

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DHR06837

<p>A UNITED COMMUNITY LLC PETITIONER,</p> <p>V.</p> <p>ALLIANCE BEHAVIORAL HEALTHCARE, AS LEGALLY AUTHORIZED CONTRACTOR OF AND AGENT FOR NC DEPARTMENT OF HEALTH AND HUMAN SERVICES RESPONDENT.</p>	<p>FINAL DECISION</p>
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THIS MATTER came on for hearing before the undersigned, J. Randall May, Administrative Law Judge, on April 21 – 23, 2015, in Raleigh, North Carolina.

APPEARANCES

For Petitioner A United Community, LLC (“Petitioner” or “AUC”):

Renée J. Montgomery
Varsha D. Gadani
Parker Poe Adams & Bernstein, LLP
301 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

For Respondent Alliance Behavioral Healthcare, *as legally authorized contractor and agent for* the North Carolina Department of Health and Human Services (“Respondent” or “Alliance”):

Erica C. Bing
Assistant General Counsel
Alliance Behavioral Healthcare
4600 Emperor Boulevard, Suite 200
Durham, North Carolina 27703

APPLICABLE LAW

The laws and regulations applicable to this contested case are N.C. Gen. Stat. § 108C, Art. 3 of N.C. Gen. Stat. § 150B, and 42 C.F.R. § 438.214.

BURDEN OF PROOF

Petitioner AUC has the burden of proof in this contested case.

ISSUES

Petitioner AUC contends the issues to be resolved in this case are whether Respondent Alliance failed to act as required by law or rule, exceeded its authority, acted erroneously, failed to use proper procedure, or acted arbitrarily or capriciously when it terminated AUC's participation in the 1915 (b)/(c) Medicaid Waiver Program that Alliance operates. AUC also contends that another issue to be determined is its entitlement to reasonable attorneys' fee from Alliance pursuant to the provisions of N.C. Gen. Stat. § 150B-33(b)(11).

In addition to the issues based on the standards of N.C. Gen. Stat. § 150B-23(a) as set forth above, Respondent Alliance also contends the issues in this case are whether the Office of Administrative Hearings has jurisdiction to hear this matter, whether Petitioner provided false information to Alliance during the re-credentialing process and thereby breached its contract with Alliance, and whether Alliance acted reasonably in its decision to deny re-credentialing and terminate the contract between Alliance and Petitioner.

ADMITTED EXHIBITS

The following exhibits were allowed into evidence:

Petitioner's Exhibits: 1-18, 21, 23, 25-29, 31, 35, 36, 38-40

- 1 July 31, 2014 Notice of Termination (Dep. Ex. 2)
- 2 AUC's Request for Reconsideration (without exhibits which are listed separately)
- 3 September 9, 2014 Reconsideration Decision (Dep. Ex. 9)
- 4 AUC's Request for a Second Level Reconsideration (without exhibits which are listed separately)
- 5 November 10, 2014 Second Level Reconsideration Decision
- 6 AUC Re-Credentialing Application (Dep. Ex. 3) (submitted with Reconsideration Requests)
- 7 April 30, 2014 email from Lisa Bradley to Kimberly Hayes (Dep. Ex. 5)(submitted with Reconsideration Requests)
- 8 Notice of Change Forms that included new Clinical Director signed and dated April 30, 2014 (submitted with Reconsideration Requests)

- 9 April 30, 2014 email from Lisa Bradley to Chessina Thigpen attaching signature page (submitted with Reconsideration Requests)
- 10 May 1, 2014 email from Chessina Thigpen to Matt Kanoy with Notice of Change Form (Dep. Ex. 4)
- 11 Alliance's Compliance Issues Report dated July 31, 2014
- 12 Alliance's Compliance Issues Report dated May 22, 2014
- 13 May 22, 2014 email from Dr. Eric Mizelle to Erica Arrington (Dep. Ex. 7)
- 14 August 11, 2014 signed statement from Chessina Thigpen (submitted with Reconsideration Requests)
- 15 Change of Medical Director Form of August 8, 2014 (Dep. Ex. 6) and Medical Director Agreement and Job Description (submitted with Reconsideration Requests)
- 16 Excerpts of provider Operations Manual (Dep. Ex. 8)
- 17 Information on Alliance's website regarding Intensive In-Home Services (Dep. Ex. 11)
- 18 Information on Alliance's website regarding Community Support Teams (Dep. Ex. 12)
- 21 CABHA position descriptions (Dep. Ex. 15) (submitted with Reconsideration Requests)
- 23 Notice of 30(b)(6) Deposition (Dep. Ex. 1)
- 25 Alliance's Response to Petitioner's First Request for Production of Documents (Dep. Ex. 10)
- 26 Alliance's Response to Petitioner's First Set of Interrogatories and Second and Third Requests for Production of Documents
- 27 Documents produced by Alliance in response to Interrogatory No. 2 of AUC's First Set of Interrogatories
- 28 Documents produced by Alliance in response to Document Request No. 5 of AUC's Second Request for Production of Documents
- 29 Minutes of reconsideration meeting of August 25, 2014 produced by Alliance in discovery
- 31 Letter of June 19, 2013 from Alliance to AUC reporting the results of Gold Star Initial Monitoring

- 35 Email from Sandy Valdez to Cathy Estes dated August 12, 2014
- 36 Email from Lisa Bradley to Cathy Estes on August 12, 2014
- 38 Contract between Alliance and the N.C. Department of Health and Human Services, Division of Medical Assistance effective on February 1, 2013
- 39 42 C.F.R. § 438.214
- 40 Documents submitted with Reconsideration Requests (Duplicate of Exhibits 6, 7, 8, 9, 14 15 and 21)

