

SUBCHAPTER 22L – ADMINISTRATIVE HEARINGS AND DISCIPLINE

21 NCAC 22L .0101 COMMITTEE ON INVESTIGATIONS

(a) The Board President shall appoint two Board members for a standing Committee on Investigations. The Committee on Investigations shall investigate complaints submitted to the Board, unless administratively closed as described in Paragraph (d) of this Rule.

(b) The complainant shall submit a signed Board-approved complaint form set forth in this Rule. The complaint form is available on the Board website (www.nchalb.org) or by contacting the Board office. The complaint form requires the following:

- (1) the complainant first and last name;
- (2) the complainant address;
- (3) the complainant phone number;
- (4) the licensee, apprentice, or registered sponsor first and last name;
- (5) the licensee, apprentice, or registered sponsor business address;
- (6) the nature of the complaint; and
- (7) the complainant signature and attestation of truthfulness.

(c) The Board shall not respond to or investigate anonymous complaints or inquiries.

(d) The Board staff shall administratively close:

- (1) any complaint anonymously submitted;
- (2) a complaint that alleges an advertising violation of 21 NCAC 22J .0103 that occurred more than one year prior to notifying the Board of the alleged violation;
- (3) a complaint withdrawn by the complainant at any stage of the investigation; or
- (4) incomplete forms. The Board staff shall return incomplete forms to the complainant, if a complainant is listed on the incomplete form.

(e) After a review of a complaint, the Committee on Investigations shall:

- (1) recommend to the Board a finding that there is no probable cause to believe a violation of the law or rules exists and close the complaint when the Board finds that there is no probable cause to believe a violation of the law or rules exists. The Committee shall send a letter to the complainant stating the same. This letter is not a public record pursuant to G.S. 93D-13(c);
- (2) serve the licensee, apprentice, or registered sponsor with a written explanation of the charges if there is evidence that probable cause of a violation exists;
- (3) hire an investigator or such persons as it deems necessary to determine whether there is probable cause to believe a violation exists in order to support formal disciplinary action against a licensee, apprentice, or registered sponsor;
- (4) subpoena persons to provide the Committee with sworn testimony or documents, provided that the subpoena is signed by the President or Secretary-Treasurer of the Board; or
- (5) make inquiries designed to assist the Committee in its review of matters under investigation.

(f) The respondent shall respond in writing within 20 days of receipt of the notification of charges.

(g) The Committee may offer the complainant a summary of the response. The Committee shall make this decision on a case-by-case basis, considering the nature of the complaint and the response.

(h) The Committee shall offer the parties an opportunity to present oral statements to the Committee after the response is received from the respondent, if the Committee determines that further information is required from the complainant or respondent. Neither party shall be compelled to attend.

(i) With assistance from the Board's legal counsel, the Committee shall determine the validity and merit of the charges, and whether the accused party has violated any standard of conduct that would justify a disciplinary action based upon the grounds as specified in G.S. 93D-13 or this Chapter.

(j) The Committee on Investigations shall present its findings and recommendation to the Board, including proposed discipline, if any, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such as licensee, apprentice, sponsor, and consumer.

(k) The Board may find no probable cause for disciplinary action and dismiss the charges. The Committee on Investigations shall notify the parties of the Board action.

(l) The Board may find no probable cause for disciplinary action but issue a letter of caution to the respondent.

(m) The Board may find probable cause for disciplinary action and serve the respondent with a private reprimand. The private reprimand letter is not a public record pursuant to G.S. 93D-13(c). The Board shall deem the private reprimand accepted as formal discipline in the matter unless the respondent submits a refusal to accept the private reprimand, which shall:

- (1) be in writing, addressed to the Committee on Investigations;
 - (2) be filed with the Board staff within 20 days after service of the private reprimand; and
 - (3) include a request for a contested case hearing in accordance with 21 NCAC 22L .0103.
- (n) The Board may find probable cause for disciplinary action and authorize the Committee on Investigations, by and through the Board's legal counsel, to undertake negotiations with the respondent to settle the matter without a hearing when such settlement accomplishes the Board's duty to protect the consuming public.
- (o) If the Board and respondent fail to settle the matter under Paragraph (n) of this Rule, the Board shall:
- (1) serve a notice of hearing on the accused party as required by G.S. 150B, Article 3A., which may also be released to any requesting member of the public pursuant to G.S. 93D-13(c);
 - (2) designate a presiding officer for the contested case; and
 - (3) conduct a hearing in accordance with the rules of this Subchapter.

