

# TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

## CHAPTER 36 – BOARD OF NURSING

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0229, and amend the rule cited as 21 NCAC 36 .0810.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbon.com](http://www.ncbon.com)

**Proposed Effective Date:** *November 1, 2024*

**Public Hearing:**

**Date:** *August 21, 2024*

**Time:** *2:00 p.m.*

**Location:** *4516 Lake Boone Trail, Raleigh NC 27607*

**Reason for Proposed Action:** *On April 23, 2024, Duke University Health System and Atrium Health (“Petitioners”) filed two petitions requesting the Board proceed with permanent rulemaking pursuant to 21 NCAC 36 .0121(a). Both petitions meet all foundational requirements of this Rule detailing the reasoning for the request. Petitioners also filed a proposed amendment in 21 NCAC 36 .0810(2)(c), which relates to NP practice, with the NC Medical Board for their consideration. The proposed language for adoption and amendment were also attached with each petition. NC General Statutes specify that a physician may issue a portable do not resuscitate (“DNR”) order and determine a person’s death. See NCGS §90-21.17(b) and §90-323. However, practice and other statutory provisions imply that these two medical tasks may be performed under the supervision of or delegated by a physician. The effect of both rules would be to clarify that these acts may be delegated to NPs and licensed nurses to promote and improve access to end-of-life care.*

*On May 23, 2024, Petitioner’s request and proposed rule language were presented to the Board. In 21 NCAC 36 .0810(c)(2), the Board voted to amend the language of this Rule to clarify the NP’s authority to issue DNR orders and pronounce death pursuant to the terms of a Collaborative Practice Agreement (“CPA”). The additional language in the proposed amendment specifies that DNR orders and pronouncement of death may be performed by an NP under the supervision of a physician by way of a CPA. The Board also voted to proceed with rulemaking of a new rule, 21 NCAC 36 .0229 Determination and Pronouncement of Death, for specific language that expressly permits physicians to delegate this act to RNs and LPNs. The language of this new rule is consistent with the Board’s position statement on Death and Resuscitation and would provide legal authority for this medical act to be delegated to RNs and LPNs as a responsibility that the nurse can safely accept.*

**Comments may be submitted to:** *Angela Ellis, PO Box 2129, Raleigh, NC 27609-2129; email [lawsrules@ncbon.com](mailto:lawsrules@ncbon.com)*

**Comment period ends:** *August 30, 2024*

**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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**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 .0200 – LICENSURE

#### **21 NCAC 36 .0229 DETERMINATION AND PRONOUNCEMENT OF DEATH**

Determination and pronouncement of death is an act that can be delegated to a registered nurse or a licensed practical nurse, provided that:

- (1) The registered nurse or licensed practical nurse has the requisite qualifications and experience to assess, interpret, and formulate this determination and pronouncement; and
- (2) This delegation is consistent with the registered nurse's or licensed practical nurse's site-specific policies and procedures.

*History Note: Authority 90-171.20(7) and (8); 90-171.23(b).*

## SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

### 21 NCAC 36 .0810 QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE AGREEMENT

The following are the quality assurance standards for a collaborative practice agreement:

- (1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
- (2) Collaborative Practice Agreement:
  - (a) shall be agreed upon, signed, and dated by both the primary supervising physician and the nurse practitioner, and maintained in each practice site;
  - (b) shall be reviewed at least yearly. This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the collaborative practice agreement, and available for inspection by either Board;
  - (c) shall include the drugs, devices, medical treatments, tests, and procedures that may be prescribed, ordered, and performed by the nurse practitioner consistent with Rule .0809 of this ~~Section~~, and Section and may include issuing do not resuscitate orders as outlined in G.S. 90-21.17(b) and determining and pronouncing death pursuant to G.S. 90-323 so long as all other applicable requirements are met and doing so is permitted by and consistent with practice-site-specific policies and procedures; and
  - (d) shall include a pre-determined plan for emergency services.
- (3) The nurse practitioner shall demonstrate the ability to perform medical acts as outlined in the collaborative practice agreement upon request by members or agents of either Board.
- (4) Quality Improvement Process:
  - (a) The primary supervising physician and the nurse practitioner shall develop a process for the ongoing review of the care provided in each practice site, including a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems.
  - (b) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time frame.
  - (c) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner for a minimum of every six months. Documentation for each meeting shall:
    - (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Sub-item (4)(b) of this Rule, and recommendations, if any, for changes in treatment plan(s);
    - (ii) be signed and dated by those who attended; and
    - (iii) be available for review by either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.
- (5) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner and primary supervising physician(s):
  - (a) During the first six months of a collaborative practice agreement between a nurse practitioner and the primary supervising physician, there shall be monthly meetings to discuss practice-relevant clinical issues and quality improvement measures.
  - (b) Documentation of the meetings shall:
    - (i) identify clinical issues discussed and actions taken;
    - (ii) be signed and dated by those who attended; and
    - (iii) be available for review by either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.

*History Note: Authority G.S. 90-8.2; 90-18(c)(14); 90-18.2; 90-171.23(b)(14);  
Recodified from 21 NCAC 36 .0227(i) Eff. August 1, 2004;  
Amended Eff. December 1, 2009; August 1, 2004;  
Readopted Eff. January 1, 2019;  
Amended Eff. June 1, 2021.*