### **NEWS FROM**



# North Carolina Board of Physical Therapy Examiners

ISSUE 47 OCTOBER 2015



# Constancy and Change in the NCBPTE

by Leslie Kesler, PT, MHA, Chair

Heraclitus, a Greek philosopher who lived about 500 BC, is often attributed to saying "The only thing that is constant is change." Disraeli, a British statesman in the 1880s, said "The secret of success is constancy to purpose." While having the honor of serving on the North Carolina Board of Physical Therapy Examiners, it has been my experience to see both constancy and change.

The evolution of the practice of Physical Therapy has driven much of the change. Over the years, NCBPTE has fielded a wide variety of inquiries about what is and what isn't allowed under the North Carolina Practice

Act. Advancements in patient care and the changing healthcare environment bring new opportunities for Physical Therapy to make a difference in people's lives. Skills that were at one time outside the scope of practice can become standard practice over a period of time when education, training and implementation is done in a safe and effective manner. Often, the NCBPTE can use Position Statements to clarify practice issues. The development of Position Statements has been the result of addressing various common scenarios that have risen over time these tools are great resources readily available and accessible on the webpage. Importantly, these Position Statements are reviewed regularly to ensure that the information remains true to current practice. A new Position Statement is in the early stages of consideration as a Task Force assesses the applicability of telehealth in the practice of Physical Therapy.

Speaking of the webpage, this too has been an evolving part of the NCBPTE. As technology has changed, we are now able to provide updates as soon as they happen and make that information easily available to licensees and the public. Moving to online licensure renewal has increased the speed and accuracy of the process. Email inquiries to the Board result in responses most often the same day, offering immediate acknowledgement and prompt follow-up. The Board has invested in technology, and the necessary support, to

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North Carolina Board of Physical Therapy Examiners – 2015 Front, Left to Right: Leslie P. Kesler, Chair; David C. Reed, Sec-Treas; Left to Right: John M. Silverstein, Attorney; Gloria H. Lewis; Christopher R. Dunn; Michael Fajgenbaum, MD; Angela B. Hunter; Ben F. Massey, Jr., ED; JoDell F. King; Eric J. Smith



# The Supreme Court and the NCBPTE

By John M. Silverstein, Attorney

Professional licensing boards generally operate in relative obscurity, except for those individuals required to be licensed before providing professional services to the public, and to consumers of those services. An exception to this rule occurred earlier this year when the United States Supreme Court issued an opinion involving the North Carolina Dental Board ("Dental Board"), and in the process, generated commentaries ranging from doom and gloom predictions of the end of professional regulation as we know it to assurances the scope of the opinion will be limited to the specific facts of the case. As is usually the case, the truth probably lies somewhere in between, but in my personal view, the decision will result in changes, but not wholesale changes, in our regime for the regulation of professions in North Carolina.

The issues addressed by the Supreme Court arose out of the provision of teeth whitening services in North Carolina. NCGS §90-29(b)(2) includes the removal of stains from teeth as a component of the practice of dentistry, which must be provided by a dentist licensed in North Carolina in accordance with the requirements of the Dental Practice Act. The Dental Board learned that there were instances of operators of kiosks in shopping malls, who were not licensed dentists, providing teeth whitening services to the public. Consistent with its enforcement responsibilities, the Dental Board, some of whose members' practices included removing stains from teeth. wrote letters to these operators demanding that they cease and desist from offering such services, or face further action by the Board. Letters were also written to owners of shopping malls in which teeth whitening services were being offered demanding that those services be stopped immediately.

The Dental Board's actions drew the attention of the Federal Trade Commission ("FTC"), which filed a complaint alleging that the conduct of the Dental Board violated federal antitrust laws. The Dental Board countered that it was an agency of the State of North Carolina, and as such, it was exempt from the application of the federal antitrust laws. It is not the purpose of this article to fully analyze the legal issues involved; suffice it to say those issues were thoroughly researched, briefed and argued before the FTC, the Fourth U. S. Circuit Court of Appeals, and the Supreme Court.