History Note: Authority G.S. 93D-3; 93D-13; 150B-38;
 Eff. January 1, 1992;
 Amended Eff. December 1, 2013; February 1, 2010; April 1, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
 Amended Eff. October 1, 2016.

21 NCAC 22L .0102 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 person, such person has the right to an administrative hearing. When the Board proposes to act in such manner, it shall give all such affected persons notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.

History Note: Authority G.S. 93D-3; 150B-38;
 Eff. January 1, 1992;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0103 REQUEST FOR HEARING

- (a) An individual who cannot resolve a matter with the Board related to rights, duties, or privileges that have been affected by the Board's administrative action may file a formal request for a hearing.
- (b) The request shall bear the notation: REQUEST FOR ADMINISTRATIVE HEARING and contain the following:
 - (1) Name and address of the petitioner;
 - (2) A statement of the action taken by the Board which is challenged;
 - (3) A statement of the way in which the petitioner has been aggrieved; and
 - (4) A specific statement of request for a hearing.

History Note: Authority G.S. 93D-3; 150B-38;
 Eff. January 1, 1992;
 Amended Eff. December 1, 2013;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0104 GRANTING OR DENYING HEARING REQUESTS

- (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).
- (b) 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 .0105 of this Subchapter.
- (c) The denial of request for a hearing shall be issued no later than 60 days after the submission of the request. The denial shall contain a statement of the reasons for the denial of the request.

History Note: Authority G.S. 93D-3; 150B-38;

Eff. January 1, 1992;
Amended Eff. December 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0105 NOTICE OF HEARING

(a) The Board shall serve the party or parties in a contested case a notice of hearing not less than 30 days before the hearing. The notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved;
- (3) A short and plain statement of the facts alleged; and
- (4) the name, position, address and telephone number of a person at the office of the Board to contact for further information on the hearing process.

(b) The Board shall serve the notice of hearing on all parties in accordance with G.S. 1A-1, Rule 4(j) or G.S.93D-10.

(c) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or registration. Upon service of the order, the licensee or registrant to whom the order is directed shall immediately cease fitting and selling hearing aids in North Carolina. The Board shall serve a notice of hearing following service of the order. The suspension shall remain in effect until the Board issues a final agency decision in accordance with Rule .0115 of this Subchapter.

History Note: Authority G.S. 93D-3; 93D-13; 150B-3(c); 150B-38; 150B-42;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0106 PRESIDING OFFICER

For each contested case, the Board shall designate one or more of its members as the presiding officer, unless the majority of the Board elects to apply to the Office of Administrative Hearings for the designation of an administrative law judge to hear a case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 93D-3; 150B-38; 150B-40;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0107 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 must 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 that are imposed on the intervenor.

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

History Note: Authority G.S. 93D-3; 150B-38;
Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0108 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. 93D-3; 150B-38;
Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0109 INFORMAL PROCEDURES

(a) The presiding officer may direct the parties to conduct an informal pre-hearing conference, or the parties may request such a conference, which shall be scheduled at a time and place agreed upon by the parties. If the parties do not agree on the time and place of the pre-hearing conference, the presiding officer may set the time and place of the pre-hearing conference, giving reasonable written notice to all parties in the proceedings.

(b) At the discretion of the presiding officer, all or part of the pre-hearing conference may be conducted by telephone or other electronic means, if each party has an opportunity to participate while the conference is taking place.