Respondent's Exhibits: 1-13, 15-20, 22 (partial), 23-25

- 1 Network Contract and Amendments
- 2 DMA Clinical Coverage Policy 8A (August 2013)
- 3 North Carolina Department of Health and Human Services State Plan Amendment Attachment 3.1-A.1
- 4 Request for Proposal Follow-Up
- 5 Medical Director Job Posting from A United Community, LLC
- 6 Re-Credentialing Application for A United Community, LLC
- 7 May 1, 2014 Email from A United Community, LLC with Notice of Change Forms attached for Nicole Benjamin, Kristen Bird, Murray Dees, Abbe Gorberg, Kennette Hicks, Ra'Necia Rorie, Joyce Chilongo, Melissa, Simpson, Kimberly Cross, Dr. Rohima Miah
- 8 May 1, 2014 Email from A United Community, LLC with Notice of Change Form attached for Dr. Eric Mizelle
- 9 May 22, 2014 Email from Dr. Eric Mizelle
- 10 July 31, 2014 Re-Credentialing Denial Notice
- 11 Alliance Provider Operations Manual
- 12 September 9, 2014 Notice of First Level Reconsideration Decision
- 13 August 14, 2014 Notice of Change Form Regarding Dr. Rohima Miah
- 15 April 30, 2014 Email from A United Community, LLC

- 16 Original Provider Application for A United Community, LLC
- 17 DHHS Webpage on CABHAs
- 18 Minutes of Reconsideration Meeting – Monday, August 18, 2014
- 19 Affidavit of Dr. Eric Mizelle and Exhibits
- 20 August 8, 2014 Notice of Change Form regarding Dr. James A. Smith, III
- 22 (Partial) Only Exhibit B of the Affidavit of Dr. Rohima Miah admitted - Judgment in Action to Recover Money for Personal Property (the affidavit itself is not admitted)
- 23 Reconsideration Panel Emails
- 24 Alliance Operational Procedure 6030 – August 28, 2013
- 25 Alliance Operational Procedure 6030 – Revised September 17, 2014

DEPOSITIONS

Petitioner also offered into evidence the deposition of Cathy Estes taken pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure on September 23, 2014 which was allowed.

WITNESSES

Petitioner presented the testimony of:

- 1. Cathy Estes, Alliance Director of Provider Network Operations (adverse witness)
- 2. Lisa Bradley, Executive Director of AUC

Respondent presented the testimony of:

- 1. Eric Mizelle, M.D. psychiatrist for AUC
- 2. Erica Arrington, M.D., formerly Associate Medical Director of Alliance
- 3. Kathy Niblock, Alliance Utilization Review Manager
- 4. Cathy Estes, Alliance Director of Provider Network Operations

PROCEDURAL HISTORY

On September 10, 2014, Petitioner AUC filed a Petition for Contested Case Hearing against Respondent Alliance as legally authorized contractor of an agent for the N.C. Department of Health and Human Services challenging the decision of Alliance to deny AUC's re-credentialing and terminate its participation in the Medicaid Waiver Program operated by Alliance. On that same

day, Petitioner also filed a Motion for Temporary Restraining Order and Stay of Contested Actions. A Temporary Restraining Order was entered on September 18, 2014.

On September 26 - 30, 2014, a hearing was held on AUC's Motion for Stay and an Order Granting Injunction Staying Contested Action was entered on October 17, 2014. On November 5, 2014, Respondent Alliance filed a Motion to Amend the Order Granting Injunction Staying Contested Action contending that OAH lacked legal authority to renew or extend the contract between AUC and Alliance beyond the contract term ending December 31, 2014. An Order denying Alliance's Motion was entered on December 11, 2014.

The contested case hearing was originally scheduled before the Honorable Donald W. Overby for February 26–27, 2015. However, due to inclement weather, the Office of Administrative Hearings was closed and the contested case hearing was not able to be heard on those dates. This case was then reassigned to the undersigned and the parties jointly moved to have the contested case hearing rescheduled for the week of April 20, 2015.

This matter was heard before the undersigned on April 21–23, 2015. The parties agreed to submit Proposed Findings of Fact and Conclusions of Law by June 17, 2015 and agreed that the Final Decision could be rendered by September 1, 2015.

N.C. Gen. Stat. § 108C-12 requires this tribunal to issue a final agency decision within 180 days of the date of filing of the contested case petition, which shall be extended in the event of delays caused or requested by Respondent. Because the parties jointly moved for a rescheduling of the contested case hearing and agreed to the time periods as set forth above, the Final Decision is timely.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding the undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of each witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other creditable evidence in the case.

FINDINGS OF FACT

The Parties

1. Petitioner AUC is a provider of mental health and behavioral health services and has attained the status of a Critical Access Behavioral Health Care Agency (“CABHA”). AUC has its principal place of business in Raleigh, North Carolina. Lisa Bradley is AUC's Executive Director. (Bradley, Vol. 1, p. 81).

2. AUC was founded in 2007 and is a provider of Medicaid Intensive In-Home (“IIH”) services, Community Support Team (“CST”), Medication Management, outpatient therapy, and

Comprehensive Clinical Assessments. (Bradley, Vol. 1, pp. 181 and 183). AUC has a special focus on treating children and adolescents and receives referrals from multiple sources, including Holly Hill Hospital, school systems, the physicians' network known as CCNC, and the justice system. (Bradley, Vol. 1, pp. 182-183).

3. AUC is distinguished from other providers by having a bilingual staff and offering one of the few evidence-based substance abuse programs for teens and youth. (Bradley, Vol. 1, p. 182). AUC also focuses on cognitive behavioral therapy and dialectical behavioral therapy. (*Id.*).

4. Under federal and State law, the North Carolina Department of Health and Human Services ("DHHS") is the single State agency authorized by the federal government to administer the Medicaid program in North Carolina. *See* 42 U.S.C. § 1396a(a)(5); N.C. Gen. Stat. § 108A-54. Under the law, DHHS is the only agency that is authorized to manage the Medicaid program, unless a waiver is granted by the federal government.

5. DHHS received approval from the federal government to operate a Medicaid waiver program under Sections 1915(b) and 1915(c) of the Social Security Act ("the 1915(b)/(c) Medicaid Program"). (Pet. Ex. 38). As a part of the 1915 (b)/(c) Medicaid Program, DHHS is permitted to enter into contracts with managed care organizations ("MCO") to operate prepaid inpatient health plans ("PIHP") pursuant to 42 C.F.R. § 438.2.