The holding in the case was that in order to enjoy immunity from federal antitrust laws, state boards that are controlled by active market participants (licensees engaged in practice in the profession being regulated) must be following a clearly articulated state policy and be actively supervised by the state, and that a general grant of authority by a state legislature does not satisfy these requirements. There are two ways to remove the active market participant disqualification: (1) limit licensee membership on regulatory boards to a minority of the board, or (2) create a state agency that would regulate all occupations. In both cases, the expertise brought to the regulation of a profession would be undermined, with any consequences of those losses to be suffered by the public. Additionally, studies of licensing bureaus in other states have shown that large state agencies do not provide the same level of service to the public as do independent boards. Finally, most powers and responsibilities granted to licensing boards do not involve conduct proscribed by federal antitrust laws, so restructuring the entire scheme of regulation to address active market participation by board members is unwarranted.

Further, the articulated state policy and active state supervision requirements can be satisfied if specific conduct by unlicensed individuals is prohibited by statute, by rule adopted following appropriate review by the Rules Review Commission, or by obtaining a court order enjoining such conduct. Regulatory boards will need to be more circumspect when dealing with issues with economic implications, such as unlawful practice, barriers to entry or scope of practice. The use of cease and desist letters has been marginalized. Board members will have to be prepared to disqualify themselves from participating in cases in which they have, or are perceived to have, an economic interest. All board actions, particularly those that may have anticompetitive implications, must be based on objective standards, not personal economic interests.

There are other issues that may draw the attention of the General Assembly, including the manner in which board members are appointed, the composition of the boards, ability of the public to file complaints, disciplinary processes, incorporation of technological advances, board consolidation and whether any boards

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# FSBPT, Telehealth, and Portability / Compacts

by Kathy O. Arney, PT, Deputy Director

The mission of the Federation of State Boards of Physical Therapy (FSBPT) is to protect the public by providing service and leadership that promote safe and competent physical therapy practice. This national organization comprising all state licensure Boards in the US (Jurisdictions) provides support and resources to jurisdictions to streamline the process for licensing physical therapists and physical therapist assistants. Like APTA, FSBPT also monitors, researches and responds to state and national healthcare issues affecting physical therapy licensees.

### Utilization of Telehealth in Physical Therapy Practice

APTA BOD Go3-o6-o9-19 Definitions and Guidelines defines Telehealth as "... the use of electronic communications to provide and deliver a host of health-related information and health care services, including, but not limited to physical therapy-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions."

A Free Regulatory Resource from FSBPT titled "Telehealth in Physical Therapy: Policy Recommendations for Appropriate Regulation" states, "Telehealth is not a new treatment, or an expansion of scope of practice, but a means to deliver physical therapy care to those in need. The physical therapist is still responsible for the care of the patient and for making determinations of the best means to deliver that care. The standards of care and practice, laws, and regulations currently required to be followed for any in-person encounter must also be followed for any encounter via telehealth." In addition, "Regulators should review existing statutes and rules to determine if the language is sufficient to authorize physical therapy to be delivered via telehealth technology; then only drafting new language if required."

In response to this important issue, NCBPTE has established a Telehealth Task Force to make recommendations regarding using this model for delivering physical therapy services in NC. The Task Force will be examining the scope of telehealth use in the Veterans Administration and other states as it relates to physical

therapy, in other healthcare disciplines, and in light of legislative approaches and court decisions.

# Physical Therapy Licensure Portability and Licensure Compacts

Do you need more than one state physical therapy license to effectively practice or access your patients? Do you need to see a patient in another state and do not have a license to practice there? State or jurisdictional boundaries and differences in licensure and practice requirements have been identified as barriers to access to health care. While some regulatory requirements are necessary to protect the public, the goal of licensure portability is overcoming unnecessary licensure barriers. The FSBPT definition of licensure portability is "the ability to obtain licensure or recognition with minimal regulatory barriers to practice in multiple jurisdictions." Making changes to accommodate licensure portability positively impacts public protection by:

- increasing patient access to qualified providers
- improving the continuity of care for patients who are being treated by a therapist in another jurisdiction
- enhancing disciplinary data and improving notification(s)
- improving information sharing between jurisdictions

Interstate compacts are contracts between two or more states or jurisdictions creating an agreement on a variety of issues, such as specific policy challenges, regulatory matters and boundary settlements. States have used interstate compacts to address a variety of issues, such as drivers' licenses which are valid beyond state boundaries. The FSBPT has undertaken the process of developing an interstate compact model for physical therapy and drafting legislation that would be adopted by each state interested in participating. The concept is that a compact would allow licensees with an existing current state license to obtain a privilege to practice for a specified period of time in all jurisdictions participating in the compact simply by submitting an application and fee to a central commission.

