

1 21 NCAC 32N .0110 is proposed to be amended as follows:

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3 **21 NCAC 32N .0110 INITIATION OF DISCIPLINARY HEARINGS**

4 (a) The Board shall issue a Notice of Charges and Allegations only upon completion of an investigation, a finding
5 by the Board or a committee of the Board that there exists a factual and legal basis for an action pursuant to any
6 subsection of G.S. 90-14(a), and a pre-charge conference, if one was requested by the licensee.

7 (b) Disciplinary proceedings shall be initiated and conducted pursuant to G.S. 90-14 through G.S. 90-14.7 and G.S.
8 150B-38 through G.S. 150B-42.

9 (c) A pre-hearing conference shall be held not less than seven days before the hearing date unless waived by the
10 Board President or designated presiding officer upon written request by either party. The purpose of the conference
11 will be to simplify the issues to be determined, obtain stipulations in regards to testimony or exhibits, obtain
12 stipulations of agreement on undisputed facts or the application of particular laws, consider the proposed witnesses
13 for each party, identify and exchange documentary evidence intended to be introduced at the hearing, and consider
14 such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

15 (d) The pre-hearing conference shall be conducted in the offices of the Medical Board, unless another site is
16 designated by mutual agreement of all parties; however, when a face-to-face conference is impractical, the Board
17 President or designated presiding officer may order the pre-hearing conference be conducted by telephone
18 conference.

19 (e) The pre-hearing conference shall be an informal proceeding and shall be conducted by the Board President or
20 designated presiding officer.

21 (f) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in
22 writing, signed by the presiding officer, respondent or respondent's counsel and Board counsel, and introduced into
23 the record at the beginning of the disciplinary hearing.

24 (g) Motions for a continuance of a hearing shall be granted upon a showing of good cause. In determining whether
25 to grant such motions, the Board shall consider the Guidelines for Resolving Scheduling Conflicts adopted by the
26 State-Federal Judicial Council of North Carolina. Motions for a continuance must be in writing and received in the
27 office of the Medical Board no less than 14 calendar days before the hearing date. A motion for a continuance filed
28 less than 14 calendar days from the date of the hearing shall be denied unless the reason for the motion could not
29 have been ascertained earlier. Motions for continuance shall be ruled on by the President of the Board or designated
30 presiding officer.

31 (h) The Respondent may challenge on the basis of personal bias or other reason for disqualification the fitness and
32 competency of any Board member to hear and weigh evidence concerning the Respondent. Challenges must be in
33 writing accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with
34 the President of the Board or designated presiding officer at least 14 days before the hearing except for good cause
35 shown. Nothing contained in this Rule shall prevent a Respondent appearing before the Board at a formal hearing
36 from making inquiry of Board members as to their knowledge of and personal bias concerning that person's case and
37 making a motion based upon the responses to those inquiries that a Board member recuse himself or herself of be
38 removed by the Board President or presiding officer.

1 (i) In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in
2 G.S. 90-8 and 150B-39 by either the Board or the Respondent. Any discovery request by a Respondent to the Board
3 shall be filed with the Executive Director of the Board. Nothing herein is intended to prohibit a Respondent or
4 counsel for Respondent from issuing subpoenas to the extent that such subpoenas are otherwise permitted by law or
5 rule. The Medical Board may issue subpoenas for the Board or a Respondent in preparation for or in the conduct of
6 a contested case as follows:

7 (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information,
8 either at the hearing or for the purposes of discovery;

9 (2) Requests by a Respondent for subpoenas shall be made in writing to the Executive Director and shall
10 include the following:

11 (A) the full name and home or business address of all persons to be subpoenaed; and

12 (B) the identification, with specificity, of any documents or information being sought;

13 (3) Where Respondent makes a request for subpoenas and complies with the requirements in Subparagraph (2)
14 of this Paragraph, the Board shall provide subpoenas promptly;

15 (4) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party
16 requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date,
17 time, and place for responding to the subpoena; and

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

20 (j) ~~All motions~~ motions, other than motions pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil
21 Procedures, related to a contested case shall be in writing and submitted to the Medical Board at least 14 calendar
22 days before the hearing. Pre-hearing motions shall be heard at the pre-hearing conference described in Paragraph (c)
23 of this Rule. Motions filed fewer than 14 days before the hearing shall be considered untimely and shall not be
24 considered unless the reason for the motion could not have been ascertained earlier. In such case, the motion shall be
25 considered at the hearing prior to the commencement of testimony. The Board President or designated presiding
26 officer shall hear the motions and any response from the non-moving party and rule on such motions. If the pre-
27 hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions
28 of G.S. 150B-40(e) shall govern the proceedings.

29 (k) Dispositive motions made pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil Procedure shall
30 be filed no later than 14 calendar days before the hearing. Dispositive motions shall be heard, and decided upon, by
31 a quorum of the Board. The Board shall receive the assistance of independent counsel when deciding a dispositive
32 motion.

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34 *History Note: Authority G.S. 90-5.1(a)(3); 90-8; 90-14.1; 90-14.2; 90-14.3; 150B-38; 150B-39(c);*

35 *Eff. February 1, 2012;*

36 *Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

37 *Amendment Eff. July 1, 2019.*

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