

# What are rules and why do they matter?

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## What is a Rule?



150B-2(8a) defines a Rule as "any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency."

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## What is a Rule?

"rules fill the **interstices** of statutes. They go beyond mere interpretation of statutory language or application of such language and within statutory limits **set down additional substantive requirements**."

*State ex rel. Comm. of Insurance v. N.C. Rate Bureau*, 300 N.C. 381, 269 S.E.2d 547, 567 (1980).

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## Why does it matter?

Rules = Law

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## What are not Rules?

- 150B-2[8a]
- "Statements concerning only the internal management of an agency... if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency..."
- "nonbinding, interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule"
- "A **form**, the contents or substantive requirements of which are prescribed by rule or statute"
- "Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries."

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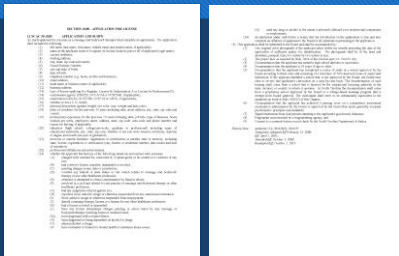
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## What are not Rules?

- "a **form**, the contents or substantive requirements of which are prescribed by rule or statute."

150B-2[8a)(i)]



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# What are not Rules?

- o "Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule." 150B-2(8a)(c)

## POLICIES

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# Rule vs. Policy

## Rule

"any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency." 150B-2(8a)

## Policy

"any **nonbinding interpretive statement** within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by the agency which is intended and used purely to assist a person to comply with the law, such as a guidance document." 150B-2(7a)

Unlike a rule, a policy does not have the force of law.

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# Rule vs. Policy

## Child Care Commission

10A NCAC 09 .0605

- (a) Any openings in equipment, steps, decks, handrails, and fencing shall be smaller than 3 1/2 inches or greater than 9 inches to prevent entrapment.
- (h) All upright angles shall be greater than 55 degrees to prevent entrapment and entanglement.



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## Rules vs. Policy

## Board of Pharmacy

## Rule

## Policy

**21 NCAC 02B .0220: HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECiprocity (EFFECTIVE JANUARY 1, 2005)**

(a) As a condition of licensure, a pharmacist shall accumulate 15 hours of continuing education each year.

(b) Eight of these continuing education hours shall be achieved through contact programs. Contact programs are those continuing education programs that require the licensee to attend a course or seminar in person and receive credit for the course. The licensee must receive a certificate of completion for the course.

(c) A pharmacist may accumulate more than the required 15 hours of continuing education in a calendar year. The pharmacist may use the excess hours to satisfy the continuing education requirement in subsequent years.

(d) Licensees receiving the pharmacist self-report continuing education hours on a form provided by the Board of Pharmacy shall be permitted to submit the form to the Board of Pharmacy and be credited with the hours. The pharmacist shall be permitted to continue education hours that are not reflected on a license to be put toward a continuing education hour.

(e) All continuing education hours shall be earned by the licensee on or after January 1, 2005. The pharmacist shall be permitted to carry over continuing education hours accumulated on the licensee's license prior to January 1, 2005.

(f) Continuing education and self-report on a biennial licensure renewal of the licensee be required by July 1, 2005. The continuing education hours specified in the Rule within the first six months of the licensee's biennial licensure renewal.

History notes:

Added 02B .0220, 02B .0220-01, 02B .0220-02

Added 02B .0220, 02B .0220-01, 02B .0220-02

Added 02B .0220, 02B .0220-01, 02B .0220-02

Added 02B .0220, 02B .0220-01, 02B .0220-02

**Pharmacist FAQs available at:**  
[http://www.rnco.org/faq/Pharmacist/faq\\_Confederation.html](http://www.rnco.org/faq/Pharmacist/faq_Confederation.html)

**Q: What are the requirements for Pharmacists?**

A: Pharmacists are required to have a minimum of 100 hours to become a member. Right off the bat, you will be asked to complete the membership form, which can either be done on Computer, or by hand.

**CARRY OVERS**

**Q: What are carry over hours?**

A: Carry over hours are surplus CE hours that have been carried over to the next year's renewal.

**Q: How do the carry over hours work?**

A: Carry over hours are carried over from one year to the next. Hours are automatically carried over the additional hours. Pharmacists can carry over a maximum of 4 surplus hours.

**Q: What CE hours can be carried over?**

A: All CE hours can be carried over. Both in-person and in-behind are carried over. Following a conference, carry over hours are automatically calculated by the pharmacy. Make sure to enter in your hours before the end of the year.

**Q: How are carry over hours identified on my CE profile?**

A: A check mark in the CARRY OVER column will indicate carry over.

**Q: How long must I carry over CE hours?**

A: All Pharmacists must carry CE certificates for a period of 3 years of hours at the end of work.

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## When are rules not needed?

- Aspirational statements are not rules.
- Restatements of state or federal law or a federal regulation are not necessary to put into a rule. (See G.S. 150B-19(4))
  - G.S. 150B-21.6 Incorporating material in a rule by reference

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## G.S 150B-21.6 – Incorporation by Reference

- An agency may incorporate the following materials:
  - Another rule or part of a rule adopted by that agency; and
  - All of part of a code, standard, or regulation adopted by another agency, the federal government or a generally recognized organization or association
- Necessary information to incorporate material by reference:
  - Whether the incorporation includes subsequent amendments and editions;
  - Where can it be obtained; and
  - The cost

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## In Summary:

If a State agency says that a third party:

- Is required to do something;
- Can be penalized for not doing something; or
- Is given a right or benefit:

# IT'S A RULE

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## So, it's a rule, now what?

"An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted in accordance with this Article." G.S. 150B-18

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## The End

# Questions?

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