Compacts are not new. APTA passed a motion in 2014 supporting the concept of a licensure compact. Currently, the National Association of EMS Officials (NASEMSO) and

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## Constancy and Change (continued from page 1)

ensure that operations are as efficient, effective, and valued-added. An example of this was in 2014, when NCBPTE moved away from paper processes to electronic media for Board meetings, resulting in decreases in manpower and supply costs.

A large portion of the webpage has resources devoted to the issue of continuing competency in Physical Therapy. Continuing competency was a major change in process and culture when the requirement became effective for North Carolina PTs/PTAs in January 2009. The rules for continuing competency have been revised based on input from licensees and are continually assessed for potential future changes.

The North Carolina Board of Physical Therapy Examiners is a successful entity because of its constancy in purpose. Since being created in 1951 by the General Assembly to "establish and maintain minimum standards for the practice of physical therapy to protect the safety and welfare of the citizens of North Carolina," the NCBPTE's purpose of public protection never wavered.

While the membership of the Board changes with yearly appointments, one of the constants during my three

terms has been the dedication and commitment of the professionals associated with NCBPTE. It is truly an honor to work with Physical Therapists and Physical Therapist Assistants from across our great state, along with our public member and physician, all of whom are focused on public protection and ethical service. Likewise, the NCBPTE staff and associates, are highly skilled and dedicated to ensuring that operations run smoothly to support licensees and the public. Having had the opportunity to interact with Boards of other disciplines and Physical Therapy Boards from other states, I can confirm that the members and staff associated with NCBPTE are among the highest caliber.

Serving on the North Carolina Board of Physical Therapy Examiners has been one of the greatest highlights of my 30+ year career. It has been a time of change and a time of constancy. As Sydney Harris, a 20th century American journalist, said "Our dilemma is that we hate change and love it at the same time; what we really want is for things to remain the same but get better." I hope you agree with me that NCBPTE gets it just right!

### Supreme Court and the NCBPTE (continued from page 2)

can be terminated. Nevertheless, most North Carolina professional regulatory boards are acknowledged to be performing in the best interests of the public. That is not to say no changes are warranted; however, it is hoped there will be tweaks, not radical changes to a system that now works well.

## FSBPT, Telehealth, and Portability / Compacts continued from page 3)

the Federation of State Medical Boards (FSMB) are in the process of establishing licensure compacts. In 2000, the National Council of State Boards of Nursing (NCSBN) launched their compact initiative for licensed nurses. Currently 24 states participate in the nurse compact. The NCBPTE will consider participation in the licensure compact if authorization is granted by the General Assembly.

## NC Acupuncture Board Files Lawsuit

In September 2015, the North Carolina Acupuncture Licensing Board filed a lawsuit against the North Carolina Board of Physical Therapy Examiners. The Physical Therapy Board has retained the law firm of Ellis & Winters LLP to defend the Board in this case.

# Continuing Competence – Commonly Asked Questions

by Kathy O. Arney, PT, Deputy Director

Continuing Competence requirements for license renewal have been in effect since January 1, 2009. Licensees have become familiar with the requirements as evidenced by the high rate of online renewals and compliant continuing competence audits. Answers to most commonly asked questions are available on the Continuing Competence links of the Board website and prior editions of Board newsletters (on the website links – editions 2009–2014). Here are some answers and references to the most commonly asked questions in 2015:

## Is this course approved or how do I know it's approved to count for credit toward my requirement?

To confirm the approval status of a provider, contact the provider directly to determine where a specific course has been approved. Approval status is often listed on a provider's literature or website under "accreditation" or approval, and sometimes is either hard to find or not listed. Direct phone contact is best. Speak to the person responsible for credentialing courses/activities and ask where the course has been approved by a Physical Therapy entity (See rule 21 NCAC 48G .0108 of the Continuing Competence Board rules). Our website lists only courses that have specifically been approved by NCBPTE and not necessarily other providers. Activities that are approved may be reported under categories requiring approval and often count for more points than non-approved activities. Link to the rule: http://www.ncptboard.org/documents/ continuingcompetence/combined%20and%20Approved% 20CC%2orules%20effective%204-1-2015%20with %20highlight%20posted%203-31-15-2.pdf