6. In February 2013, Alliance entered into a contract with DHHS allowing it to serve as a managed care organization ("MCO") under the 1915(b)/(c) Medicaid Program. Alliance manages Medicaid mental health, developmental disability, and substance abuse services provided in Cumberland, Durham, Johnston, and Wake Counties. (Pet. Ex. 38). Alliance's duties include authorizing and paying for recipient services, contracting with providers, and monitoring providers for compliance with regulatory and quality standards. (*Id.*, at Attachment B).

Federal, State, and Alliance Policy Requirements Regarding Re-credentialing

7. The federal government has promulgated regulations that apply when states receive a waiver to operate Medicaid MCOs and PIHPs. One of these regulations is 42 C.F.R. § 438.214(a) entitled, "*Provider Selection.*" This regulation requires the State to ensure, through a contract, that each MCO/PIHP "implements written policies and procedures for selection and retention of providers." (Pet. Ex. 39) (Emphasis added).

8. 42 C.F.R. § 438.214(e) requires MCO/PIHPs to "comply with any additional requirements established by the State." (Pet. Ex. 39).

9. Pursuant to 42 C.F.R. § 438.214, Alliance has executed a contract with DHHS, division of Medical Assistance ("DMA"). Under Section 7.6 of this contract, which Alliance has stipulated is relevant to the issues in this contested case (Jt. Stip. 2), Alliance is required to consider seven different categories of information in deciding whether to re-credential a network provider such as AUC. (Estes, Vol. 1, pp. 69-70). The required information to be considered is as follows:

- a) Data collected through Alliance's Utilization Management Program;

- b) Data collected through Alliance's Quality Management Program;
- c) Accreditation outcomes;
- d) Grievances procedure outcomes;
- e) Complaint logs;
- f) Enrollee satisfaction survey results; and
- g) Results from other quality improvement activities.

(Pet. Ex. 38, p. 32).

10. Alliance's Provider Operations Manual states that re-credentialing of providers must be done in accordance with federal and state laws, rules and regulations, and DHHS contract requirements. (Pet. Ex. 16, p. 21).

11. Alliance also stipulated that Section 7.8 of the DHHS contract is relevant to the issues in this contested case. (Jt. Stip. 3). Section 7.8 of the DHHS contract specifically requires that Alliance develop a provider manual that provides information and education to providers about Alliance which must include, among other topics, the provider appeals process. (Pet. Ex. 38, § 7.8, pp. 33-34).

12. AUC's contract with Alliance that is at issue in this case commenced on January 1, 2014 was set to expire by its own terms on December 31, 2014. AUC's contract with Alliance contained no right to renewal or extension. That contract also included a termination clause which either party could exercise without cause upon 30 days' notice.

13. Alliance began the process of re-credentialing AUC in February 2014 by notifying AUC in writing that Alliance was responsible for the credentialing and re-credentialing of all providers in the Alliance network. The letter, dated February 28, 2014, stated that AUC had been identified by Alliance at that time to begin the re-credentialing process. Application forms, and instructions for their completion, were attached to that correspondence to AUC. Alliance identified a Credentialing Specialist, Matt Kanoy, who was assigned to AUC as Petitioner's contact throughout the re-credentialing process. Thus, Alliance did not act without substantial justification in beginning the re-credentialing process. (N.C. Gen. Stat. § 150-33(b)(11))

Resignation of AUC's Medical Director and Submission of Change Forms

14. Rohima Miah, M.D., AUC's Medical Director, resigned on April 26, 2014 with no prior notice. (Pet. Ex. 7). On April 30, 2014, Lisa Bradley communicated by telephone with the network specialist assigned to AUC by Alliance, Kimberly Hayes, and informed Ms. Hayes about Dr. Miah's resignation and that AUC was presently interviewing for a Medical Director. (*Id.*; Bradley, Vol. 1, pp. 194-195). Lisa Bradley informed Ms. Hayes that Dr. Eric Mizelle continued to provide direct care to consumers including medication management. (*Id.*).

15. When Kimberly Hayes was assigned to be AUC's network specialist, AUC was informed that she was the person at Alliance to contact with any questions, concerns, and to communicate any information that AUC needed to share. (Bradley, Vol. 1, pp. 193-194).

16. After Lisa Bradley's conversation with Kimberly Hayes, she followed up that same day with an email to Ms. Hayes at 10:53 p.m. on April 30, 2014 confirming the information that she had communicated during the telephone conversation with Kimberly Hayes. (Pet. Ex. 7).

17. After emailing Ms. Hayes to conform their conversation, Lisa Bradley then sent an email to Chessina Thigpen, AUC's Office manager, at 11:16 p.m. attaching one signature page to be submitted with the change forms indicating that Dr. Rohima Miah had resigned and that AUC had a new Clinical Director. (Pet. Ex. 9; Bradley, Vol. 1, p. 200). The submission of these change forms was consistent with what Ms. Bradley informed Kimberly Hayes she would do. (Bradley, Vol. 1, p. 198).

18. In response to a question directed to Ms. Thigpen by Matt Kanoy with Alliance regarding AUC's Medical Director on May 1, 2014, Chessina Thigpen submitted a change form that identified Dr. Eric Mizelle as the Acting Medical Director of AUC. (Pet. Ex. 10). Attached to the change form was a copy of a signature page dated April 30, 2014 that Lisa Bradley had transmitted to Chessina Thigpen the evening of April 30, 2014 to be used with the notices of change forms submitted to notify Alliance that Dr. Miah had resigned and that AUC had a new Clinical Director. (Pet. Ex. 8; Bradley, Vol. 1, pp.202 and 206).

19. Lisa Bradley was not aware that Ms. Thigpen had sent the form involving Dr. Mizelle and only learned about the erroneously submitted form after she received notification on July 31, 2014 that AUC's re-credentialing was being denied and its contract was being terminated. (Bradley, Vol. 1, pp.202 and 206; Pet. Exs. 2 and 36). During Lisa Bradley's investigation, Chessina Thigpen explained that she had submitted the form at the request of an Alliance employee, copying the signature page that Lisa Bradley had signed for the forms that Ms. Bradley had authorized. (Bradley, Vol. 1, pp. 202 and 206). She explained that it was an honest mistake. (*Id.*).

