

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 46 – BOARD OF PHARMACY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .2017, amend the rules cited as 21 NCAC 46 .2001, .2004-.2009, .2011, .2013-.2016, and repeal the rule cited as 21 NCAC 46 .2010.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbop.org/rulemakings.htm](http://www.ncbop.org/rulemakings.htm)

**Proposed Effective Date:** August 1, 2020

**Public Hearing:**

**Date:** May 26, 2020

**Time:** 10:00 a.m.

**Location:** North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

**Reason for Proposed Action:** *The Board proposes a thorough revision of its administrative hearing procedural rules in Section .2000. The Board has not revised the majority of the rules in over thirty years. During that time, both the spirit and the letter of the Administrative Procedures Act have moved away from the existing rules, and the existing rules contain outdated and extraneous requirements that the Board has not required parties to satisfy in order to decide their claims. The revisions would: (1) bring the rules into compliance with the letter of the APA; (2) remove rules that attempt to restate substantive law, provisions of the APA, and other board rules; (3) bring the rules into compliance with the Board's practices; (4) provide clarity on procedural steps not previously covered (or covered adequately) in the rules for the guidance of all parties; (5) notify the parties of certain provisions that are currently covered in Board orders, so that parties can be aware of those provisions from the outset; and (6) generally make the hearing process as efficient as it can be consistent with the APA.*

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email [jcampbell@ncbop.org](mailto:jcampbell@ncbop.org)

**Comment period ends:** May 26, 2020 at 10:00 a.m.

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

### SECTION .2000 - ADMINISTRATIVE PROVISIONS

#### 21 NCAC 46 .2001 FILING AND SERVICE RIGHT TO HEARING

(a) Parties shall file all papers provided for in this Section with the Board, either before service or within five days after service. The Board shall consider a paper to be filed when the Board actually receives it. Parties shall direct filings to the Investigations and Inspections Coordinator, North Carolina Board of Pharmacy, 6105 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517.

(b) In addition to filing all papers with the Board, the Board and other parties shall serve all papers as follows:

- (1) The Board shall serve a notice of hearing under Rule .2006 of this Section on all parties by any method for service of process permitted by G.S. 150B-38(c).
- (2) Parties shall serve subpoenas under Rule .2013 of this Section by any method for service permitted by G.S. 150B-39(c). In investigation or preparation for, or in the conduct of, a contested case, among others who are authorized to serve subpoenas, Board staff may serve subpoenas on behalf of the Board, pursuant to G.S. 1A-1, Rule 45.
- (3) Parties shall serve all other papers in the contested case on all parties (including counsel to the Board) by any method for service permitted by G.S. 1A-1, Rule 5.

(4) The Board shall serve all its orders by any method for service permitted by G.S. 150B-42(a).

~~(a) When the Board acts or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person notice of the right to a hearing by mailing by certified mail to that person at the last known address of that person a notice of the proposed action and a notice of a right to a hearing.~~

~~(b) Prior to issuing the notice called for in Paragraph (a) of this Rule, and with the consent of the party or parties, the Board may attempt to settle disputes through the informal procedures set out in Rule .2008(a) of this Section.~~

*Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42.*

#### **21 NCAC 46 .2004 REQUEST FOR HEARING**

~~(a) Any time an individual If a person believes that a Board administrative action has substantially affected that individual's person's rights, duties, or privileges have been affected substantially by the Board's administrative action, but that person has not received a notice of a right to an administrative hearing, that individual person 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.~~

~~(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 for hearing shall contain the following information:~~

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

~~(d) A (c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for administrative hearing must be submitted to with the Board Board's office within 60 days after the person receives of receipt of notice of the Board action taken by the Board that the person challenges, which is challenged. The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 46 .2005, a hearing shall be scheduled.~~

*Authority G.S. 90-85.6; 150B-38.*

#### **21 NCAC 46 .2005 GRANTING OR DENYING HEARING REQUEST**

~~(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing petitioner is a "person aggrieved" within the meaning of G.S. 150B-2(6). The Board will provide notice of the time and place for the hearing. If the party fails to appear, the Board may deny the party's request for failure to prosecute it or may proceed to hear the matter in the party's absence.~~

~~(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision. The denial of request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.~~