(c) The parties shall conduct the pre-hearing conference to deal with, where applicable:

(1) exploring settlement possibilities;

(2) formulating, clarifying, and simplifying the issues to be contested at the hearing;

(3) preparing stipulations of facts or findings;

(4) ruling on the identity and number of witnesses;

(5) determining the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, video tape, or other electronic means will be used as a substitute for proceedings in person;

(6) determining what depositions, discovery orders, or subpoenas will be needed;

(7) determining the need for consolidation of cases or joint hearing;

(8) determining the order of presentation of evidence and cross-examination; and

(9) considering any other matters which may promote the prompt, orderly, and efficient disposition of the case.

History Note: Authority G.S. 93D-3; 150B-38;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0110 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 perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the final decision.

(b) Request for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to perform all duties in an impartial manner, the party shall make a written request that the Board member be disqualified. The request shall be accompanied by a sworn, notarized affidavit. The title of such affidavit shall bear the notation: AFFIDAVIT IN SUPPORT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of Case).

(c) Contents of Affidavit. The affidavit shall state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness of Affidavit. The affidavit shall be considered timely if it is filed at least 10 days before commencement of the hearing or if 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.

(e) The Board shall determine the matter as a part of the record in the case in accordance with G.S. 150B-40.

(f) In the event of disqualification, the disqualified member shall not participate in the hearing, deliberations, or decision.

*History Note: Authority G.S. 93D-3; 150B-38; 150B-40;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

21 NCAC 22L .0111 FAILURE TO APPEAR

(a) Continuances and adjournments shall be granted at the discretion of the presiding officer.

(b) If a party fails to appear at a hearing after proper notice, the presiding officer shall determine whether to continue the hearing or proceed with the hearing and allow the agency to make its decision in the absence of the party.

*History Note: Authority G.S. 150B-38; 150B-40;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

21 NCAC 22L .0112 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 or transcribed. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*History Note: Authority G.S. 150B-38; 150B-40;
Eff. January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

21 NCAC 22L .0113 SUBPOENAS

(a) A party in a contested case may request a subpoena. The request shall:

- (1) be made in writing to the Board;
- (2) include a particularized description of any books, papers, records or objects the recipient shall produce pursuant to the subpoena;
- (3) include the full name and home or business address of the person to be subpoenaed; and
- (4) include the date, time, and place for responding to the subpoena.

(b) The Board-designated presiding officer for the contested case shall issue the requested subpoena in duplicate within five days of receipt of the request. A subpoena shall include:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location to appear;

- (4) a particularized description of any books, papers, records or objects the recipient shall produce pursuant to the subpoena;
 - (5) the identity of the party requesting the subpoena;
 - (6) the date of issuance of the subpoena;
 - (7) the signature of the presiding officer;
 - (8) a return of service form; and
 - (9) instructions for objecting to the subpoena.
- (c) The party requesting the subpoena shall provide a copy of the issued subpoena to all parties in the contested case at the time the subpoena is served on the recipient.
- (d) A subpoena shall be served in accordance with G.S. 1A-1, Rule 45. The person serving the subpoena shall return one copy of the subpoena with a completed return of service form to the Board.
- (e) The completed return of service form shall provide:
- (1) the name and capacity of the person serving the subpoena;
 - (2) the date on which service was made;
 - (3) the person on whom service was made;
 - (4) the manner in which service was made; and
 - (5) the signature of the person effectuating service.
- (f) A recipient of a subpoena issued by the Board may file a written objection to the subpoena with the presiding officer. The recipient shall serve a copy of the objection on the party requesting the subpoena. The objection may be made on any of the following grounds:
- (1) the subpoena requests evidence not related to a matter at issue;
 - (2) the subpoena does not describe with sufficient particularity the evidence to produce;
 - (3) the subpoena fails to allow reasonable time for compliance;
 - (4) the subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection;
 - (5) the subpoena subjects a person to an undue burden or expense;
 - (6) the subpoena is otherwise unreasonable or oppressive; or
 - (7) the subpoena is procedurally defective.
- (g) The party requesting the subpoena, in such time as may be granted by the Board, may file a written response to the objection with the presiding officer, and shall serve the objecting recipient and all parties with a copy of the written response.
- (h) The presiding officer shall issue a written notice to all parties of an open hearing, scheduled as soon as practicable, during which evidence regarding the objection and response may be presented,
- (i) The presiding officer shall issue a written decision based upon the factors required by G.S. 150B-39(c). A copy of the decision shall be issued to all parties and made a part of the record.