#### What is my reporting period?

Reporting periods are assigned based on Board rules 21 NCAC 48G .0106 (a) and (b). Reporting periods are 25 months in length and always begin on January 1 and end on January 31. Licensees receive a packet in the mail upon initial licensure that includes a summary of continuing competence requirements. The reporting period assigned to a licensee is written on this summary document for reference. In addition, licensees have 24/7 access to the online continuing competence reporting tool on the Board website which also lists assigned reporting periods. The



button to access the online report is accessible from the home page or Continuing Competence menu. After initial licensure, before the first reporting period opens, licensees should refer to the message at the top of the page or the document received with the licensure packet to review their reporting period assignment.

#### When do I renew/when is cc due?

License renewal is required annually before January 31, and continuing competence is due every 25 months also before January 31. The chart below best summarizes the differences.

Reference to this chart may be found on the Board website: Continuing Competence link: Continuing Competence and License renewals (http://www.ncptboard.org/ContinuingCompetence/CCRenewal.shtml)

#### Reporting periods and Renewal period defined:

Category	Frequency	Time Period		
License renewal	Annual	By January 31		
Continuing Competence Reporting Periods 30 points PT/20 points PTA	25 months	January 1 through January 31 (example: January 1, 2004 through January 31, 2006)		

#### How do I document Clinical Practice/CI?

Documentation of Clinical Practice and Clinical Education as a Clinical Instructor can be simplified by utilizing the template forms and information available on the Board website. Reference: Continuing Competence link: Continuing Competence Forms: (http://www.ncptboard.org/ContinuingCompetence/CCForms.shtml)

<u>Clinical Practice</u> Requires separate documentation for each year during the reporting period. Documentation should include total clinical hours completed during one year. If years are combined, documentation will need to be resubmitted. W-2's, paystubs or timesheets are not acceptable forms of documentation for this category.

<u>Clinical Instructor</u> (CI) documentation requires two parts, documentation from the affiliated educational institution and a document listing hours the student and CI spent together during the clinical affiliation. Specifics are listed at the above link on the Board website.

#### What to send for audit?

The Board audits licensees each year from the reporting period that has just closed. Letters are mailed to the

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### Continuing Competence (continued from page 5)

address marked as "preferred" on file with the Board office. The date the letter is received marks the beginning of the 30-day period allowed for a response to be provided. The Board requires documentation of continuing competence activities completed during the reporting period — either 30 (PT) or 20 (PTA) points be submitted by mail. Licensees who do not respond, do not respond in a timely manner or who do not complete the audit are reviewed by the Investigative Committee (IC) of the Board for noncompliance with Board rules.

Completing an audit requires that proof of 20 or 30 points be sent to the Board office. Keep it simple! Submit only what is required!

#### Do NOT send:

- a copy of the audit request letter,
- a copy of the online report or
- significant amounts of documentation beyond 20/30 points, unless it is requested of you.

#### Do send:

• copies of Jurisprudence Certificates

- Proof of carry over points used to complete 20/30 points, if you do not have 30/20 points of documentation to submit from the reporting period itself.
   Submission of documentation of carry over is from the category where you claimed the carryover.
- submission of documentation of a few extra points, in case the documentation does not match the online report or count for as much as they had anticipated, is acceptable.

Know the rules, accurately report activities online and save documentation that accurately represents activities. Send exactly what the rules require to show for a specific activity. Auditing documentation of continuing competence is intended to be a compliance check and not a burdensome, time consuming activity. For Reference see, "Audits: How to respond" on the homepage of the Board website, www.ncptboard.org and the Continuing Competence link: Required Documentation

#### More questions?

Contact Kathy Arney, PT, Deputy Director at karney@ncptboard.org.

