

21 NCAC 42L .0104 COMMITTEE ON INVESTIGATIONS

- (a) Upon receipt of a written complaint alleging misconduct that might subject a licensee or other person to discipline, or upon notice of such otherwise coming to the Board's attention through investigatory means, the Board may investigate such matter to determine whether probable cause exists to institute formal disciplinary proceedings.
- (b) The President shall appoint one member from the Board to serve with the Executive Director of the Board as the probable cause or investigatory committee. The probable cause committee may be assisted by any attorney retained by the Board for the purpose of such investigation, or any investigator retained by the Board.
- (c) The probable cause committee shall investigate the complaint referred to it by the Board. The committee shall determine whether or not there is probable cause to believe that the licensee has violated any statute or board rule which would justify a disciplinary hearing. If the committee determines that such probable cause exists, the committee may confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee may cause to be drafted a proposed settlement agreement, which may include proposed findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. Such settlement agreement shall be presented to and approved by the licensee before they are presented to the Board for consideration and approval.
- (d) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request an administrative hearing pursuant to Rule .0002 of this Section or the Board may give notice of a disciplinary or contested case hearing, if required.
- (e) Any Board member who has been appointed to a probable cause committee shall not be assigned to make a decision or to make findings of fact and conclusions of law in any administrative hearing concerning the particular matter on which he served on the probable cause committee. Such Board member may be called as a witness and may give testimony at any administrative hearing resulting from such investigation.
- (f) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party or his representative, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, and he may communicate with persons not parties to the contested case who may be called as witnesses, including the person who filed the complaint against the optometrist. He also may communicate with the Board members about other matters.

History Note: Authority G.S. 90-117.5; 150B-38; 150B-40;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.