20. Although the credibility of Chessina Thigpen's testimony could not be observed by the undersigned, there was no indication that the misrepresentation transmitted by her was deceitful, with guile, malice or anything other than a mistake. It is clear to the undersigned that this statement was contrary to the other representations made by AUC.

The Re-credentialing Committee's Decision

21. As set forth in Finding 9 above, Alliance is required to consider certain information about a provider in deciding whether the provider should be re-credentialled.

22. Alliance's Credentialing Committee made the decision that AUC would not be re-credentialled. (Estes Dep., pp. 14 and 15) However, members of the Credentialing Committee were not provided any data collected on Alliance's Utilization Management Program, any data collected through Alliance's Quality Management Program, any information on grievance

procedure outcomes or complaint logs, the results of any enrollee satisfaction surveys, nor the results from other quality improvement activities. (Pet. Exs. 26 Interrogatory No. 2 response and 27)

23. Instead of considering the factors that the Credentialing Committee was required to consider, the Credentialing Committee based its decision based on the one notice of change form mistakenly submitted by Chessina Thigpen without the knowledge of Lisa Bradley, AUC's Executive Director. (Estes, Vol. 1, p. 44; Bradley, Vol. 1, p. 202). The Credentialing Committee never saw a copy of Lisa Bradley's email to AUC's assigned network specialist, Kimberly Hayes that accurately informs Alliance about the circumstances of its Medical Director. (Estes, Vol. 1, p. 47; Pet. Ex. 7).

24. Members of the Credentialing Committee received only a checklist completed by Matt Kanoy. (Pet. Ex. 27). Matt Kanoy was not a member of the Credentialing Committee and none of the information by Mr. Kanoy reviews was provided to the Credentialing Committee. (Pet. Exs. 26 and 27; Estes, Dep., pp. 14 and 15; Estes, Vol. 3, pp. 591-592).

25. The checklist that was completed by Mr. Kanoy includes no details or analysis of the subjects that Alliance is required to consider in re-credentialing. The form simply indicates that there were "no issues noted" for quality management and compliance sanctions database. (Pet. Ex. 27, p. 2). The form makes no mention of any of the data collected through Alliance's Utilization Management Program, grievances procedure outcomes, complaint logs, generally satisfaction survey results, or the result of other AUC quality improvement activity. (*Id.*). The checklist nowhere mentions that AUC received a score of 99% on the Gold Star initial monitoring conducted by Alliance. (Pet. Exs. 27 and 34).

Notification to AUC of Alliance's Denial of Its Credentialing

26. On July 31, 2014, AUC's Executive Director, Lisa Bradley, was notified through a telephone call and letter that was emailed to her on that same day that its re-credentialing had been denied and that its contract would be terminated effective August 30, 2014. (Bradley, Vol. 1, pp. 203-204; Pet. Ex. 1).

27. Ms. Bradley was on vacation when she received a message asking her to call Cathy Estes. During the conversation which lasted approximately five minutes, Cathy Estes informed Lisa Bradley that AUC's re-credentialing was being denied and its contract terminated. (Bradley, Vol. 1, pp. 203-204 and 210). Lisa Bradley was stunned and surprised and asked questions regarding appeal rights and what would happen to AUC's consumers. (*Id.* at 204). Ms. Estes told Ms. Bradley that the information would be provided in a letter and mentioned false information was presented in the credentialing application. (*Id.*).

28. Following the telephone call, Lisa Bradley received a letter from Alliance informing AUC about Alliance's decision. (Pet. Ex. 1). The letter cited the Notice of Change Form identifying Dr. Eric Mizelle as an Acting Medical Director, which was the first time Lisa Bradley heard about the erroneous form. (Bradley, Vol. 1, pp. 210-211).

29. Cathy Estes testified for Alliance in response to a Rule 30(b)(6) Notice of Deposition to Alliance (Pet. Ex. 23; Estes Dep., p. 7). Ms. Estes testified that the sole reason for the denial of re-credentialing and the termination of AUC's contract was a Notice of Change Form erroneously submitted by Chessina Thigpen on May 1, 2014. (Estes, Vol. 1, pp. 44-45; Pet. Ex. 10).

30. Following receipt of the July 31st letter, Lisa Bradley did an investigation regarding the change form described in the letter and discovered that Chessina Thigpen had mistakenly submitted a change form that identified Dr. Eric Mizelle as the Acting Medical Director of AUC. Lisa Bradley did not know that the form had been submitted by Chessina Thigpen and did not authorize her to submit the form to Alliance. (Bradley, Vol. 1, pp. 202 and 206).

31. Ms. Bradley discovered that the signature page that Ms. Thigpen had attached to the form indicating that Dr. Mizelle was Acting Medical Director was the same signature page that she had sent to Ms. Thigpen on April 30, 2014 at 11:16 p.m. which was to be submitted with the change forms indicating that Dr. Rohima Miah had resigned and that AUC had a new Clinical Director. (Pet. Ex. 9; Bradley, Vol. 1, pp. 202 and 206).

32. As Ms. Bradley explained in an email to Cathy Estes on August 12, 2014 and in AUC's Request for Reconsideration submitted to Alliance on August 11, 2014, the Office Manager, Ms. Thigpen, was not instructed to submit a change for Acting Medical Director and just assumed in error she should complete a Notice of Change Form and provide his name to Alliance since he was the only medical doctor on staff at the time. (Pet. Exs. 2 and 36; Bradley, Vol. 1, pp. 202 and 206).

Other Admissions of Alliance Regarding the Decision to Terminate AUC

33. In her deposition, Cathy Estes admitted that Alliance had notice on April 30, 2014 that AUC did not have a medical director and was searching for a new medical director. (Estes Dep, p. 31) Notwithstanding the admission that Alliance had notification that AUC had no medical director on April 30, 2014, Alliance nevertheless, used as the reason for terminating AUC's participation in its network a form mistakenly submitted the following day that included a signature of Lisa Bradley dated April 30, 2014. (Pet. Ex. 1).