## North Carolina Board of Physical Therapy Examiners

Board Orders / Consent Orders / Other Board Actions Nov 2014 - Oct 2015

Kim, Thomas Seung, PT (Probation)

**Location:** Hendersonville, NC, Henderson County

License #: P9748

**Conduct:** After determining that the requirements of Board rule 21

NCAC 48G .0601 (b) were satisfied, the Board imposed the same sanctions as the Virginia Board of Physical Therapy

Examiners.

**Discipline:** Indefinite probation with conditions.

(Effective date- Nov 19, 2014)

Sison, Ben-Hur Verano, PT (Probation)
Location: Wake Forest, NC, Wake County

License #: P13493

**Conduct:** Entering false documentation in patient records and billing

for treatment that was not performed.

**Discipline:** Probation for 2 years with conditions and reimburse the

Board for the cost of the investigation. (Executed date— Dec 4, 2014)

Metzger, Raymond S., III (Suspension)
Location: Pinehurst, NC, Lee County

License #: P3854

**Conduct:** Engaging in inappropriate conduct with a student while

serving as her clinical instructor.

**Discipline:** Suspension for 1 year, the imposition of which would be

stayed so long as he complies with several conditions for a period of three years. (Executed July 31, 2015)

Chambers, Dania W., PTA (Warning)
Location: Durham. NC. Durham County

Lucation: Durnam, NG, Durnam C

License #: A5040

**Conduct:** Documenting and billing for treatment that was not provided. **Discipline:** Warning with condition and reimburse the Board for the cost

of the investigation. (Effective date- Oct 20, 2015)

### Disciplinary Actions related to Continuing Competence

Roddenberry, Joseph Ronald, PTA (Warning)

Location: Arden, NC, Buncombe County

License #: A4555

**Conduct:** Failing to respond in a timely manner to an audit request by

the Board for the January 1, 2012 through January 31, 2014

Continuing Competence Reporting Period.

Discipline: Warning and reimburse the Board for the cost of the

investigation. (Effective date- Jan 14, 2015)

Pressly, Ann P., PTA (Warning)

Location: Albemarle, NC, Stanly County

License #: A1148

**Conduct:** Failing to provide documentation that she completed

continuing competence activities for the January 1, 2011-

December 31, 2012 Reporting Period

**Discipline:** Warning and reimburse the Board for the cost of the

investigation. (Effective date- Oct 20, 2015)



# Are PT licensees required to have a "Privilege License"?

From time to time, the Board receives inquiries regarding the applicability of G.S. 105 – Taxation, § 105-41, which relates to a fee for professionals for a Privilege License. Any questions regarding the Privilege License should be directed to the appropriate local branch of the Department of Revenue.

Are PTAs, student PTs, and student PT
allowed to take verbal or telephone orders?
It would not be violation of the North Carolina
Physical Therapy Practice Act or Board rules for a PTA or a PT or PTA student to take a verbal order or a telephone order from a physician provided that the physical therapist and the referring physician co-sign the order.

# • May I accept a gift from a patient / client?

It would not be a violation of the Practice Act or Board's rules for a licensee to accept a gift (small token of appreciation) provided that the gift is of nominal value and was not solicited by the licensee. Board rules that could potentially apply: 21 NCAC 48G .0601 (a) (9) & (29).

# Can a PTA write a letter of "medical necessity"?

The determination of medical necessity requires an evaluation and judgment, which should be performed by a physical therapist. Therefore, it would be beyond the scope of practice for a PTA to write a letter of medical necessity.

# Is "maintenance physical therapy" allowed by law?

The Board cannot speak for Medicare / Medicaid / Worker's comp / private insurance contractual agreements / etc. regarding their regulations. The Board can only speak for the North Carolina Physical Therapy Practice Act. Neither the Practice Act, nor the Board rules specifically mention "Maintenance Therapy." It would not be a violation of the Practice Act for a PT (or a PTA who is appropriately supervised) to provide maintenance therapy to patients provided that the patient & family, referring physician, and payors are informed that the treatment is maintenance and that this is documented in the chart. The supervision requirements would be no different than other supervision requirements.

# Are physical therapists allowed to treat someone solely for weight loss purposes? The patient's only diagnosis is obesity and she has no pain.

