptive advertising.

- (12) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner.
 - (13) Filing a false continuing education documentation report or record.
 - (14) Violating a lawful order of the board or aiding, abetting or assisting any person in a violation of a lawful order of the Board.
- (e) The presumptive civil penalty for the following violations is: 1st offense one thousand dollars (\$1000.00), 2nd offense one thousand dollars (\$1000.00), 3rd offense one thousand dollars (\$1000.00).
- (1) Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary.
 - (2) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
 - (3) Paying or receiving any commission or bonus, or any kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies.
 - (4) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation.
 - (5) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.

History Note: Authority G.S. 90-666;
Eff. April 1, 2004.

21 NCAC 61 .0310 CIVIL PENALTY PROCEDURES

- (a) Citations. The Board, through its duly authorized representatives, shall issue a citation with respect to any violation for which a civil penalty may be assessed. Each citation shall be in writing and shall describe the nature of the violation, including a reference to the specific provision alleged to have been violated. The civil penalty, if any, shall attach at the time the citation is written. The citation shall include an order to correct any condition or violation which lends itself to corrections, as determined by the Board.
- (b) Correction of Violation. Any licensee who has been issued a warning citation must present written proof satisfactory to the Board, or its executive director, that the violation has been corrected. This provision applies only to a licensee's first violation in any one year period for a violation with a first offense warning penalty. Proof of correction shall be presented to the Board, through its executive director, within 30 days of the date the warning citation was issued. The Board may extend for a reasonable period, the time within which to correct the warning citation in case of an illness or hospitalization or other exigent circumstances. Notices of correction filed after the prescribed date shall not be acceptable and the civil penalty shall be paid.
- (c) Contested Case. Persons to whom a notice of violation or a citation is issued and a civil penalty assessed, may contest the civil penalty by filing written notice with the Board within 60 days of the receipt of the notice of violation or citation. The Board shall institute a contested case by sending a notice of hearing pursuant to G.S. 150B, Article 3A. The Board shall conduct a contested case hearing pursuant to G.S. 150B, Article 3A. The licensee's filing written notice with the Board shall stay the civil penalty until the Board renders a final agency decision in the contested case.
- (d) Final Agency Decision. The Board, after the hearing has been concluded, may affirm, reduce, or dismiss the charges filed in the notice of hearing or any penalties assessed. In no event shall the civil penalty be increased.
- (e) Cost of disciplinary action(s). The Board shall assess the costs of disciplinary actions against a person found to be in violation of the Respiratory Care Practice Act or rules adopted by the Board.
- (f) Failure to File. If no written notice contesting the civil penalty is filed as set forth in Paragraph (c) of this Rule, the civil penalty becomes a final agency decision.

History Note: Authority G.S. 90-666;
Eff. March 1, 2004.

SECTION .0400 - CONTINUING EDUCATION REQUIREMENTS FOR LICENSE HOLDERS

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Upon application for license renewal, a licensee shall attest to having completed one or more of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:

- (1) Completion of a minimum of 12 hours of Category I Continuing Education (CE) activities directly related to the licensee's practice of respiratory care and currently approved by the Board, the American Association for Respiratory Care (AARC) or the Accreditation Council for Continuing Medical Education (ACCME). "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:
 - (A) Lecture – a discourse given for instruction before an audience or through teleconference;
 - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;
 - (C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest;
 - (D) Seminar – a directed advanced study or discussion in a specific field of interest;
 - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters; and
 - (F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package;
- (2) Retake the Certified Respiratory Therapist Examination (CRT), administered by the National Board for Respiratory Care (NBRC), and achieve a passing score as determined by the NBRC or take any of the following examinations and achieve a passing score as determined by the sponsor of the examination: the Registry Examination for Advanced Respiratory Therapists (RRT), administered by the NBRC; the Neonatal/Pediatric Respiratory Care Specialty Examination (NPS), administered by the NBRC; the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), administered by the NBRC; the Registry Examination for Advanced Pulmonary Function Technologist (RPFT), administered by the NBRC; the Sleep Disorders Specialty (SDS) exam, administered by the NBRC; the Registry Examination for Polysomnographic Technologist (RPSGT), administered by the Board of Registered Polysomnographic Technologists (BRPT); or the Asthma Educators Certification Examination (AE-C), administered by the National Asthma Educator Certification Board (NAECB);
- (3) Completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs;
- (4) Completion of a minimum of three semester hours of post-licensure respiratory care academic education leading to a baccalaureate or masters degree in Respiratory Care;
- (5) Presentation of a Respiratory Care Research study at a continuing education conference; and
- (6) Authoring a published Respiratory Care book or Respiratory Care article published in a medical peer review journal.