34. Prior to deciding to deny AUC's re-credentialing and terminate its participation in Alliance's network, no one with Alliance called Lisa Bradley or anyone else at AUC to discuss the change form submitted by Chessina Thigpen that directly conflicted with Lisa Bradley's email to her assigned network development specialist, Kimberly Hayes. (Bradley, Vol. 1 pp. 64-65; Bradley, Vol. 1, pp. 207-208).

35. On May 22, 2014, Erica Arrington, M.D., Alliance's Associate Medical Director, sent an email to Dr. Mizelle asking if he was the Medical Director or general employee with AUC. (Pet. Ex. 13). Dr. Mizelle responded that he was providing medication management and reviewed some of their person-centered plans and assessments and signed medical necessity orders, but he was not the Medical Director. (*Id.*).

36. In his email response, Dr. Mizelle did not mention the clinical supervision he was providing and the monthly supervision meetings that he was attending. (Mizelle, Vol. 1, pp. 143-144). Dr. Mizelle testified that it was plausible for someone in a position like Chessina Thigpen to confuse medical doctor and medical director given the fact that he was working with AUC, providing clinical supervision, and clinical direction to its provisionally licensed clinicians. (Mizelle, Vol. 1, pp. 147-148).

37. Dr. Mizelle was led to believe that Lisa Bradley had represented that Dr. Mizelle was AUC's Medical Director and was not told that the reason for the request was a change form submitted by Chessina Thigpen. (Mizelle, Vol. 1, p. 144). Ms. Bradley was not informed about this communication with Dr. Mizelle until it was shown to her by Dr. Arrington at the reconsideration hearing which was held on August 25, 2014, after the notice to AUC denying re-credentialing and terminating its contract. (Bradley, Vol. 1, pp. 223-224).

38. Alliance contends that it did not need to consider the information and email to Cathy Estes because Ms. Estes was not involved in the credentialing or re-credentialing. However, Ms. Estes was AUC's assigned network specialist and she had reached out to Lisa Bradley at AUC to discuss the abrupt departure of Dr. Miah. (Bradley, Vol. 1, pp. 194-195).

39. Cathy Estes admitted that the change forms are not specific to the re-credentialing process. (Estes Dep., pp. 41-42). Ms. Thigpen did not voluntarily submit the form but was requested to do so by Matt Kanoy with Alliance. (Pet. Ex. 10). Ms. Thigpen's email references "information requested about medical director." (*Id.*).

40. In communicating with Ms. Thigpen about the Medical Director, Matt Kanoy was ignoring the fact that the credentialing application listed Lisa Bradley as the primary contact person. (Pet. Ex. 6). Ms. Estes admitted that if there had been any questions about the forms that had been submitted or questions about AUC's Medical Director, the application that AUC submitted named Lisa Bradley as the primary contact person. (Estes, Vol. 1, pp. 170-171). This position left question for the finder of fact.

41. AUC followed the required procedures regarding notice of change forms involving its medical director and followed the process that she had discussed with Ms. Hayes. (Bradley, Vol. 1, p. 198). After Dr. Miah resigned, AUC submitted the required change form notifying Alliance about Dr. Miah's abrupt resignation. (Pet. Ex. 8) When AUC was able to secure a new medical director, James Smith, M.D., AUC submitted the required change form. (Pet. Ex. 15; Bradley Dep. Vol. 1, pp. 208-209).

42. Cathy Estes, who testified as Alliance's 30(b)(6) designee, admitted that she had not even seen Lisa Bradley's email to Kimberly Hayes, AUC's assigned network specialist, until immediately prior to her deposition several weeks after the termination letter was sent to AUC. (Estes Vol. 1, pp. 47 and 49; Estes Dep., pp. 29-30). Ms. Estes testified that neither she nor the Credentialing Committee saw this email prior to making a decision to deny re-credentialing and terminate AUC's contract. (Estes, Vol. 1, pp. 47 and 49). Ms. Estes also admitted that she was not aware of anything inaccurate in this email reporting the circumstances of AUC's Medical Director. (Estes, Vol. 1, p. 49).

43. In its termination letter, Alliance cites its provider manual as support for its decision citing the language that “providing false information or failing to disclose information in response to a question in the application will result in a denial of the providers application or result in termination of the contract.” (Pet. Ex. 1; Pet. Ex. 16, p.35; Estes Dep. p. 75) However, Alliance admitted in Cathy Estes’ deposition that there was no false information in AUC’s credentialing application, that the information was correct when it was submitted, and that AUC had no obligation to amend the application. (Estes Dep. pp. 22-23).

44. In submitting this form, Ms. Thigpen made an honest mistake. Since Dr. Mizelle was a medical doctor for AUC at the time, she assumed that Dr. Mizelle could be called an acting medical director. (Pet. Exs. 2, 14, 36). His contractual duties included clinical leadership and ongoing clinical supervision. (Res. Ex. 19; Mizelle, Vol. 1, pp. 142-143).

45. Ms. Estes contends she made an “honest mistake” by signing the denial of re-credentialing letter to AUC as the “Credentialing Manager” when it was no longer her title. (Estes, Vol. 1, pp. 37-38).

The Reconsideration Process

46. The letter sent to AUC informing AUC that the Credentialing Committee made a determination to deny its re-credentialing which would result in termination of its contract informed AUC that it could request a reconsideration of the decision within 21 calendar days. (Pet. Ex. 1). Although Cathy Estes testified that the Provider Operations Manual does not provide reconsideration of a decision made by the Credentialing Committee, the letter sent to AUC specifically referenced Alliance’s Provider Operations Manual as the document that set forth AUC’s reconsideration rights. (Pet. Ex. 1; Estes, Vol. 1, p. 99).

47. Although the Provider Operations Manual says that a decision does not become final if a reconsideration request is submitted, the letter sent to AUC failed to include that language. (Pet. Ex. 1; Pet. Ex. 16, p. 110).

48. Alliance treated the decision as final by instructing AUC to begin transferring its consumers. (Pet. Ex. 1; Bradley, Vol. 1, pp. 237 and 240). This caused considerable harm to AUC because some AUC employees became very concerned and some began finding other employment. (Bradley, Vol. 1, pp. 240-241).

