

10A NCAC 13J .0907 ADVERSE ACTION

(a) An agency may appeal any adverse decision made by the Department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and departmental rules 10A NCAC 01 et seq.

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Part C of Article 6 and the rules promulgated under that Part; and
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the home care licensure rules for the foreseeable future.

The Department shall give the licensee written notice of the amendment of its license. This notice shall be given by registered or certified mail or by personal service and shall set forth the reasons for the action.

(c) The provisional license shall be effective immediately upon its receipt by the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license; or
- (3) the end of the licensee's licensure year. If a licensee has a provisional license at the time that the licensee submits a renewal application, the license, if renewed, shall also be a provisional license unless the Department determines that the licensee can be returned to full license status. A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display its full license during the appeal.

(d) The Department may revoke a license whenever:

- (1) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Part C of Article 6 and the rules promulgated under those parts; and
 - (B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Part C of Article 6; and
 - (B) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with the home care licensure rules for the foreseeable future; or
- (3) The Department finds that there has been any failure to comply with the provisions of G.S. 131E, Part C of Article 6 and the rules promulgated under those parts that endangers the health, safety or welfare of the clients receiving services from the agency.

The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Subparagraphs (d)(1)(2) and (3) of this Rule.

*History Note: Authority G.S. 131E-140;
Eff. July 1, 1992;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016.*