~~(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .2006 of this Section.~~

*Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-42.*

#### **21 NCAC 46 .2006 NOTICE OF HEARING**

~~(a) Before imposing final discipline under G.S. 90-85.38 on a person who holds a license, registration, permit, or other privilege issued by the Board, the Board shall file and serve a notice of hearing pursuant to G.S. 150B-38(b). 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) A party who has been served with a notice of hearing may file and serve a written response not less than 10 days before the date set for the hearing. If the party wishes to submit this written response instead of personally appearing at the hearing, the party should note that desire in the written response, and the Board will consider the written response in lieu of a personal appearance.~~

~~(c) If a party who has been served with a notice of hearing neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall rule the party to be in default and the allegations of the notice to be admitted, and the Board may enter a final agency decision by default granting any relief available to the Board.~~

~~(d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspend suspending a license, registration, permit, or other privilege granted by the Board, license or permit. Upon service of the order, the licensee licensee, registrant, or permit holder to whom the order is directed shall immediately cease the practice of stop practicing pharmacy or cease the dispensing of and stop dispensing devices and medical equipment in North Carolina. Failure to receive the order shall not invalidate the order. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However, pursuant to Rules .2004 and .2005 of this Section, a person subject to a summary suspension may request a hearing on whether the public health, safety or welfare permits terminating or modifying the terms of the summary suspension pending a final agency decision.~~

Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

Authority G.S. 90-85.6; 90-85.12; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-42.

## **21 NCAC 46 .2007 WHO SHALL HEAR CONTESTED CASES**

(a) ~~All administrative hearings shall be conducted by the Board, a panel consisting of a A majority of the Board shall conduct all hearings, as set forth in G.S. 150B-40(b), except as provided in the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).~~

(b) ~~The Board President shall be the presiding officer at any hearing, unless the President is disqualified, absent or otherwise determines that he or she is unable to serve in that capacity. In the event that the President does not preside, the Board Vice President shall be the presiding officer at any hearing, unless the Vice President is disqualified, absent or otherwise determines that he or she is unable to serve in that capacity. In the event that neither the President nor the Vice President preside, the Board shall designate another presiding officer. The presiding officer shall have all duties and powers set forth in G.S. 150B-40(c). Matters involving device and medical equipment permit holders shall be initially heard by a device and medical equipment subcommittee. The subcommittee shall be elected pursuant to Section .2100 of this Chapter. Prior to issuing a notice of hearing, the subcommittee and the party or parties may agree to follow the informal procedures set out in Rule .2008 of this Section.~~

(c) ~~After hearing the matter, the device and medical equipment subcommittee shall propose a recommended decision to the Board. Sanctions shall be consistent with G.S. 90-85.38. If the Board accepts the recommended decision, it shall constitute a final agency decision for the right to judicial review. If the Board rejects the recommended decision, the Board may propose an alternative decision or schedule the matter for a formal hearing before the Board.~~

Authority G.S. 90-85.6; 90-85.12; 150B-38; 150B-40.

## **21 NCAC 46 .2008 INFORMAL PROCEDURES**

(a) ~~Prior to Before issuing a notice of hearing, the Board or the device and medical equipment subcommittee and the party or parties may agree to conduct one of more conferences a conference in which a member of the Board or the device and medical equipment subcommittee and the party or parties meet to consider the possibility of disposing of resolving the dispute without a hearing or any other matter as may aid in the prompt disposition of the dispute. If such a conference is held, the Board, or the device and medical equipment subcommittee, The member of the Board may direct one or more of the following dispositions:~~

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation that Board staff provide informal guidance to resolve the dispute;
- ~~(2)~~(3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order;  
consent; or
- ~~(3)~~(4) Scheduling, with appropriate notice, for contested case hearing.

~~The Board must approve all recommendations under Subparagraphs (1), (2) and (3) of this Paragraph. All recommendations of dismissal must be approved by the Board. Any consent order proposed may dispose of the dispute or set forth such matters as were agreed to between the parties that may expedite the hearing. All matters contained in the consent order must be agreed to by the party or parties and approved by the Board at its next regular meeting. The Board member or member of the device and medical equipment subcommittee who participated in the conference may participate in Board discussions concerning any recommendation made but may not vote upon the recommendation. The Board member who participated in the conference shall disqualify himself or herself in accordance with 21 NCAC 46 .2011 Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.~~

(b) ~~After issuance of a notice of hearing, the The Board or the device and medical equipment subcommittee and the party or parties may agree in advance to simplify the hearing by stipulation or any other method provided by G.S. 150B-41(c), 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.~~

Authority G.S. 90-85.6; 150B-38, 150B-39; 150B-40; 150B-41; 150B-42.

