

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 12 NCAC 07D .0301

RECOMMENDED ACTION:

- X Note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a security guard and patrol license, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) or who are military spouses must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials or prior experience of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a)]*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language was substantively the same as that presented for this review. In June 2013, the Commission reviewed a rule with similar language (12 NCAC 07D .0501), also presented for certification. The Commission objected to language that is similar to (a)(3) and (b)(2) in this Rule, stating that the requirements for licensure are set in G.S. 93B-15.1, and that statute does not require applicants to have served as a manager, supervisor or administrator. (The objection letter is attached). It is possible that the Commission intended to limit this objection to just that Rule; in an

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abundance of caution, I am addressing the objection for this and all Rules with similar language to ensure the decisions for these Rules are consistent.

I agree that G.S. 93B-15.1 does not specifically include a requirement that an applicant have experience as a manager, supervisor or administrator. However, I note that both 93B-15.1(a) and (b) state that licensing boards are allowed to determine equivalent experience to license these applicants. [See G.S. 93B-15.1(a)(1) and (b)(2)].

In the Rule language before you this month, the Board states it determined that the equivalent experience required for a military trained applicant is two years of service as a “manager, supervisor or administrator” as set forth in Subparagraph (a)(3) of the Rule. This is a lower amount of experience than the standard used by the Board to license all others in the category [those applicants must have three years of experience as a manager, supervisor or administrator, as set forth in Subparagraphs (a)(1) and (a)(2).] I do not believe that the Rule language exceeds the Board’s authority set forth in G.S. 93B-15.1(a) to determine the equivalent experience needed for licensure, and do not recommend objection to the language in Subparagraph (a)(3).

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) of the Rule states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. The Rule is silent regarding the other requirements in G.S. 93B-15.1(b), but I assume the Board believes those requirements are covered by other Rules.

Further, Subparagraph (b)(2) as written requires the military spouse applicant to have actual military experience. While I am sure this is an unintended editing issue, this requirement is clearly beyond the authority and intent of the statute. Thus, I believe the Commission should object to the Rule based upon the language in Paragraph (b).

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Commission Counsel

By way of further dicta, I note from my review of the existing language of the Rule that the competency standard used by the Board in licensing any applicant is that he or she must have three years of experience as a manager, supervisor or administrator for a company, organization or federal agency [see Subparagraphs (a)(1) and (a)(2)]. Therefore, I believe it's within the Board's authority, through G.S. 93B-15.1(b)(2), to set the competency for a military spouse as two years of experience as a manager, supervisor or administrator.

I believe the opinion expressed in this Staff Opinion is a fair interpretation of the law that fulfills the statutory deference given to the class of applicants while maintaining the autonomy granted to the Board by G.S. 93B-15.1 to determine competency for its licensees.

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) **Notwithstanding any other provision of law**, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, **completed testing or equivalent training and experience as determined by the board**, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) **Can demonstrate competency in the occupation through methods as determined by the Board**, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless

of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1.)

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AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0302

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a guard dog service license, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language was substantively the same as that presented for this review.

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via

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Commission Counsel

a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

In June 2013, the Commission reviewed a rule with similar language (12 NCAC 07D .0501), also presented for certification. The Commission objected to language that is similar to (a)(3) and (b)(2) in this Rule, stating that the requirements for licensure are set in G.S. 93B-15.1, and that statute does not require applicants to have served as a manager, supervisor or administrator. The language in Subparagraph (a)(3) and (b)(2) require applicants under G.S. 93B-15.1 to have been either managers, supervisors or administrators or dog handlers performing guard dog functions for two years. These are the same requirements set forth for other applicants seeking this licensure, and I believe it's within the Board's authority in G.S. 93B-15.1 to set this as equivalent experience.

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AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0401

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a private investigator license, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show the applicant's fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language was substantively the same as that presented for this review.

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via

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a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Subparagraph (b)(2) also requires the spouse to have military experience, which is not consistent with the statute, and I do not believe the Board has the statutory authority to add this requirement. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

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AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0501

RECOMMENDED ACTION:

- X Note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a polygraph license, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language reviewed in January was substantively the same as that presented for this review. Last month, the Board brought the Rule back to the Commission for certification to publish additional changes. I believe the Board inadvertently filed the June version of the Rule for review at the July meeting. As reflected in the attached, the Commission voted in June to not certify this Rule, finding

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the Board did not have the authority to set the standards for applicants to have been managers, supervisors or administrators.