49. On or around August 11, 2014, AUC submitted its Request for Reconsideration of the decision. (Pet. Ex. 2). As stated in Alliance’s letter notifying AUC of its decision, AUC was instructed that it “must provide any additional information at the time the Request for Reconsideration was filed” in a specific format. (Pet. Ex. 1, p. 2).

50. In its Reconsideration Request, AUC provided supporting documents which included Lisa Bradley’s email to Kimberly Hayes on April 30, 2014 informing Alliance that the position of Medical Director was vacant and an Attestation from the Office Manager, Chessina Thigpen, stating that the Provider Change Form for Mr. Mizelle had been submitted in error with no false intent. (Pet. Exs. 7 and 14).

51. Notwithstanding the instructions to AUC that all documents should be submitted with the Reconsideration Request, Cathy Estes testified that she expected Lisa Bradley to bring documents concerning Dr. Mizelle to the reconsideration hearing. (Estes, Vol. 3, pp. 625-626). After Lisa Bradley's discovery that the basis for determination was the form submitted in error by Chessina Thigpen, she determined that it was not necessary to submit any documents concerning Dr. Mizelle nor bring Dr. Mizelle to the reconsideration hearing. (Pet. Ex. 29).

52. Although an issue has been raised by Alliance that Ms. Bradley erroneously stated that she had contacted Dr. Mizelle before the hearing, she explained at the hearing that her contact was with Dr. Mizelle's wife who is his administrative assistant and deals with all administrative matters. (Bradley, Vol. 1, pp. 226-227).

53. A panel of three members was assembled to consider and decide AUC's Reconsideration Request. These individuals were Kathy Niblock, an employee of Alliance, Erica Arrington, M.D., an Associate Medical Director of Alliance, and Timothy Brooks, an individual who owns and operates a behavioral healthcare agency. (Pet. Ex. 29).

54. None of the individuals on the reconsideration panel were to have any prior knowledge or involvement in the matter. (Estes, Vol. 1, p.223). This was not the case with Dr. Arrington. Dr. Arrington had sent the email to Dr. Mizelle on May 22, 2014 asking if he was the Medical Director or a general employee with AUC which was used by the Credentialing Committee to make its decision. (Pet. Ex. 13).

55. The reconsideration hearing was held on August 25, 2014. (Pet. Ex. 29). Minutes of the meeting were taken and produced by Alliance in discovery. (*Id.*). Although the stated reason for the termination decision was the erroneous form, after Ms. Bradley explained to the panel members how the form was erroneously submitted, the minutes do not reflect any questions of Ms. Bradley or discussion regarding the erroneous form. (*Id.*; Estes, Vol. 1, p. 84). Instead, most of the meeting involved discussing AUC's Medical Director vacancy after Ms. Estes stated that there could be no vacancy. (Bradley, Vol. 1, pp. 230-231).

56. Cathy Estes attended the meeting although she was not a member of the panel. The minutes show that Cathy Estes was very involved in the meeting by asking questions and making comments. (Pet. Ex. 29).

57. During the reconsideration hearing, Ms. Estes stated that AUC was required to have a Medical Director and could not have a vacancy. (Pet. Ex. 29, p. 2; Estes, Vol. 1, p. 87). This is the first time that Lisa Bradley was informed that Alliance, through Ms. Estes, was taking the position that there could be no vacancy in the Medical Director position. (Bradley, Vol. 1, pp. 234 and 236). This statement is contradicted by the CABHA position description of Medical Director, which can be found on Alliance's website. (Bradley, Vol. 1, pp. 231-232; Pet. Ex. 21).

58. Alliance's website includes a link to Implementation Update 71 issued by the N.C. Department of Health and Human Services, which attaches a document entitled "CABHA Position Descriptions." (Pet. Exs. 20 and 21; Estes Dep., p. 69). The description of the Medical Director position states that the loss of the Medical Director position for more than 90 days will require a

review of the agency's CABHA certification and the loss of this position for 180 days will result in losing CABHA certification. (Pet. Ex. 21, p. 2). When Lisa Bradley researched the issue of how long her agency could have a vacancy in its Medical Director position, this is the only information that she could find. (Bradley, Vol. 1, pp. 231-232).

59. Cathy Estes admitted that Alliance's Provider Operations Manual instructs providers that they are required to follow state updates, which would include information on Medical Director vacancies, allowing up to 180 days for a vacancy before it will result in losing CABHA certification. (Pet. Ex. 21, p. 2; Estes, Vol. 1, p. 93).

60. Ms. Estes made the statement to the Reconsideration Panel that there could be no vacancy in the Medical Director position even though she had previously received a communication from the office of Alliance's General Counsel indicating that the Compliance Committee had considered whether there could be a vacancy in a Medical Director position and determined that there was not a firm policy on the issue. (Pet. Ex. 35; Estes, Vol. 1, pp. 91 and 92).

61. Cathy Estes admitted that there is no written policy or statement available to providers stating that a provider can never have a vacancy in its Medical Director position. (Estes, Vol. 1, p. 94; Estes Dep., pp. 72, 65, 70, 72, 90).

62. Cathy Estes admitted that it is difficult to fill the position of Medical Director. (Estes Dep., p. 81). Dr. Eric Mizelle who has served as the Medical Director for CABHA confirmed the difficulty of filling this position. (Mizelle, Vol. 1, p. 142). It takes some time to find the right individual to fill the position of Medical Director. (Bradley, Vol. 1, pp.232).

63. Alliance's position on whether the Medical Director vacancy was another reason for the denial of re-credentialing and termination of AUC's contract has been contradictory. At the 30(b)(6) deposition, Cathy Estes testified that this was a second reason for the denial of the re-credentialing. (Estes, Dep., p. 57). At the hearing, however, Dr. Arrington testified that this was not a basis for the denial of the re-credentialing, even though the letter communicating reconsideration decision stated the Medical Director vacancy from April 26, 2014 through July 27, 2014 as a basis for the decision. (Arrington, Vol. 2, pp. 429-430). Cathy Estes also testified the vacancy was not a basis for the reconsideration decision, contradicting her deposition testimony and the language in the letter. (Estes, Vol. 3, pp. 603-604).