(b) The completion of certification or recertification in any of the following: Advanced Cardiac Life Support (ACLS) by the American Heart Association, Pediatric Advanced Life Support (PALS) by the American Heart Association, and Neonatal Resuscitation Program (NRP) by the American Academy of Pediatrics, shall count for a total of five hours of continuing education for each renewal period; but no more than five hours of total credit will be recognized for each renewal period for the completion of any such certification or recertification.

(c) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (a) of this Rule for a period of no less than three years.

(d) A licensee shall maintain a file at his or her practice facility that contains a copy of the RCP license, a copy of a current Basic Cardiac Life Support (BCLS) certification, a copy of advanced life support certifications and a copy of all credentials issued by the National Board for Respiratory Care.

(e) A licensee is subject to random audit for proof of compliance with the Board's requirements for continuing education.

(f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Evidence of completion of the requirements of Paragraph (a) of this Rule shall be submitted to the Board no later than 30 days of receipt of the audit notice.

(g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-666.

(h) The Board shall charge twenty dollars (\$20.00) per approved hour of CE with a maximum of one hundred and fifty dollars (\$150.00) per application for providers of continuing education who apply for approval of continuing education programs.

(i) The Board shall grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.

- (1) Having served in the regular armed services of the United States at least six months of the 12 months immediately preceding the license renewal date; or
- (2) Having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the 12 months immediately preceding the licensee renewal date.

History Note: Authority G.S. 90-652(2)(13); 90-658; 90-660(b)(9);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. September 1, 2010; July 1, 2007; April 1, 2004.

SECTION .0500 - GENERAL

21 NCAC 61 .0501 CHANGE OF ADDRESS OR BUSINESS NAME

All licensees shall notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0502 ADVERTISING

A licensee may not advertise under a name that is different from the licensee's surname unless written notice has been filed with the Board. For all advertisements relating to respiratory care, the company or respiratory care practitioner sponsoring any advertisement must be able to furnish on request the name and license number of each respiratory care practitioner who will be providing services. Failure by a sponsoring respiratory care practitioner to provide this information shall constitute unprofessional conduct under 21 NCAC 61 .0307. The Board shall report any failure of a company to provide this information to any agency or board that issues a license for its operation as a health care provider.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

SECTION .0600 - RULES

21 NCAC 61 .0601 PETITIONS FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

(a) General. The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-20.

(b) Submission. Rule-making petitions shall be sent to the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of any proposed rule or amendment to a rule;
- (2) the reason for the proposal;
- (3) the effect of the proposal on existing rules or decisions;
- (4) data supporting the proposed rule change;
- (5) practices likely to be affected by the proposed rule change;
- (6) persons likely to be affected by the proposed rule change.

(c) Disposition. The Board shall render its decision to either deny the petition or initiate rulemaking, and shall notify the petitioner of its decision in writing, within the 120-day period set by G.S. 150B-20.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0602 PROCEDURE FOR ADOPTION OF RULES

- (a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B, Article 2A.
- (b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice to licensees through its newsletter or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the Board and shall be responsible for the cost of mailing said notice.
- (c) Public Hearing. Any public rule-making hearing required by G.S. 150B, Article 2A shall be conducted by the Chairman of the Board or by any person he may designate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments.
- (1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his discretion, prescribes a greater time limit.
 - (2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0603 TEMPORARY RULES

The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-21.1.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0604 DECLARATORY RULINGS

- (a) General. The issuance of declaratory rulings by the Board is governed by G.S. 150B-4.
- (b) Contents of Request. A request for a declaratory ruling shall be in writing and addressed to the Board. The request shall contain the following information:
- (1) The name and address of the person making the request;
 - (2) The statute or rule to which the request relates;
 - (3) A concise statement of the manner in which the person has been aggrieved by the statute or rule; and
 - (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.
- (c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:
- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case or when the matter at issue is properly the subject of a contested case;
 - (2) When the facts underlying the request for a ruling on a rule were specifically considered at the time of the adoption of the rule in question; and
 - (3) When the subject matter of the request is involved in pending litigation in North Carolina.