This Rule establishes the standard for anyone to become licensed in this area, and those standards are found in Subparagraphs (a)(1) through (a)(3). Unlike some of the other Rules submitted for the Commission's review this month, this Rule does not require "regular" applicants to have experience serving as a manager, supervisor or administrator. It appears that the Board, in using standard language for determining equivalent experience required by G.S. 93B-15.1, has created a higher standard for military trained applicants and military spouses than the ones required for other applicants. I do not believe this is consistent with the statute, and do not see authority for the Board to do this. Therefore, I recommend objection to the Rule based upon the language in Subparagraph (a)(4) and Paragraph (b).

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

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AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0601

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a psychological stress evaluator license, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language reviewed in January was substantively the same as that presented for this review.

This Rule establishes the standard for anyone to become licensed in this area, stated in Subparagraph (a)(1). That individual must successfully complete a course of instruction at any Psychological Stress Evaluator school approved by the Board. As set forth in the new Paragraph

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(c) of this Rule, the school course must be at least 40 hours of actual classroom instruction. Other rules in the Section require an examination, as well. (The Rules setting the standards are attached to this Staff Opinion.)

Unlike some other Rules submitted for the Commission's review this month, this Rule does not require "regular" applicants to have experience serving as a manager, supervisor or administrator. It appears that the Board, in using standard language for determining equivalent experience required by G.S. 93B-15.1, has created a higher standard for military trained applicants and military spouses than the ones required for other applicants. I do not believe this is consistent with the statute, and do not see authority for the Board to do this. Therefore, I recommend an objection to this Rule based upon the language in Subparagraph (a)(2) and Paragraph (b).

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

SECTION .0600 - PSYCHOLOGICAL STRESS EVALUATOR (P.S.E.)

12 NCAC 07D .0601 EXPERIENCE REQUIREMENTS FOR A PSYCHOLOGICAL STRESS EVALUATOR LICENSE

- (a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a Psychological Stress Evaluator license shall successfully complete a course of instruction at any P.S.E. school approved by the Board.
- (b) A P.S.E. school must consist of not less than 40 hours of actual classroom instruction in psychological stress evaluation.

History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. March 1, 2008.

12 NCAC 07D .0602 P.S.E. EXAMINATION REQUIREMENTS

P.S.E. licensees shall comply with the requirements of 12 NCAC 7D .0503. In addition, P.S.E. examinations shall be conducted by the examiner in the presence of the examinee and with the examinee's knowledge that he is being examined. Examination by telephone is prohibited.

History Note: Authority G.S. 74C-5;
Eff. June 1, 1984.

12 NCAC 07D .0603 P.S.E. INSTRUMENTS

An instrument used for P.S.E. examinations shall be capable of measuring and recording voice reactions on a graph. This recording must be in a form suitable for examination by another P.S.E. examiner. Such recordings shall be available to the Board or its designated representative. The instrument must be given maintenance, cleaning, adjustment, and demagnetizing periodically as recommended by the manufacturer and not less than once after each eight hours of continuous mechanical operation. The examiner shall conduct a test pattern of the instrument prior to each examination.

History Note: Authority G.S. 74C-5;
Eff. June 1, 1984.

12 NCAC 07D .0503 POLYGRAPH EXAMINATION REQUIREMENTS

Polygraph licensees and trainees shall comply with the following:

- (1) Obtain written consent from the individual to be examined which shall be signed in the presence of both the examiner and examinee. The consent form shall include a statement advising the examinee that he may terminate the examination at any time;
- (2) Each chart shall be kept by the examiner. The examiner shall label the beginning of the first chart with the following information:
 - (a) name of the examinee,
 - (b) date of the examination,
 - (c) type of examination,
 - (d) time the examination started,
 - (e) location of the examination, and
 - (f) name and license number of the examiner.
- (3) The examiner shall give the examinee a reasonable opportunity to explain reactions on the charts;
- (4) The examiner shall not issue or permit an employee of his to issue an examination report which is misleading, biased, or falsified;
- (5) Each examination report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on the analysis of the charts;