## **21 NCAC 46 .2009 MOTIONS PETITION FOR INTERVENTION**

Except as otherwise provided in this Section, parties must file and serve motions related to a contested case at least ten days before the hearing, except those made during the hearing. The presiding officer may decide to hear pre-hearing motions either before the hearing or at the hearing before witnesses testify.

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should 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) The moving party must serve copies of the petition on all parties to the case.

~~(d) 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.~~

~~(e) 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.~~

*Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41.*

## **21 NCAC 46 .2010      TYPES OF INTERVENTION**

*Authority G.S. 90-85.6; 150B-38.*

### **21 NCAC 46 .2011      DISQUALIFICATION OF BOARD MEMBERS**

~~(a) **Self disqualification.** If for any reason a Board member determines that personal bias or other reason for that Board member's disqualification exists in factors renders that Board member unable to hear a contested case, ease 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 ease believes case, in good faith, has evidence that a Board member is personally biased or another reason for disqualification exists, otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file and serve a motion for disqualification, which must be supported by a sworn, notarized affidavit testifying to the facts relevant to disqualification, with the Board. The title of such affidavit should bear the notation: **AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of ease).** Ex parte communication by or on behalf of a party with a Board member about the facts of a case at any time during either the investigation or prosecution of potential violations shall be grounds for disqualification of that Board member, other than communications by Board counsel and staff during the course of seeking a summary suspension or communications during any other proceeding before the Board. Before a hearing begins (or during the hearing, if applicable), both the Board member and the party must disclose the communications between the Board member and a party about the facts of the case to the Board and to the parties.~~

~~(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 of affidavit.**~~

~~(1) An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will 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.~~

~~(2) Where an affidavit for disqualification is filed A party may file and serve a motion for disqualification less than then ten days before or during the course of a hearing hearing, only based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting the petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record.~~

~~(d) The Board Board, before rendering its decision, shall decide whether the evidence requires justifies disqualification. disqualification before it renders the final agency decision in the contested case. The decision about the disqualification of a Board member will be made by the other Board members. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.~~

~~(e) The presiding officer may determine the method of resolving the motion for disqualification in the presiding officer's discretion under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.~~

~~(f) In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the ease.~~

~~(e) **Procedure for determining disqualification.**~~

~~(1) The Board will appoint a Board member to investigate the allegations of the affidavit.~~

~~(2) The investigator will report findings to the Board and make recommendations.~~

~~(3) The Board shall decide whether to disqualify the challenged individual.~~

~~(4) The person whose disqualification is to be determined will not participate in the decision case but may be called on 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 will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.~~

~~(6)(g) If three 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).~~

*Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41.*

### **21 NCAC 46 .2013      SUBPOENAS**

~~(a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. A form of subpoena is available on the Board's website at [ncbop.org/lawandrules.htm](http://ncbop.org/lawandrules.htm). The Board may issue the subpoena in accordance with G.S. 150B-39(c). Subpoenas must be issued and signed by the Board's Executive Director, the Board's legal counsel or a Board staff member designated by the Executive Director.~~

~~(b) The party shall serve the subpoena along with the fees and expenses required by G.S. 150B-39(c).~~

(c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).

(d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena by filing a motion to quash. The movant shall file and serve the motion to quash within 10 days of service of the subpoena or seven days before the contested case hearing, whichever is sooner. The Board shall hear and rule on objections as provided in G.S. 150B-39(c).

(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 to the Board and 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 one of the members of the Board or the Board's executive director; 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) Except as otherwise stated in a particular subpoena, any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) 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.

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

(g) 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.

(h) 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 time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, a majority of the Board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

*Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40.*

## **21 NCAC 46 .2014 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 The presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42.*

## **21 NCAC 46 .2015 FINAL DECISION**

In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. All final agency decisions shall be drafted by Board staff or Board counsel and presented to the presiding officer. In the event that the presiding officer determines that the drafted order does not reflect the Board's findings of fact, conclusions of law or ruling, the presiding officer shall revise the drafted order to reflect the Board's decision. In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

*Authority G.S. 90-85.6; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-41; 150B-42.*

## **21 NCAC 46 .2016 PROPOSALS FOR DECISIONS**

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), that statute governs the procedures before the administrative law judge, a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the rules of the Office of Administrative Hearings, 26 NCAC 3 .0026.

(b) Within 10 days after the proposal for decision is served on the parties under G.S. 150B-40(e), a Any party may file and serve written exceptions to this "proposal proposal for decision decision" and submit their its own proposed findings of fact and conclusions of law.