History Note: Authority G.S. 90-652(1),(2);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

SECTION .0700 - ADMINISTRATIVE HEARING PROCEDURES

21 NCAC 61 .0701 APPLICABLE HEARING RULES

When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0702 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give any such affected person notice of the right to a hearing by mailing to the person, by certified mail at the person's last known address, a notice of the proposed action and a notice of a right to a hearing.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0703 REQUEST FOR HEARING

(a) An individual who believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, and who has not received notice of a right to an administrative hearing, may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board. Upon the request of an individual, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally with the individual, and attempt to reach an informal resolution of all matters at issue. Each Board member who is designated to serve in this capacity with regard to an individual's matter, whether the Board member actually meets with the individual or not, shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.

(c) Subsequent to such informal action, if still dissatisfied, the individual may submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING". The request shall contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) clear and specific statement of request for a hearing.

(d) The request shall be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 61 .0704, a hearing will be scheduled.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0704 GRANTING OR DENYING HEARING REQUEST

(a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

(b) The denial of a request for a hearing shall be issued immediately upon decision, and in no case later than 60 days after the submission of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing shall be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0705 of this Section.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0705 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address, and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) the date, time and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of respiratory care in North Carolina.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0706 CONTESTED CASES

(a) All administrative hearings shall be conducted by the Board, a panel consisting of a majority of the members of the Board then serving, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

(b) The hearing of a contested case shall commence no later than 90 days from the date the Board grants a request for a hearing, unless the licensee and the Board together shall jointly agree to extend this deadline.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0707 PREHEARING PROCEDURES

The Board and the other party or parties may agree in advance to simplify the hearing by decreasing the number of issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case with relevance to the case at hand, or agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0708 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request shall bear the notation: "PETITION TO INTERVENE IN THE CASE OF (name of case)".

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0709 TYPES OF INTERVENTION

- (a) **Intervention of Right.** A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.
- (b) **Permissive Intervention.** A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:
- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
 - (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.
- (c) **Discretionary Intervention.** The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

History Note: Authority G.S. 90-652(2) (5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0710 DISQUALIFICATION OF BOARD MEMBERS

- (a) **Self-disqualification.** If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
- (b) **Petition for Disqualification.** If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)".
- (c) **Contents of Affidavit.** The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.
- (d) **Timeliness and Effect of Affidavit.** An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than 10 days before a hearing or during the course of a hearing, the Board may continue the hearing with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case.
- (e) **Procedure for Determining Disqualification when a timely Affidavit of Disqualification is filed:**
- (1) The Board will appoint a Board member to investigate the allegations of the affidavit.
 - (2) The investigator will report to the Board the findings of the investigation.
 - (3) The Board shall decide whether to disqualify the challenged individual.
 - (4) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the other members of the Board.
 - (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing shall continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
 - (6) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0711 SUBPOENAS

- (a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing and delivered to the Board at least 10 days before the date of a contested case hearing and at least twenty days before a date given to provide discovery, shall identify any

document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(e) Any objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(f) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, the majority of the Board members hearing the contested case shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0712 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses other than the Licensee from the hearing room until the time they are called to testify, so that they cannot hear the testimony of other witnesses before testifying themselves.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.

21 NCAC 61 .0713 FINAL DECISION

In all cases heard by the Board, the Board shall issue its decision within 120 days after its next regularly scheduled meeting following the close of the hearing. The decision will be the "final agency decision" for the right to judicial review. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;

Eff. August 1, 2002.

21 NCAC 61 .0714 PROPOSALS FOR DECISION

- (a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 03 .0126. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.
- (b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)".
- (c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.
- (d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the time and place for such oral argument.
- (e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002.*