- (6) All questions to be considered for chart analysis shall be in writing and shall be reviewed with the examinee prior to any testing;
- (7) An examiner shall not make a conclusive verbal or written examination report without having administered two or more tests consisting of the same questions; and
- (8) An examiner shall not inquire into the sexual conduct or preferences of a person to whom a polygraph examination is being given unless pertinent to an alleged sex-related crime, nor shall an examiner inquire into the activities, affiliations or beliefs on religion, politics or race, except where there is specific relevancy to an investigation.
- (9) Each chart shall be signed by the examinee and the examiner, at the end of the chart before the end of the recording;
- (10) An examiner shall conduct no more than ten examinations in a 24 hour period; and
- (11) For adequate auditing of polygraph examiners each examiner shall keep a daily log of examinations.

*History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. December 1, 1987; July 1, 1987; December 1, 1985.*

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AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0901

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for a firearms trainer certificate, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language reviewed in January was substantively the same as that presented for this review.

This Rule establishes the standard for anyone to become licensed in this area, stated in Subparagraph (a)(1) . That individual must:

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- 1) *Meet the requirements of Rule 12 NCAC 07D .0703 (mostly setting “character” requirements. The Rule is attached to this Staff Opinion.);*
- 2) *Have one year of experience (either in a supervisory capacity within a private organization or general experience in government agencies, including the military);*
- 3) *Attain a 90 percent score on the firearm prequalification course;*
- 4) *Complete a 40 hour training;*
- 5) *Pay a fee; and*
- 6) *Complete the requirements for the Unarmed Trainer Certificate.*

As written, this Rule, in Subparagraph (c)(2) will require a military trained applicant to:

- 1) *Meet the requirements of Rule 12 NCAC 07D .0703 (mostly setting “character” requirements);*
- 2) *Have one year of experience (either in a supervisory capacity within a private organization or general experience in government agencies, including the military);*
- 3) *Attain a 90 percent score on the firearm prequalification course;*
- 4) *Have a military occupational specialty;*
- 5) *Have two years of experience in the military as a firearms instructor;*
- 6) *Pay half of the course fee;*
- 7) *Complete an eight hour course given by the Board on rules and regulations;*
- 8) *Pay a fee; and*
- 9) *Complete the requirements for the Unarmed Trainer Certificate.*

It appears that the Board, in using standard language for determining equivalent experience required by G.S. 93B-15.1, has created a higher standard for military trained applicants than the ones required for other applicants. I do not believe this is consistent with the statute, and do not see authority for the Board to do this. Therefore, I recommend an objection to this Rule based upon the language in Subparagraph (c)(2).

It may be that the Board intended to create a separate category altogether for military trained applicants and only require the MOS, two years of experience as a firearms instructor, a reduced course fee, a reduced hour course, and attain a 90 percent score on the firearm prequalification. However, as written, the Rule does not say that.

I also recognize that the Board may believe that since G.S. 93B-15.1(a)(2) requires that these applicants are required to have actively practiced in the occupation for at least two of the five years preceding the application, this is not an additional burden and does, in fact, reduce the burden upon the applicant. I believe this is an argument that the Board must present in order for the Commission to fully consider it.

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must: 1) possess a license from another jurisdiction whose requirements for licensure are substantially equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Further, it requires the spouse to have military experience as a firearms instructor, which is not consistent with the statute and I do not believe the Board has the authority to add this requirement. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

**12 NCAC 07D .0703 MINIMUM STANDARDS FOR UNARMED SECURITY GUARD
REGISTRATION**

An applicant for registration shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;
- (3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage, conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, larceny, any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of (3) of this Rule, "conviction" means and includes the entry of a pleas of guilty, plea of no contest, or a verdict of guilty;
- (4) not have been declared by any court of competent jurisdiction incompetent by reason of mental disease or defect; or not have been involuntarily committed to an institution for treatment of mental disease or defect by a district court judge. When an individual has been treated and found to have been restored by a psychiatrist, the Board will consider this evidence and determine whether the applicant meets the requirements of this Paragraph; and
- (5) not have had a revocation of a registration.

History Note: *Authority G.S. 74C-5;*
 Eff. June 1, 1984;
 Amended Eff. August 1, 1988; December 1, 1985.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Private Protective Services Board

RULE CITATION: 21 NCAC 07D .0909

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals for an unarmed guard trainer certificate, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show the applicant's fitness to practice the occupation in this state. [See G.S. 93B-15.1(a).] (The text of the statute is attached to the Staff Opinion for Rule 12 NCAC 07D .0301.)*

The Commission certified this Rule for publication pursuant to G.S. 150B-19.1 in January 2013. The language reviewed in January was substantively the same as that presented for this review.