64. As shown by the minutes of the meeting held to consider AUC's Reconsideration Request, there was considerable discussion of the vacancy and then Cathy Estes stated to the members of the Panel and to Ms. Bradley that there could be no vacancy in the Medical Director position. (Pet. Ex. 29).

65. Although Ms. Estes and some Panel members testified that Lisa Bradley told the Reconsideration Panel that Dr. Mizelle was Acting Medical Director, there is nothing in the Minutes of the meeting that includes that statement from Lisa Bradley. (Pet. Ex. 29; Estes, Vol. 1, p. 176). Instead, after being faced with the accusation that AUC could not have any vacancy in

the Medical Director position, Lisa Bradley stated that if AUC had issues, Dr. Mizelle would be there to support AUC. (Pet. Ex. 29 at p. 1).

The Reconsideration Decision

66. By letter of September 9, 2014, Alliance informed AUC that the Reconsideration Panel decided to uphold the Credentialing Committee's original decision to deny re-credentialing and terminate AUC's contract. The letter cites as an additional basis for the decision that AUC failed to fill the vacated position of Medical Director from April 26, 2014 to July 27, 2014. (Pet. Ex. 3).

67. Dr. Arrington, a member of the Reconsideration Panel, admitted that none of the documents reviewed and considered by Alliance in making the decision to terminate AUC involved any of the criteria that Alliance was required to consider in making its re-credentialing decision. (Arrington, Vol. 2, pp. 422-424; Pet. Ex. 25; Pet. Ex. 38, Section 7.6, p. 32).

68. The letter denying AUC's reconsideration also mentioned there was an alleged second occasion on which AUC was alleged to have reported "false information." (Pet. Ex. 3). The letter cites the telephone conference between Cathy Estes and Lisa Bradley on July 31, 2014 and indicates that Ms. Bradley gave "false information reporting that Dr. Mizelle was the Acting Medical Director from April 26, 2014 until his separation from the agency in late May, 2014." (*Id.*).

69. The allegedly false information during the call on July 31, 2014 was not mentioned in the denial letter that was sent following the call. (Pet. Ex. 1). Ms. Bradley was not aware of this alleged statement by her until she received the reconsideration decision on September 9, 2014. (Pet. Ex. 3).

70. Before the reconsideration hearing on August 25, 2014 and without Ms. Bradley being present, Ms. Estes spoke with the Panel members about this communication that she alleges occurred between herself and Ms. Bradley. (Arrington, Vol. 2, pp. 439-440). Ms. Bradley was not provided any prior notice of this allegation and it was not the subject of the reconsideration hearing or the request for reconsideration. Nevertheless, it is included as a grounds for affirming the Credentialing Committee's decision. (Pet. Ex. 3).

71. If Ms. Bradley had told Ms. Estes during their short conversation on July 31, 2014 that Dr. Mizelle was the Acting Medical Director, this would have been inconsistent with her communication with Kimberly Hayes, the assigned network specialist, her email to Cathy Estes on August 12, 2014 explaining the circumstances of the erroneous change form, and the statements set forth in AUC's Reconsideration Request submitted to Alliance on August 11, 2014. (Pet. Exs. 2, 7, and 36).

72. Under Alliance's Provider Operations Manual, a provider is entitled to know the basis of the decision that is the subject of a reconsideration request. (Pet. Ex. 16, pp. 109-110). Alliance has failed to follow its own procedures in rendering a reconsideration decision citing additional bases for the decision to deny AUC's re-credentialing.

73. Alliance also takes a position that it was not required to provide any reconsideration to AUC because re-credentialing was not subject to Alliance's reconsideration process at the time of the termination decision. (Estes, Vol. 1, pp. 97-98). This position directly contradicts Alliance's notice to AUC of the denial of re-credentialing which specifically states that AUC was entitled to the reconsideration process set forth in the Provider Operations Manual. (Pet. Ex. 1).

74. At her deposition, Cathy Estes admitted that the sanction being imposed on AUC was termination from the network. (Estes Dep., p. 45). However, she also testified that because the termination was communicated by the Credentialing Committee and not the Corporate Compliance Committee, it was not subject to the provision that allowed an informal meeting with the Chief Executive Officer prior to the sanction becoming final. (Estes Dep., p. 51).

75. Alliance never explained why a termination decision made by the Corporate Compliance Committee was subject to reconsideration while at the same time a termination decision from the Credentialing Committee has no reconsideration rights. Ms. Estes contended that Alliance was providing a reconsideration for AUC even though it was not required by Alliance's policies. (Estes, Vol. 1, pp. 97-98). This directly contradicts Section 7.8 of Alliance's contract with DHHS which requires that the Provider Manual cover several areas, including provider appeals process. (Pet. Ex. 38, p. 34).

76. Ms. Estes admitted that an appeals process also was required for Alliance's own accreditation. (Estes, Vol. 1, p. 95). Although Ms. Estes contended that the action should not be viewed as a "sanction," she could not explain why the Minutes of the Reconsideration Panel's hearing referred to the action as a "sanction." (Estes, Vol. 1, p. 96).

77. As allowed under Alliance's procedures, AUC requested a second-level reconsideration. The letter of September 9, 2014 informing AUC that the Reconsideration Panel decided to uphold the Credentialing Committee's original decision specifically referenced the Alliance Provider Operations Manual as providing the right to a second-level reconsideration, which is a desk review. (Pet. Ex. 3).

78. Under the procedures outlined in Alliance's Provider Manual, Alliance should have rendered a decision on the second-level reconsideration within 21 days of the request that was submitted on or around September 10, 2014. (Pet. Exs. 4 and 16, pp. 111-112). The decision on the second-level reconsideration was not issued until November 10, 2014 and upheld the original decision to deny re-credentialing and terminate AUC's participation in Alliance's network. (Pet. Ex. 5).

CONCLUSIONS OF LAW

To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein as Conclusions of Law. Based upon the foregoing Findings of Fact, the undersigned makes the following Conclusions of Law:

1. As previously determined in the Order Granting Injunction Staying Contested Action and Order Denying Alliance's Motion to Amend the Order Granting Injunction Staying the Contested Action entered by the Honorable Craig Croom, all parties are properly before the Office of Administrative Hearings, and this tribunal has jurisdiction of the parties and subject matter.