History Note: Authority G.S. 1A-2; 93D-3; 150B-38; 150B-39; 150B-40;
 Eff. January 1, 1992;
 Amended Eff. December 1, 2013; March 1, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

21 NCAC 22L .0114 FINAL DECISION

History Note: Authority G.S. 93D-3; 150B-38; 150B-39;
 Eff. January 1, 1992;
 Repealed Eff. March 1, 1996.

21 NCAC 22L .0115 PROPOSALS FOR DECISIONS AND FINAL DECISION

- (a) When the Board conducts the contested case hearing, the Board shall render a final agency decision within 60 days after the hearing if no transcript is requested by the Board or either party, or within 45 days after receipt of a transcript of the hearing. The parties may submit proposed decisions within 20 days after the hearing or receipt of the transcript, whichever is later.
- (b) When an administrative law judge conducts the hearing, a proposal for decision shall be rendered in accordance with G.S. 150B-40(e). The parties may file written exceptions to the proposal for decision and submit their own

proposed findings of fact and conclusions of law. The exceptions and alternative proposals shall be filed within 10 days after the party has received the proposal for decision as drafted by the administrative law judge.

(c) 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 shall be written and refer specifically to pages of the record or otherwise identify the occurrence to which exception is taken. The exceptions shall 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).

(d) Any party may present oral argument on written exceptions to the Board upon request. The request shall be included with the written exceptions.

(e) Upon receipt of request for oral argument on written exceptions, notice shall be issued by the Board to all parties designating the time and place for such oral argument.

(f) The Board may adopt the administrative law judge's proposal for decision or may modify it as the Board deems necessary. The Board shall render the final agency decision within 60 days after the next regularly scheduled Board meeting following the deadline for receipt of the written exceptions or the hearing of oral arguments on written exceptions, whichever is later. The final agency decision rendered shall be part of the record and a copy thereof given to all parties.

*History Note: Authority G.S. 93D-3; 150B-38; 150B-40;
Eff. January 1, 1992;
Amended Eff. December 1, 2013; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

21 NCAC 22L .0116 PUBLICATION OF DISCIPLINARY ACTIONS

(a) Formal disciplinary actions imposed by the Board shall be published on the Board's website (www.nchalb.org) within 60 days of the final agency decision as follows:

- (1) Notice of a suspension of license or registration shall be posted on the website during the suspension period, including a link to a copy of the final agency decision;
- (2) Notice of the reinstatement of a suspended license or registration shall be posted on the website for 90 days, including a link to the final agency decision for reinstatement;
- (3) Notice of revocation of a license or registration shall be posted on the website for three years from the date of revocation, including a link to a copy of the final agency decision;
- (4) The number of private reprimands issued by the Board and the nature of the violations shall be posted on the website for the current and previous fiscal year without identifying associated individual(s); and
- (5) The number of suspensions and revocations shall be posted on the website for the current and previous fiscal year without reference to individuals receiving the discipline.

(b) The content of a private reprimand shall not be released to any member of the public pursuant to G.S. 93D-13(c), but the existence of a private reprimand shall be reported in accordance with this Rule.

(c) When responding to public information requests about disciplinary actions against a specific licensee, the Board shall issue a written response which shall identify:

- (1) any revocation of license since original license issued
- (2) other disciplinary actions for the five year period preceding the request
- (3) current status of license (active or expired).

*History Note: Authority G.S. 93D-3; 93D-13;
Eff. December 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*