This Rule establishes the standard for anyone to become licensed in this area, stated in Subparagraph (a)(1). That individual must:

Amanda J. Reeder
Commission Counsel

- 1) *Meet the requirements of Rule 12 NCAC 07D .0703 (mostly setting “character” requirements);*
- 2) *Have one year of experience (either security experience within a private organization or general experience in government agencies, including the military);*
- 3) *Complete a 24 hour training;*
- 4) *Have a favorable recommendation from a licensee; and*
- 5) *Submit the application for the Unarmed Trainer Certificate.*

As written, this Rule, in Subparagraph (b)(2) will require a military trained applicant to:

- 1) *Meet the requirements of Rule 12 NCAC 07D .0703 (mostly setting “character” requirements);*
- 2) *Have one year of experience (either security experience within a private organization or general experience in government agencies, including the military);*
- 3) *Have a favorable recommendation from a licensee;*
- 4) *Submit the application for the Unarmed Trainer Certificate;*
- 5) *Have a military occupational specialty; and*
- 6) *Have two years of experience in the military as a firearms instructor.*

It appears that the Board, in using standard language for determining equivalent experience required by G.S. 93B-15.1, has created a higher standard for military trained applicants than the ones required for other applicants. A military trained applicant does not have to complete the 24 hour training, but is required to have 2 years of experience instead. I do not believe this is consistent with the statute, and do not see authority for the Board to do this. Therefore, I recommend an objection to the Rule based upon the language in Subparagraph (b)(2).

I recognize that the Board may believe that since G.S. 93B-15.1(a)(2) requires that these applicants are required to have actively practiced in the occupation for at least two of the five years preceding the application, this is not an additional burden and does, in fact, reduce the burden upon the applicant. I believe this is an argument that the Board must present in order for the Commission to fully consider it.

G.S. 93B-15.1(b) governs applicants who are spouses of military members. Those applicants must:

- 1) *possess a license from another jurisdiction whose requirements for licensure are substantially*

equivalent to or exceed the NC standard for licensure; 2) demonstrate competency to the Board via a method determined by the Board; 3) not have committed any act in any jurisdiction that would constitute grounds for refusal, suspension or revocation of the license in NC; 4) be in good standing and not disciplined by the other state(s) licensing board; and 5) pay the licensure fee.

As currently written, Paragraph (b) states the applicant must possess a license or have two years of experience. I do not believe the Board has the authority to abrogate the statute in this manner. Further, it requires the spouse to have military experience as an unarmed guard trainer, which is not consistent with the statute and I do not believe the Board has the authority to add this requirement. Therefore, I recommend objection the Rule based upon the language in Paragraph (b).

RRC STAFF OPINION

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AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .1001

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals based upon military service, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show the applicant's fitness to practice the occupation in this state. [See G.S. 93B-15.1(a)]*

I do not see that the Board has authority to require that an applicant submit, "written evidence that the applicant is currently serving in the U.S. military or is in the U.S. military reserves" required in Paragraph (a)(3) of the Rule. For that matter, I do not see any authority of the Board to restrict the application of the statute to only those actively serving. Rather, the statute specifically speaks to those who have received military training and been awarded an MOS, so it could extend to retired or discharged military applicants seeking licensure.

Amanda J. Reeder
Commission Counsel

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless

of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1.)

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16G. 0107

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT: *This Rule purports to establish the procedure for licensure by endorsement for individuals based upon military service, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials of these applicants are given due consideration to show the applicant's fitness to practice the occupation in this state. [See G.S. 93B-15.1(a)]*

I do not see that the Board has authority to require that an applicant submit, "written evidence that the applicant is currently serving in the U.S. military or is in the U.S. military reserves" required in Paragraph (a)(3) of the Rule. For that matter, I do not see any authority of the Board to restrict the application of the statute to only those actively serving. Rather, the statute specifically speaks to those who have received military training and been awarded an MOS, so it could extend to retired or discharged military applicants seeking licensure.

Amanda J. Reeder
Commission Counsel

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless

of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1.)