~~The exceptions and alternative proposals must be filed within ten 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 Exceptions 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 ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case): the party takes exception. Each proposed finding of fact should refer specifically to pages of the record or otherwise precisely identify the evidence supporting the proposed finding, and each proposed conclusion of law must refer specifically to or otherwise precisely identify both the findings of fact and legal support for the proposed conclusion. A party may file and serve written arguments along with the exceptions and proposed findings of fact and conclusions of law.~~

~~(c) Any A party may ask to present oral argument to the Board. Board upon request. The party must file and serve the request with the written submissions under Paragraph (b) of this Rule. The request must be included with the written exceptions.~~

~~(d) Upon receipt of request for further If a party requests oral argument, notice will be issued promptly to all parties designating the Board will notice the time and place for such oral argument. The presiding officer may set the terms of oral argument, including order of argument and time limitations.~~

~~(d) After the procedures set forth in this Section, the Board will issue a final agency decision in accordance with Rule .2015 of this Section.~~

~~(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 will 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 will 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 will be rendered within 60 days of the next regularly scheduled Board meeting following filing of the written exceptions.~~

*Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-41; 150B-42.*

## **21 NCAC 46 .2017 REAPPLICATIONS, REINSTATEMENT, REHEARING, AND RECONSIDERATION**

~~(a) The following terms govern reapplication, reinstatement, rehearing and other reconsideration requests from a final agency decision, unless otherwise expressly provided in that order:~~

- ~~(1) No individual who holds a license, registration or other privilege from the Board who has that license, registration or other privilege either (a) revoked or (b) actively suspended indefinitely or for more than five years may petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.~~
- ~~(2) No individual who has had an application for a license, registration or other privilege from the Board denied may submit another application or petition for reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that the Board denied. At that time, the individual must submit a new application for the Board to consider.~~
- ~~(3) No permit holder who has had that permit either (a) revoked or (b) actively suspended indefinitely or for more than five years may submit another application or petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.~~
- ~~(4) No proposed permit holder who has had an application for a permit denied may submit another application for a permit or petition for reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that was denied. At that time, the proposed permit holder must submit a new application for the Board to consider.~~
- ~~(5) If any license, registration, permit or any other privilege is subject to a stayed suspension or an active suspension for a period of five years or shorter, the person holding that privilege may not submit another application, petition for reinstatement, to have the suspension lifted, for reconsideration or rehearing or otherwise for modification or rescinding the order, before the conclusion of that suspension.~~
- ~~(6) For the purposes of Subparagraphs (3), (4) and (5) of this Paragraph, the Board shall treat a permit holder or proposed permit holder the same as a prior permit holder or proposed permit holder if either of the following two conditions is true: (a) the permit holder or proposed permit holder has the same pharmacy manager and there is more than 10 percent common ownership as the prior permit holder or proposed permit holder; or (b) the permit holder or proposed permit holder has 50 percent or more common ownership as the prior permit holder or proposed permit holder. To determine common ownership under this Rule, the Board shall consider business entities to be identical to other business entities if there is more than a 50 percent common ownership. Furthermore, to determine common ownership under this Rule, the Board shall combine the interests of individuals with the interests of any business entities in which the individuals have more than a 10 percent interest, as well as with the interests of individuals in the same family.~~

~~(b) The Board may alter the terms provided in Paragraph (a) of this Rule, after applying the facts and circumstances of the matter and its application of the disciplinary provision in G.S. 90-85.38. Unless the Board expressly modifies these terms in the final agency decision, the terms of Paragraph (a) of this Rule apply to that decision.~~

~~(c) If a person submits a petition or application that does not satisfy the limits set forth in this Rule, the Executive Director shall not schedule any hearing on the petition or application before the Board until the limits set forth in this Rule are satisfied.~~

~~(d) A person's ability to petition for reinstatement or to submit a new application under this Rule does not indicate that the Board will grant any such petition or application. The Board will grant or reinstate a license, registration, permit or other privilege only after a~~

finding that the grant or reinstatement is appropriate under the Pharmacy Practice Act and its rules and regulations. In making that decision, the Board will consider, among other things, the gravity of the misconduct that caused the denial, suspension or revocation; the applicant's history; the applicant's current ability to practice pharmacy with reasonable skill, competence and safety to the public; and the applicant's conduct since the order of denial, suspension or revocation.

*Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-40; 150B-42.*