2. An ALJ need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

3. In the legal issues that Alliance contends should be considered in its decision, Alliance is characterizing the relationship between AUC and Alliance as merely contractual. This argument already has been considered and rejected in the Orders entered by the Honorable Craig Croom. In its Order Granting Injunctive Relief to Petitioner, Judge Croom cited the decision of Senior Resident Superior Court Judge Donald W. Stephens in *Yelverton's Enrichment Services, Inc. v. PBH*, 13 CVS 11337 (Wake County Superior Court, March 11, 2014). As Judge Croom recited: "In the *Yelverton's* decision, Senior Resident Superior Court Judge Donald W. Stephens concluded that 'contract provisions cannot override or negate the protections provided under North Carolina law, specifically the appeal rights set forth in N.C. Gen. Stat. Chapter 108C.'" This contested case is not a breach of contract case. Instead, it involves AUC's claims that Alliance has violated the standards of N.C. Gen. Stat. § 150B-23(a).

4. Alliance also raises as an issue whether OAH has jurisdiction to hear this matter because it was filed prior to Petitioner's exhaustion of administrative remedies. This argument also was rejected when Judge Croom entered his Order Granting Injunctive Relief before the second-level reconsideration had been completed. After finding that Petitioner showed a likelihood of success on the merits and would be irreparably harmed without the entry of an injunction prior to the completion of the second-level reconsideration, Judge Croom enjoined Alliance from terminating AUC's involvement in Alliance's network, but also ordered that Alliance and AUC shall complete the reconsideration process in good faith. (Paragraph 7 of Order entered on October 17, 2014).

5. Based upon the above Findings of Fact, Alliance has exceeded its authority, has acted erroneously, has failed to act as required by law or rule, has failed to use proper procedure, and has acted arbitrarily and capriciously. N.C. Gen. Stat. § 150B-23(a). The actions of Alliance have substantially prejudiced AUC.

6. 42 C.F.R. § 438.214 entitled "*Provider Selection*" requires the State to ensure, through a contract, that each MCO/PIHP "implements written policies and procedures for selection and retention of providers." (Emphasis added).

7. In its contract with Alliance, DHHS has set forth criteria that must be considered in deciding whether or not to re-credential a provider. 42 C.F.R. § 438.214(e) requires that Alliance "comply with any additional requirements established by the State." Alliance's Provider Operations Manual acknowledges that it is required to comply with the provisions of its contract with DHHS.

8. Alliance failed to follow federal and State requirements in the re-credentialing of AUC. In making the re-credentialing decision on AUC, Alliance was required to consider a list of criteria set forth in Alliance's contract with DHHS. These criteria were not considered and the Credentialing Committee was given no documents concerning the criteria. As set forth in the Findings, the Credentialing Committee was provided only a summary checklist form completed by a non-member of the Committee.

9. Alliance also failed to follow its own policies and procedures by failing to follow the reconsideration process set forth in its Provider Operations Manual. Although Alliance contends that it was not required to provide any reconsideration to AUC because it was a termination decision made by the Credentialing Committee and not the Corporate Compliance Committee, this justification is lacking in merit and is a denial of due process.

10. Alliance failed to follow the reconsideration process set forth in its Provider Operations Manual by: (a) instructing AUC to begin transferring consumers even though the decision should not have been treated as final; (b) by failing to provide AUC with an informal meeting with Alliance's CEO before the decision became final; (c) by setting forth new reasons for the denial of AUC's re-credentialing and termination of its participation when Alliance's policies and due process require that Alliance provide the basis for its decision prior to reconsideration; and (d) by failing to provide the second-level of reconsideration within 21 days as set forth in Alliance's Manual.

11. Through its representative, Cathy Estes, Alliance also prejudiced the considerations of the Reconsideration Panel by falsely stating that there could be **no Medical Director vacancy** which was contrary to the information on Alliance's own website. Ms. Estes already had been told by the office of Alliance's General Counsel that the policy on Medical Director vacancies was not firm. (Emphasis added)

12. Under relevant North Carolina case law, decisions are arbitrary or capricious if they are "patently in bad faith, or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment" *Lewis v. N.C. Dep't of Human Res.*, 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989).

13. The evidence in this case include that Alliance's decisions and actions taken against AUC were arbitrary and capricious because they indicate a clear lack of fair and careful consideration. Alliance's failure to follow its own policies and procedures as set forth above was arbitrary and capricious.

14. The Findings of Fact demonstrate many additional examples of a decision that indicates a clear lack of fair and careful consideration, including: (a) a failure to consider information that was required to be considered during the re-credentialing process; (b) basing the credentialing decision on an erroneously submitted form and coming up with new reasons for denying AUC's re-credentialing when it was explained that the form was submitted in error; (c) providing contradictory testimony concerning the basis for Alliance's decision; and (d) adding new reasons to the reconsideration decision with no prior notice to AUC and beyond the stated basis for the original decision.

15. The re-credentialing process that Alliance followed did not require perfect vision; however, a broader approach, following a more inclusionary process would have prevented this system from failing to see “the forest for the trees”. This case clearly demonstrates a failure to communicate, which has led the parties to a very costly and unnecessary hearing. Reasonable minds are required to produce reasonable results - - this should have been the purpose of the reconsideration process.

16. Reasonable attorneys’ fees may be assessed against a respondent when that respondent has substantially prejudiced petitioner’s rights and has acted arbitrarily or capriciously. N.C. Gen. Stat. § 150B-33(b)(11). However, because of the facts of this case and in the discretion of the undersigned, an award of attorneys’ fees is denied.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent prejudiced Petitioner’s rights, acted outside of its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, and failed to act as required by law or rule in its decision to terminate AUC as a provider in the Alliance service area. Respondent’s decision is hereby **REVERSED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court where the person aggrieved resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision. In conformity with the Office of Administrative Hearings’ Rule, 26 N.C. Admin. Code 03.01 and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 20th day of July, 2015.

J. Randall May
Administrative Law Judge