As obesity is a medical diagnosis and condition, and proper exercise is an established component for treating obesity, and also in most cases involving obesity there are also related deconditioning and musculoskeletal conditions including joint problems, it would not be a violation of the North Carolina Physical Therapy Practice Act or Board rules for a physical therapist to treat a patient with the diagnosis of obesity. A physical therapist may not provide nutritional counseling to patients as a stand-alone service or part of their plan of care to help and aid them in improving their health, well being and function; however, it would not be a violation of the Practice Act or Board's rules for a physical therapist to offer general dietary advice that can be routinely found in the public domain. As stated in the Position Statement on the Board's website, a physical therapist should also not make specific recommendations regarding vitamins or supplements.

#### North Carolina Board of Physical Therapy Examiners

#### **Board Members**

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Angela B. Hunter, PT Rocky Mount, NC

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#### North Carolina Board of Physical Therapy Examiners

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## **Calendar of Events**

\* Dates are tentative / please confirm by contacting the Board office (800-800-8982)

Oct 27, 2015 (Tues)	Investigative Committee Meeting *- (08:00 a.m. – 1:00 p.m., Satisky and Silverstein Law Firm, Raleigh, NC, www.satiskysilverstein.com).
Oct 28, 2015 (Wed)	Newsletter will be posted. A "notice" regarding Newsletter and reminder regarding licensure renewal will be emailed to all licensees.
Oct 31, 2015 (Sat)	Postcard Notices will be mailed reminding licensees to renew. Online renewal will open.
Dec 9, 2015 (Wed)	Board Meeting *- (8:30 a.m 4:30 p.m., Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC, http://www.sienahotel.com/).
Dec 16, 2015 (Wed)	Investigative Committee Meeting *- (08:00 a.m. – 1:00 p.m., Satisky and Silverstein Law Firm, Raleigh, NC, www.satiskysilverstein.com).
Jan 28, 2016 (Thurs)	Investigative Committee Meeting *- (08:00 a.m. – 1:00 p.m., Satisky and Silverstein Law Firm, Raleigh, NC, www.satiskysilverstein.com).
Jan 31, 2016 (Sun)	Final Deadline for license renewal.
Feb 1, 2016 (Mon)	Lapse of licenses not renewed.
Mar 23, 2016 (Wed)	Board Meeting *- (8:30 a.m 4:30 p.m., Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC, http://www.sienahotel.com/).
June 15, 2016 (Wed)	Board Meeting *- (8:30 a.m 4:30 p.m., Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC, http://www.sienahotel.com/).
Sept 14, 2016 (Wed)	Board Meeting *- (8:30 a.m 4:30 p.m., Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC, http://www.sienahotel.com/).

### **Summary of Fees**

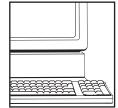
Renewal (PT & PTA)	\$ 100.00	Verification/Transfer Fee	30.00
Revival Fee and Renewal Fee	130.00	License Card	10.00
Application Fee PT & PTA	150.00	List of Licensees (PT or PTA)	60.00
Exam Cost (PT & PTA)* (01-01-15)	400.00	Certificate Replacement	30.00
Exam Retake Fee	60.00	* Plus PT or PTA Application Fee	

#### 21 NCAC 48G .0112 Costs for Continuing Competence Activities

(Effective January 1, 2009)

- (a) There is no cost for approval of continuing competence activities offered by approved sponsors.
- (b) For a non-Approved provider seeking approval of a continuing competence activity offered to licensees in this State, the cost is one hundred fifty dollars (\$150.00) per activity.
- (c) For a licensee seeking approval of a continuing competence activity that is not offered by an approved sponsor, the cost is twenty-five dollars (\$25.00).

N.C. Licensure Statistics	Licensed	Reside	Work
(As of September 23, 2015)	 7,755 3,511	6,543 3,105	6,266 2,898



#### 21 NCAC 48F.0105 CHANGE OF NAME AND ADDRESS REQUIRED

Each licensee must notify the Board within 30 days of a change of name or work or home address. [History Note: Authority G.S. 90-270.27; Eff. August 1, 2002.]

Addresses can be changed by the licensee on the Licensure Board's web page (www.ncptboard.org) or by letter, fax (919-490-5106), or call the Board's office @ 919-490-6393 or 800-800-8982.